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# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 212

**[CIS No. 2780–24; DHS Docket No. USCIS–2009–0022]**

**RIN 1615–AB83**

## Immigration Benefits Business Transformation, Increment I; Corrections

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

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** On August 29, 2011, the Department of Homeland Security published a final rule titled ''Immigration Benefits Business Transformation, Increment I,'' which, in part, amended DHS regulations to remove references to form numbers and titles. Two of the amendatory instructions were inadvertently not followed, resulting in errors in the Code of Federal Regulations (CFR). This document describes those errors and corrects the CFR to incorporate the amendments as instructed in the 2011 final rule. This action makes no substantive regulatory changes.

**DATES:** August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

The *Immigration Benefits Business Transformation, Increment I* final rule [1] included two amendments to 8 CFR 212.2 that were incorrectly incorporated into the CFR. Specifically, the instruction numbered 64 stated that 8 CFR 212.2 would be amended to revise the term ''the Form I–212'' or ''Form I–212'' to read as ''the application'' wherever it appeared in the listed paragraphs, including paragraph (f) and paragraph (i)(2).[2] However, the resulting amendments to the CFR were incomplete, as described in the following paragraphs.

In accordance with these instructions, the sentence in former 8 CFR 212.2(f) that read, ''The alien must file the Form I–212, where required, with the DHS officer having jurisdiction over the port of entry,'' [3] should have been revised to read, ''The alien must file the application, where required, with the DHS officer having jurisdiction over the port of entry.'' However, 8 CFR 212.2(f) was erroneously amended to remove ''Form I–212'' without incorporating ''application.'' As a result, the current provision has a blank space and reads, ''The alien must file the, where required, with the DHS officer having jurisdiction over the port of entry.'' [4]

The instructions also sought to amend 8 CFR 212.2(i)(2) by replacing ''Form I–212'' with ''the application'' in the two instances in which it appeared in that paragraph.[5] However, only one instance was amended, resulting in the provision now reading, ''If the alien filed Form I–212 in conjunction with an application for adjustment of status under section 245 of the Act, the approval of the application shall be retroactive to the date on which the alien embarked or reembarked at a place outside the United States.'' [6]

This document corrects these errors in the CFR.

DHS has good cause to bypass any notice-and-comment or delayed effective date procedures that might otherwise apply to this document under the Administrative Procedure Act. DHS has for good cause found that such procedures would be unnecessary, *see* 5 U.S.C. 553(b)(B), (d), because this rule merely corrects typographical errors in the CFR.

**List of Subjects in 8 CFR Part 212**

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

Accordingly, for the reasons set forth in the preamble, 8 CFR part 212 is amended as follows:

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

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

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

Section 212.1(q) also issued under section 702, Public Law 110–229, 122 Stat. 754, 854.

■ 2. Amend § 212.2 by revising the last sentence in paragraph (f) and paragraph (i)(2). The revisions read as follows:

**§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.**

* * * * *

(f) * * * The alien must file the application, where required, with the DHS officer having jurisdiction over the port of entry.

* * * * *

(i) * * *

(2) If the alien filed the application in conjunction with an application for adjustment of status under section 245 of the Act, the approval of the application shall be retroactive to the date on which the alien embarked or reembarked at a place outside the United States.

* * * * *

**Christina E. McDonald,**

*Associate General Counsel for Regulatory Affairs, U.S. Department of Homeland Security.*

[FR Doc. 2024–17400 Filed 8–8–24; 8:45 am]

**BILLING CODE 9111–97–P**

[1] *See* 76 FR 53764 (Aug. 29, 2011); *see also* 76 FR 73475 (Nov. 29, 2011) (making correcting amendments); 78 FR 22770 (Apr. 17, 2013) (same).

[2] *See* 76 FR at 53786. ''Form I–212'' refers to Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

[3] *See* 8 CFR 212.2(f) (2011).

[4] *See* 8 CFR 212.2(f).

[5] *See* 8 CFR 212.2(i)(2) (2011).

[6] *See* 8 CFR 212.2(i)(2).

## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Part 330**

**RIN 3064–AG06**

# Clarification of Deposit Insurance Coverage for Legacy Branches of U.S. Banks in the Federated States of Micronesia, the Marshall Islands, and Palau

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Interim final rule and request for comment.

**SUMMARY:** The FDIC is amending its regulations to clarify that it insures the deposits of legacy branches of U.S. insured depository institutions operating in the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

**DATES:** The interim final rule is effective August 9, 2024. Comments must be received on or before October 8, 2024.

**ADDRESSES:** You may submit comments, identified by RIN 3064–AG06, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/regulations/laws/federal/*. Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov*. Include RIN 3064–AG06 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AG06, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/*. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the proposed rule will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** James Watts, Counsel, Legal Division, 202–898–6678, *jwatts@fdic.gov;* Kathryn Marks, Counsel, Legal Division, 202–898–3896, *kmarks@fdic.gov;* Anthony Sinopole, Associate Director, Division of Insurance and Research, 202–898–6507, *asinopole@fdic.gov*.

**SUPPLEMENTARY INFORMATION:**

## A. Policy Objectives

The Federal Deposit Insurance Corporation (FDIC) has a long history of providing deposit insurance coverage in the island nations that formerly were part of the Trust Territory of the Pacific Islands, which include the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (Marshall Islands), and the Republic of Palau (Palau). Collectively, these three countries are known as the Freely Associated States. At one time, the FDIC provided deposit insurance coverage pursuant to the Federal Deposit Insurance Act (FDI Act) on the basis that these islands were part of the Trust Territory of the Pacific Islands administered by the United States. The FSM, the Marshall Islands, and Palau later became independent nations, and each entered into a Compact of Free Association (Compacts) with the United States that provided among other economic benefits, the availability of the FDIC's deposit insurance. The unique and somewhat complex legal framework comprised of the Compacts, their relevant subsidiary agreements, implementing legislation, and the FDI Act, is what has allowed the FDIC to insure deposits in the Freely Associated States.

The United States recently negotiated, and Congress approved, new agreements related to the Compacts with each of the Freely Associated States. Some of these new agreements include provisions relating to deposit insurance coverage for banks chartered by the Freely Associated States. In light of this, the FDIC believes it would be beneficial to clarify the application of the FDI Act and the deposit insurance regulations to the legacy branches of U.S. insured depository institutions (IDIs) operating in the Freely Associated States. For these reasons, the FDIC is issuing this interim final rule to clarify that it insures the deposits of legacy branches of U.S. IDIs operating in the FSM, the Marshall Islands, and Palau.

## B. Background

The interim final rule implements the FDI Act, rather than the Compacts. However, a brief historical discussion and overview of the Compacts provides helpful context for understanding the interim final rule, which is based upon the special and historic relationship between the United States and the Freely Associated States.

The FSM, the Marshall Islands, and Palau were once part of the Trust Territory of the Pacific Islands, established by the United Nations following World War II and administered by the United States pursuant to a trusteeship agreement.[1] In 1981, Congress added the Trust Territory of the Pacific Islands to the FDI Act's definition of ''State,'' with the result that deposits in banks located in the Trust Territory were eligible to be insured by the FDIC.[2]

### *1986 Compacts*

The FSM, the Marshall Islands, and Palau each adopted a Compact of Free Association with the United States that was subsequently approved by the U.S. Congress. Each of these nations then exited the Trust Territory of the Pacific Islands by becoming an independent nation. Specifically, the U.S. Congress approved a Compact with the FSM and the Marshall Islands through the Compact of Free Association Act of 1985, which became effective in 1986.[3] The FSM and the Marshall Islands became independent effective October 2, 1986, and November 3, 1986, respectively. Congress approved the Compact with Palau in 1986,[4] and Palau became independent effective October 1, 1994.[5] These Compacts contained provisions requiring certain agencies of the U.S. Government, including the

[1] In addition to the FSM, the Marshall Islands, and Palau, the Trust Territory of the Pacific Islands also included the Northern Mariana Islands. The Northern Mariana Islands became a self-governing commonwealth of the United States in 1986, and has since been added to the FDI Act's definition of ''State.'' *See* 12 U.S.C. 1813(a)(3).

[2] Public Law 97–110, sec. 103 (Dec. 26, 1981).

[3] Public Law 99–239 (Jan. 14, 1986).

[4] Public Law 99–658 (Nov. 14, 1986); Public Law 101–219 (Dec. 12, 1989).

[5] Public Law 99–658 was a joint resolution to approve the Palau Compact. Section 101(d) of that Act provided that the Compact would not take effect until, among other things, enactment of a joint resolution authorizing entry into force of the Compact. Public Law 101–219 was that joint resolution. Further delay, until 1994, occurred due to the need for multiple plebiscites to secure approval on Palau for implementation of the Compact.

FDIC, to provide their programs and services to each nation.[6]

*2003 Compacts*

The United States, the FSM, and the Marshall Islands eventually renewed negotiations concerning their Compact, resulting in separate amended agreements between the United States and each of these nations that took effect in 2003.[7] The amended Compacts included changes to, among other things, the provision of deposit insurance coverage. Specifically, section 221(a)(5) of the amended U.S.-FSM Compact stated that the FDIC would provide deposit insurance ''for the benefit only of the Bank of the Federated States of Micronesia,'' in accordance with a Federal Programs and Services Agreement executed by the two nations.[8] [9] By contrast, the corresponding provision of the amended Compact with the Marshall Islands, section 221(a), included no reference to deposit insurance.[10]

*Review of Palau Compact*

The U.S.-Palau Compact does not include a termination date, but requires formal review of its terms by the 15-year, 30-year, and 40-year anniversaries of its effective date. The direct economic assistance provisions of the Compact expired in 2009, and, following the required 15-year review, were renegotiated and signed on September 3, 2010. Congress approved a Compact Review Agreement with respect to the U.S.-Palau Compact in December 2017.[11]

*2023 Compact Amendments*

During 2023, the United States and each of the Freely Associated States concluded new agreements relating to their respective Compacts. The U.S. Congress approved the new agreements in March 2024.[12] Some of the new agreements include the provision of deposit insurance by the FDIC.

**C. Statutory Framework**

The FDI Act governs the FDIC's deposit insurance coverage for U.S. banks and savings associations. The statute includes two provisions on foreign deposits that are particularly relevant to the interim final rule.

*Section 3*

The FDI Act defines the ''deposits'' insured by the FDIC. As early as the Banking Act of 1933, Congress distinguished between domestic and foreign deposits, and the current statutory definition of ''deposit'' makes clear that foreign branch deposits of IDIs are not deposits for the purposes of the FDI Act except under prescribed circumstances. In particular, section 3(*l*)(5) of the FDI Act excludes from the definition of ''deposit'' deposit obligations of a foreign branch of an IDI that would otherwise fall within the definition of ''deposit'' under section 3(*l*) of the FDI Act unless they (1) would be deposits if carried on the books and records of the IDI in the United States; and (2) are expressly payable at an office of the IDI located in the United States.[13] The FDIC has generally referred to this second prong of subparagraph (A) of section 3(*l*)(5) of the FDI Act as requiring ''dual payability'' of a deposit.

*Section 41*

Section 41 of the FDI Act generally prohibits the payment of deposit insurance with respect to certain deposits carried on the books and records of foreign branches of U.S. IDIs.[14] Section 41(a) generally prohibits payment of obligations that would have the direct or indirect effect of satisfying any claim against an IDI which would constitute deposits ''but for subparagraphs (A) and (B) of section 3(*l*)(5).'' [15]

As described above, subparagraph (A) of section 3(*l*)(5) of the FDI Act excludes an obligation from being considered a ''deposit'' unless (1) the obligation would constitute a ''deposit'' if carried on the IDI's books and records in a State; and (2) the contract expressly provides dual payability. An obligation that constitutes a deposit ''but for'' subparagraph (A) is one that is excluded from the ''deposit'' definition only because it does not satisfy the two-part test in subparagraph (A). Put differently, obligations that constitute deposits ''but for'' subparagraph (A) include those that would constitute a ''deposit'' if carried on the IDI's books and records in a State, yet are not expressly payable at a location of the IDI within a State. Section 41 therefore prohibits the FDIC from paying deposit insurance on obligations of IDIs' foreign branches that are not dually payable. Dual payability is, in effect, a statutory prerequisite for deposit insurance with respect to U.S. IDIs' foreign branch deposits.

**D. 2013 Rulemaking on the Definition of ''Insured Deposit''**

While dual payability is a statutory prerequisite for deposit insurance, the FDIC has also used its authority to limit the availability of deposit insurance for IDIs' foreign branch deposits. In 2013, the FDIC amended its deposit insurance rules to clarify the status of deposits maintained in foreign branches of U.S. banks.[16] This action was taken, among other reasons, to address a proposal by the Financial Services Authority of the United Kingdom to prohibit non-European Economic Area banks, including U.S. banks, from accepting deposits in their United Kingdom branches unless claims of United Kingdom depositors were treated the same as domestic depositors in resolution proceedings of the bank.

The 2013 rule made clear that if a bank's deposits carried on the books of its foreign branches were made dually payable under section 3(*l*)(5)(A) of the FDI Act, this could make them deposits for purposes of depositor preference in resolution proceedings, but would not make them insured deposits. Specifically, the 2013 rule amended 12 CFR 330.3(e) of the FDIC's deposit insurance regulations to provide that obligations of IDIs payable solely at an office of the IDI located outside any State (as defined in section 3(a)(3) of the FDI Act) are not ''deposits'' for purposes of 12 CFR part 330. Thus, obligations that are not dually payable may not be considered ''deposits.'' The 2013 rule further provided that even if such obligations are made dually payable at an office of the IDI located within a State, they are not ''insured deposits'' for purposes of 12 CFR part 330. The 2013 rule also included a rule of construction for overseas military banking facilities operated under U.S. Department of Defense regulations, stating that such offices would not be considered to be located outside any State. While the focus of the 2013 rule was clarifying the effect of dual

[6] *See* Public Law 99–239, sec. 111(a) (making the programs and services of the FDIC available to the FSM and the Marshall Islands); Public Law 99–658, sec. 102(b) (applying sec. 111(a) of Public Law 99–239 to Palau). The Compacts provided continuing authority for the FDIC to insure banks chartered by the FSM, the Marshall Islands, and Palau, which, due to their exit from the Trust Territory of the Pacific Islands, no longer fell within the FDI Act's definition of ''State.''

[7] Public Law 108–188 (Dec. 17, 2003).

[8] Public Law 108–188, § 201(a).

[9] *See* Federal Programs and Services Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Concluded Pursuant to Article III of Title One, Article II of Title Two (including Section 222), and Section 231 of the Compact of Free Association, as Amended, available at *https://www.doi.gov/sites/doi.gov/files/uploads/Compact-Subsidiary-Agreements-for-the-FSM.pdf.* Article XI of this Agreement governed the provision of FDIC programs and services.

[10] Public Law 108–188, sec. 201(b).

[11] Public Law 115–91, sec. 1259C (2017).

[12] Public Law 118–42, div. G, tit. II.

[13] 12 U.S.C. 1813(*l*)(5)(A).

[14] 12 U.S.C. 1831r.

[15] 12 U.S.C. 1831r(a).

[16] *See* 78 FR 56583 (Sept. 13, 2013).

payability, the FDIC also discussed the rule's effect on deposits in the Freely Associated States. Specifically, the FDIC stated that the 2013 rule was not intended to ''affect the status of insured deposits, if any, located in the former Trust Territories.'' [17]

### E. Statutory Authority for Interim Final Rule

The FDIC issues rules and regulations necessary to carry out the statutory mandates of the FDI Act. Providing deposit insurance to IDIs and maintaining public confidence in the banking system through deposit insurance in the event of a U.S. bank's insolvency are two central functions of the FDIC. In order to permit the FDIC to carry out these functions successfully, the FDIC is authorized to undertake rulemaking to implement the FDI Act effectively, particularly with respect to its deposit insurance functions.

The FDI Act contains several provisions granting the FDIC authority to issue regulations to carry out its core functions and responsibilities, which include the duty ''to insure the deposits of all insured depository institutions.'' Section 11(d)(4)(B)(iv) authorizes the FDIC to promulgate ''such regulations as may be necessary to assure that the requirements of this section [section 11, which addresses the payment of deposit insurance] can be implemented with respect to each insured depository institution in the event of its insolvency.'' [18] Other grants of FDIC rulemaking authority can be found in section 9(a)(Tenth) of the FDI Act, authorizing the FDIC's Board of Directors to prescribe ''such rules and regulations as it may deem necessary to carry out the provisions of this chapter,'' and section 10(g) of the FDI Act, authorizing the FDIC to ''prescribe regulations'' and ''define terms as necessary to carry out'' the FDI Act.[19]

### F. Interim Final Rule

As noted above, in light of the FDIC's role in the Freely Associated States under the new Compact-related agreements, the FDIC believes it would be beneficial to clarify the application of the FDI Act and the deposit insurance regulations to the legacy branches of U.S. IDIs operating in the Freely Associated States. The interim final rule clarifies that the FDIC, pursuant to the FDI Act, insures the deposits of legacy branches of U.S. IDIs operating in the FSM, the Marshall Islands, and Palau, better aligning the regulation with the historical coverage provided for these deposits.

The interim final rule amends 12 CFR 330.3(e) of the FDIC's deposit insurance regulations, which governs deposits of IDIs that are payable outside of the United States and certain other locations. Currently under the regulation, an obligation of an IDI that is payable solely at an office of the IDI located outside any State is not considered a ''deposit'' for purposes of the deposit insurance regulations.[20] Where an obligation of an IDI is carried on the books and records of an office of the IDI located outside any State, the regulations provide that it shall not be considered an insured deposit, even if it is also made payable at an office of the IDI located within any State.[21] Essentially, where obligations booked outside the U.S. are made dually payable, they may be entitled to depositor preference (payment ahead of the institution's other creditors), but are not generally eligible for deposit insurance coverage. The regulation at 12 CFR 330.3(e)(3) includes a rule of construction providing a limited exception to these general rules for overseas military banking facilities operated under U.S. Department of Defense regulations. Military banking facilities are not considered to be offices located outside any State under the regulation, meaning that military banking facility deposits are eligible to be insured.

The interim final rule amends the rule of construction in 12 CFR 330.3(e) to apply expressly to deposits of legacy branches of U.S. IDIs operating in the FSM, the Marshall Islands, and Palau. Such branches will not be considered to be offices located outside any State for purposes of the deposit insurance rules, meaning that their deposits, if dually payable, would be eligible to be insured by the FDIC pursuant to 12 CFR part 330.

The coverage for U.S. IDIs' legacy branches provided by the rule is intended to function as a limited-scope exception to the general rule that excludes IDIs' foreign branch deposits from deposit insurance coverage. This limited exception aligns the regulation with the historical coverage that has been provided for banks operating in the Freely Associated States through the special and historical relationship the United States has maintained with each of the Freely Associated States. Accordingly, the exception provided by the interim final rule is limited to the legacy branches of U.S. IDIs, meaning the number of branches operated by each U.S. IDI as of the interim final rule's effective date. Any changes to branch locations remain subject to existing applicable requirements depending on the circumstances.[22] The FDIC believes that limiting coverage to legacy branches of U.S. IDIs serves the FDIC's policy objectives while promoting consistency, to the extent possible, with the rules that generally apply to foreign deposits.

As explained above, dual payability is a statutory prerequisite for deposit insurance with respect to U.S. IDIs' foreign branch deposits. Therefore, deposits of U.S. IDIs' legacy branches in the Freely Associated States are only eligible for deposit insurance if they have been made dually payable. This means that, under the contract, they are expressly payable at an office of the IDI located in a State (as defined in 12 U.S.C. 1813(a)(3)).

Importantly, all dually payable deposits of the legacy branches of U.S. IDIs are eligible for deposit insurance coverage under the interim final rule.[23] Coverage is not limited to deposit balances maintained by the depositor as of the rule's effective date, or limited to deposit accounts opened prior to the rule's effective date. This aspect of the interim final rule ensures that coverage will be easily understood by consumers and bankers. It also reduces operational complexity for the FDIC in the event of a bank failure that would require a deposit insurance determination. Under the interim final rule, calculation of deposit insurance coverage will be determined by application of the deposit insurance regulations that generally apply to all IDIs, found in 12 CFR part 330.

It is important to note that the interim final rule does not affect the provision of deposit insurance to banks chartered by any of the Freely Associated States or branches of such banks. This is because the rule is intended to clarify the application of the FDI Act to branches of U.S.-chartered IDIs. Deposit insurance coverage is provided to certain banks chartered by the Freely Associated States pursuant to separate authority provided by legislation concerning the Compact-related

[17] 78 FR 56583, 56587 (Sept. 13, 2013). As explained above, eligibility of a U.S. IDI's foreign branch obligations for deposit insurance coverage under the FDI Act would depend upon whether the deposits were expressly payable at an office of the IDI located in a State.

[18] 12 U.S.C. 1821(d)(4)(B)(iv).

[19] 12 U.S.C. 1819(a)(Tenth); 1820(g).

[20] 12 CFR 330.3(e)(1).

[21] 12 CFR 330.3(e)(2).

[22] *See* 12 CFR part 303, subparts C, D, and J.

[23] Deposit insurance coverage only applies to ''deposits'' as that term is defined in the FDI Act. Other types of products, such as stocks, bonds, money market mutual funds, securities, commodities, and crypto assets are not insured under the interim final rule.

agreements as discussed in further detail above.[24]

**G. Expected Effects**

The interim final rule amends 12 CFR part 330 to clarify that the FDIC insures dually payable deposits of the legacy branches of U.S. IDIs operating in the Freely Associated States. Given that these deposits have historically been and are currently insured, the interim final rule will not change the deposit insurance coverage for these deposits, as compared to a baseline scenario in which the interim final rule had not been promulgated. Thus, the effects of the rule are likely limited to the increased awareness of deposit insurance coverage in the Freely Associated States and the reduced likelihood of confusion regarding such coverage.

Any costs imposed by the interim final rule will directly affect IDIs that operate legacy branches in the Freely Associated States. According to recent Summary of Deposit data,[25] there are currently three IDIs operating eight total branches in these areas. As of June 30, 2023, these branches hold approximately $731 million in deposits. As discussed previously, the interim rule does not affect the provision of deposit insurance at these branches, so the interim final rule will likely not result in any operational changes at affected IDIs. Costs incurred by these IDIs are likely limited to costs associated with clarifications to the IDIs' customers regarding the nature of deposit insurance for products offered at these branches. The FDIC does not have data to quantify these costs, but believes they are de minimis.

The interim final rule will benefit both IDIs operating branches in the Freely Associated States as well as their customers. The publication of the interim final rule will remind affected IDIs of the statutory prerequisites for deposit insurance under the FDI Act with regards to deposits held in affected legacy branches. To the extent that customers in the Freely Associated States are unclear as to the status of deposit insurance for their deposits, the interim final rule could pose benefits to those customers. The clarity provided by these IDIs to holders of dually payable deposits could reinforce and/or increase awareness of the extent to which or the manner in which the IDIs' products are insured by the FDIC. This clarity will help customers more clearly understand when their funds are protected by the FDIC's deposit insurance. These benefits, in whole, will reinforce the role of FDIC deposit insurance and bolster confidence in the U.S. banking system in the Freely Associated States. Given that dually payable deposits in the Freely Associated States have been treated as FDIC-insured since 1981, the FDIC believes these benefits are likely *de minimis.*[26]

The FDIC invites comments on these expected effects. In particular, are there effects of the interim final rule that the FDIC did not consider?

**H. Request for Comment**

The FDIC invites comments on all aspects of the interim final rule. In particular, the FDIC requests comment on the following:

1. Is there additional information that would be helpful in further clarifying the scope of the rule?

2. Are there legal or policy considerations regarding deposit insurance coverage for U.S. IDIs' branches in the Freely Associated States that are relevant, but not discussed in the interim final rule?

**I. Administrative Law Matters**

*Administrative Procedure Act*

The FDIC is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[27] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [28]

The FDIC believes that the public interest would be best served if the interim final rule is effective immediately upon publication in the **Federal Register**. The interim final rule aligns the FDIC's regulation with the deposit insurance coverage historically provided by the FDIC for IDIs in the Freely Associated States, clarifying the application of 12 CFR 330.3(e) of the FDIC's regulations in this context. Moreover, a delayed effective date could lead depositors of IDIs in the Freely Associated States to question whether their deposits are insured during the comment period. The FDIC has therefore determined that the public notice and participation ordinarily required by the APA before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date.

Nevertheless, the FDIC desires to have the benefit of public comment before adopting a permanent final rule, and thus invites interested parties to submit comments during a 60-day comment period. In adopting a final regulation, the FDIC will revise the interim final rule if appropriate in light of the comments received.

*Riegle Community Development and Regulatory Improvement Act*

The Riegle Community Development and Regulatory Improvement Act of 1994 generally provides that new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on IDIs shall take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective for such time.[29] For the reasons discussed above, the FDIC has determined that good cause exists for the interim final rule to become effective immediately upon publication in the **Federal Register**.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The interim final rule does not create new or revise any existing information collection requirements, and therefore, the FDIC will make no submissions to OMB in connection with this interim final rule.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5

[24] The FDIC currently insures deposits of one bank chartered by the Federated States of Micronesia, the Bank of the Federated States of Micronesia, pursuant to this separate authority. The interim final rule does not affect deposit insurance coverage for this bank.

[25] FDIC Summary of Deposits, as of June 30, 2023.

[26] Public Law 97–110, sec. 103 (Dec. 26, 1981).

[27] 5 U.S.C. 553.

[28] 5 U.S.C. 553(b)(B).

[29] 12 U.S.C. 4802.

U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the FDIC has determined for good cause that notice and opportunity for public comment prior to the rule's effective date is contrary to the public interest, and therefore is not issuing a notice of proposed rulemaking. Accordingly, the FDIC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analyses do not apply. Nevertheless, the FDIC is interested in receiving feedback on ways that it could reduce any potential burden of the interim final rule on small entities.

*Congressional Review Act*

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The OMB has determined that the interim final rule is not a major rule for purposes of the Congressional Review Act. The FDIC will submit the rule and other appropriate reports to Congress and the Government Accountability Office for review.

*Plain Language*

Section 722 of the Gramm-Leach-Bliley Act [30] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the interim final rule in a simple and straightforward manner. The FDIC invites comments on whether the interim final rule is clearly stated and effectively organized and how the FDIC might make the proposal easier to understand.

**List of Subjects in 12 CFR Part 330**

Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 330 of title 12 of the *Code of Federal Regulations* as follows:

## PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

**Authority:** 12 U.S.C. 1813(*l*), 1813(m), 1817(i), 1818(q), 1819(a)(Tenth), 1820(f), 1820(g), 1821(a), 1821(d), 1822(c).

■ 2. Amend § 330.3 by revising paragraph (e)(3) to read as follows:

**§ 330.3 General principles.**

* * * * *

(e) * * *

(3) *Rule of construction.* For purposes of this paragraph (e), the following are not considered to be offices located outside any State, as referred to in paragraph (e)(1) of this section:

(i) Overseas Military Banking Facilities operated under U.S. Department of Defense regulations, 32 CFR parts 230 and 231; and

(ii) Legacy branches of U.S. insured depository institutions in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, which for purposes of this paragraph means the number of branches operated by each U.S. insured depository institution as of August 9, 2024.

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 30, 2024.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2024–17351 Filed 8–8–24; 8:45 am]

**BILLING CODE 6714–01–P**

[30] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809)).

## CONSUMER FINANCIAL PROTECTION BUREAU

### 12 CFR Chapter X

### Consumer Financial Protection Circular 2024–04: Whistleblower Protections Under CFPA Section 1057

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Consumer financial protection circular.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB) has issued Consumer Financial Protection Circular 2024–04, titled, ''Whistleblower protections under CFPA section 1057.'' In this circular, the CFPB responds to the question, ''Can requiring employees to sign broad confidentiality agreements violate section 1057 of the Consumer Financial Protection Act (CFPA), the provision protecting the rights of whistleblower employees, and undermine the CFPB's ability to enforce the law?''

**DATES:** The CFPB released this circular on its website on July 24, 2024.

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

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

**SUPPLEMENTARY INFORMATION:**

**Question Presented**

Can requiring employees to sign broad confidentiality agreements violate section 1057 of the Consumer Financial Protection Act (CFPA), the provision protecting the rights of whistleblower employees, and undermine the CFPB's ability to enforce the law?

**Response**

Yes. Although confidentiality agreements can be entered into for legitimate purposes, such as to ensure the protection of confidential trade secrets, such agreements, depending on how they are worded and the context in which they are employed, could lead an employee to reasonably believe that they would be sued or subject to other adverse actions if they disclosed information related to suspected violations of Federal consumer financial law to government investigators. Threats of this nature can lead to violations of section 1057 and impede investigations into potential wrongdoing, including the CFPB's efforts to uncover violations of the consumer financial protection laws it enforces.

**Background**

Public policy in the United States long has recognized the important role that whistleblowing plays in preventing and stopping illegal and unethical

misconduct. One of the first Federal laws to provide protections to employees who reported fraud against the government was the False Claims Act, originally passed in 1863 and since amended. A majority of States since have passed their own such statutes. As Congress passed more legislation providing protections for employees against retaliation from their employers for engaging in protected whistleblowing activity, it empowered the Occupational Safety and Health Administration (OSHA), a regulatory agency of the U.S. Department of Labor (DOL), to adjudicate employees' retaliation claims. Currently, OSHA's Whistleblower Protection Program enforces the anti-retaliation provisions of more than 20 Federal laws, including the CFPA as discussed below.[1]

Many entities, including covered persons and service providers under the CFPA,[2] require their employees to sign nondisclosure agreements (NDAs) or other types of agreements containing confidentiality requirements. Such agreements may indicate that employees who violate the agreement's terms may be subject to lawsuits, including the possibility of damages or other costs, as well as other punishment, such as termination. These types of agreements can be entered into for legitimate purposes—for example, to ensure the protection of confidential trade secrets or to safeguard the sensitive personal information of employees or consumers. However, depending on how they are worded and the context in which they are employed, confidentiality agreements hold the potential to frustrate the efforts of government enforcement agencies—including the CFPB—to investigate violations of law. In particular, confidentiality agreements entered into in certain circumstances may impede such efforts when they are so broadly worded as to forbid or otherwise dissuade employees from reporting suspected violations of law to the government or cooperating with a government investigation.

*CFPA Section 1057*

Section 1057 of the CFPA applies to covered persons. It provides anti-retaliation protections for covered employees[3] and their representatives who provide information to the CFPB or any other Federal, State, or local law enforcement agency regarding potential violations of laws and rules that are subject to the CFPB's jurisdiction. Specifically, section 1057(a) provides that ''[n]o covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees'' for: (1) providing or being about to provide information to the employer, the CFPB, or any other State, local, or Federal Government authority or law enforcement agency relating to a violation of, or any act or omission that the employee reasonably believes to be a violation of, a law subject to the CFPB's jurisdiction or prescribed by the CFPB; (2) testifying or intending to testify about such a potential violation; (3) objecting to or refusing to participate in any activity, policy, practice, or assigned task that the employee reasonably believes to be such a violation; or (4) filing any lawsuit or instituting any other proceeding under any Federal consumer financial law.[4]

Section 1057(c) provides procedures by which a person who believes they have been discharged or otherwise discriminated against in violation of section 1057(a) may file a complaint with DOL, and a process by which DOL shall investigate and adjudicate such complaints.[5] It further specifies the procedures for appealing DOL's decisions in Federal court. The CFPB also has independent authority to enforce section 1057.[6] Section 1057(d) provides that, outside of limited circumstances, contractual provisions that purport to waive the rights and remedies granted by section 1057 are unenforceable.[7]

Accordingly, section 1057 makes it unlawful for a covered person to discriminate against an employee for whistleblowing with respect to suspected violations of Federal consumer financial law. As explained below, discrimination in this sense may include suing or threatening to sue or otherwise taking or threatening to take adverse action against employees for engaging in whistleblowing activity. And, in certain circumstances, requiring employees to sign confidentiality agreements that are so broad as to forbid or otherwise dissuade employees from sharing information about potential law violations with the government or cooperating with a government investigation can amount to a threat to punish.

**Analysis**

The CFPB is issuing this circular to remind regulators and the public that covered persons who in certain circumstances require their employees to enter into broad confidentiality agreements that do not clearly permit communications with government enforcement agencies or cooperation with law enforcement investigations risk violating the CFPA's prohibition on discrimination against whistleblowers and undermining the government's ability to enforce the law.

As noted above, section 1057(a) prohibits covered persons from terminating or otherwise discriminating against covered employees for engaging in whistleblowing activity. The term ''discriminate against'' is broad and encompasses a variety of adverse actions that a covered person may take against covered employees.[8] The use of the term in multiple whistleblower protection statutes passed by Congress reflects this understanding.

For example, section 23 of the Commodity Exchange Act (CEA), which Congress passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA, of which the CFPA is a part), created a whistleblower awards program and protection for whistleblowers.[9] Section 23, which is administered by the Commodity Futures Trading Commission (CFTC), states ''[n]o employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower'' in providing

[1] *See* Occupational Safety and Health Administration: *Whistleblower Protection, https://www.whistleblowers.gov/about-us.*

[2] Covered persons and service providers must comply with the whistleblower protection requirements of the CFPA. 12 U.S.C. 5481(6), (26); 12 U.S.C. 5567. For simplicity, the remainder of this circular refers to covered persons and service providers as ''covered persons.''

[3] A ''covered employee'' is defined as ''any individual performing tasks related to the offering or provision of a consumer financial product or service.'' 12 U.S.C. 5567(b).

[4] 12 U.S.C. 5567(a).

[5] 12 U.S.C. 5567(c).

[6] 12 U.S.C. 5563(a)(1), 5564(a).

[7] 12 U.S.C. 5567(d). This provision applies to pre-dispute arbitration agreements, which it states are not valid or enforceable to the extent they require arbitration of disputes arising under section 1057. 12 U.S.C. 5567(d)(2).

[8] At its essence, to ''discriminate'' means ''to make a distinction'' or ''to make a difference in treatment or favor on a basis other than individual merit.'' *Discriminate, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/discriminate* (last visited July 17, 2024); *see also Murray* v. *UBS Securities, LLC,* 601 U.S. 23, 34 (2024) (explaining meaning of ''discriminate'' under analogous anti-retaliation provision in the Sarbanes-Oxley Act, 18 U.S.C. 1514A, and holding that while the employee had to prove his protected activity was a contributing factor in the unfavorable personnel action, he did not also have to prove his employer acted with retaliatory intent).

[9] 7 U.S.C. 26. *See* Commodity Futures Trading Commission: *Whistleblower Protections, https://www.whistleblower.gov/protections.*

information to the CFTC.[10] Likewise, Congress created a whistleblower awards program and related protections when it passed section 21F of the Securities Exchange Act of 1934, also part of the DFA. Section 21F, which is administered by the Securities and Exchange Commission (SEC), identically provides that ''[n]o employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower'' in providing information to the SEC.[11] Congress thus made clear that the term ''discriminate against'' encompasses a variety of adverse actions—including threatening employees—listed in these statutes, in addition to other actions that employers may take to prevent or dissuade employees from whistleblowing or to punish them for whistleblowing.[12]

In addition to enforcing the anti-retaliation provision of section 21F, the SEC promulgated Rule 21F–17, which provides that ''[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.'' [13] As the SEC explained in its proposal, ''the Congressional purpose underlying section 21F of the Exchange Act is to encourage whistleblowers to report potential violations of the securities laws by providing financial incentives, prohibiting employment-related retaliation, and providing various confidentiality guarantees. Efforts to impede a whistleblower's direct communications with Commission staff about a potential securities law violation, however, would appear to conflict with this purpose.'' [14] The SEC since has pursued enforcement actions against companies that it alleged violated Rule 21F–17 by requiring their employees or clients to sign confidentiality agreements that would impede the ability of such individuals to share freely information about suspected wrongdoing with the SEC.[15]

The SEC is not alone in observing that employer confidentiality agreements may undermine the rights of whistleblowers and impede government enforcement efforts. In 2017, the CFTC promulgated a rule that similarly bars impeding an individual from communicating with CFTC staff, including by enforcing or threatening to enforce confidentiality agreements.[16] The CFTC explained when it proposed the rule that it was doing so to complement the prohibition on employer retaliation against whistleblowers found in CEA section 23(h)(1)(A) and to achieve consistency with the SEC's whistleblower rules.[17] In June 2024, the CFTC issued a settlement order with Trafigura Trading LLC that addressed, among other issues, the company's NDAs with employees that impeded their ability to communicate voluntarily with the CFTC.[18] And last year, the Federal Trade Commission's (FTC's) Bureau of Competition issued guidance explaining that certain types of contractual provisions, including confidentiality agreements, NDAs, and notice-of-agency-contact provisions, are ''contrary to public policy and therefore void and unenforceable insofar as they purport to (1) prevent, limit, or otherwise hinder a contract party from speaking freely with the FTC; or (2) require a contract party to disclose anything to an investigation target about the FTC's outreach or communications.'' [19]

The same dynamic is true for the CFPB. Confidentiality agreements that limit the ability of employees to communicate with government enforcement agencies or speak freely with investigators undermine the CFPB's ability to enforce the law. Among the functions that Congress laid out for the CFPB is ''taking appropriate enforcement action to address violations of Federal consumer financial law.'' [20] Subtitle E of the CFPA specifies the CFPB's enforcement powers, including the authority to conduct investigations of potential violations of law.[21] In addition to other actions, the CFPB may issue demands for written or oral testimony in pursuing such investigations.[22] If, due to a confidentiality agreement, an employee perceives that they could suffer adverse consequences for cooperating in such circumstances, then the CFPB's ability to carry out its statutory functions to protect consumers is compromised.

Consistent with these observations, covered persons that require employees in certain circumstances to sign broadly worded confidentiality agreements risk violating section 1057 of the CFPA.

[10] 7 U.S.C. 26(h)(1)(A) (emphasis added).

[11] 15 U.S.C. 78u–6(h)(1)(A) (emphasis added).

[12] In addition to these examples, the Financial Institutions Anti-Fraud Enforcement Act of 1990 (FIAFEA) allows whistleblowers to bring claims related to suspected violations of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)—passed in the wake of the savings and loan crisis—by submitting confidential declarations setting forth facts about alleged fraud. 12 U.S.C. 4201 *et seq.* As enacted, in addition to providing for discretionary monetary awards from the Attorney General, the FIAFEA granted certain protections to whistleblowers against employer retaliation for lawfully reporting such information to the government. 12 U.S.C. 4212 (providing that such declarants shall enjoy the protections afforded under 18 U.S.C. 3059A(e)). Specifically, it provided that a person who ''is discharged, demoted, suspended, threatened, harassed, *or in any other manner discriminated against* in the terms or conditions of employment by an employer because of lawful acts done by the person . . . in furtherance of a prosecution under [applicable provisions] may, in a civil action, obtain all relief necessary to make the person whole.'' 18 U.S.C. 3059A(e)(1), *repealed by* Public Law 107–273, 116 Stat. 1781 (Nov. 2, 2002) (emphasis added). Congress repealed 18 U.S.C. 3059A in 2002 as it considered it to be one of several ''redundant authorizations of payments for rewards.'' Public Law 107–273, 116 Stat. 1781 (Nov. 2, 2002). Functionally equivalent award and anti-retaliation provisions apply to employees of insured depository institutions and credit unions pursuant to the Federal Deposit Insurance Corporation Act and Federal Credit Union Act, although those provisions do not contain the same list of examples of forms of employer discrimination that appeared in the FIAFEA. *See* 12 U.S.C. 1831j, 1831k; 12 U.S.C. 1790b, 1790c. These provisions predated the FIAFEA, however, and the fact that Congress labeled the FIAFEA protections ''redundant'' supports the notion that it viewed the less descriptive anti-discrimination provisions in these acts as encompassing the broad definition of discrimination articulated in the FIAFEA.

[13] 17 CFR 240.21F–17(a).

[14] 75 FR 70488, 70510 (Nov. 17, 2010). *See also* 76 FR 34300, 34351–52 (June 13, 2011) (final rule preamble reiterating congressional purpose).

[15] *See, e.g.,* Press Release, SEC, *SEC: Companies Cannot Stifle Whistleblowers in Confidentiality Agreements* (Apr. 1, 2015), *https://www.sec.gov/news/press-release/2015-54* (describing administrative settlement in enforcement action wherein SEC alleged that KBR Inc.'s practice requiring employees to sign confidentiality agreements in internal investigations created a ''chilling effect'' to discourage whistleblowing in violation of Rule 21F–17); Press Release, SEC, *Company Paying Penalty for Violating Key Whistleblower Protection Rule* (Aug. 10, 2016), *https://www.sec.gov/news/press-release/2016-157* (describing SEC's issuance of cease-and-desist order and imposition of remedial sanctions against publicly traded company BlueLinx Holdings, Inc. for including language in its employee severance agreements that required departing employees to notify the company's legal department prior to disclosing any financial or business information to any third parties); Press Release, SEC, *J.P. Morgan to Pay $18 Million for Violating Whistleblower Protection Rule* (Jan. 16, 2024), *https://www.sec.gov/news/press-release/2024-7* (announcing settled charges against J.P. Morgan Securities LLC for violations of Rule 21F–17(a) stemming from the company's regularly asking retail clients to sign confidential release agreements that allowed them to respond to SEC inquiries but did not permit them to voluntarily contact the SEC).

[16] 17 CFR 165.19(b).

[17] 81 FR 55951, 55955 (Aug. 30, 2016).

[18] *In re Trafigura Trading LLC,* CFTC No. 24–08, 2024 WL 3225331 (June 17, 2024), available at *https://www.cftc.gov/media/10791/enftrafiguratradingorder061724/download.*

[19] Bureau of Competition, FTC, *Re: Contracts That Impede Bureau of Competition Investigations* (June 15, 2023), available at *https://www.ftc.gov/system/files/ftc_gov/pdf/Formal-Analysis.pdf.*

[20] 12 U.S.C. 5511(c)(4).

[21] *See* 12 U.S.C. 5562.

[22] *See* 12 U.S.C. 5562(c)(1).

Confidentiality agreements sometimes specify that the employer may file a lawsuit or reserves the right to take adverse employment action upon the employee's violation of the agreement. Depending on the circumstances, an employee may interpret such conditions as threats to retaliate for engaging in whistleblowing activity. The risk of a violation of section 1057 is heightened when covered persons impose such agreements in situations that are particularly likely to lead a reasonable employee to perceive the required entry into the agreement as a threat, such as in the context of an internal investigation or other scenario involving potential violations of law—for example, after the uncovering of suspected or confirmed wrongdoing, or in the aftermath of a potentially embarrassing episode for a company. When an employee participates in an investigation or otherwise is made aware of possible wrongdoing and simultaneously is required to sign such an agreement, there is a heightened risk that the employee reasonably would view the requirement to sign as a threat by the employer to take adverse action if the employee were to engage in whistleblowing activity. Indeed, the employee reasonably may not fathom any other reason for why they are being made to sign the agreement beyond that the employer is threatening to sue or otherwise punish the employee for engaging in whistleblowing. In line with the analysis above, such threats may constitute discrimination within the meaning of section 1057 and thus be prohibited, regardless of whether or not the employer acts upon them or a court actually would enforce a confidentiality agreement with respect to whistleblowing.[23]

For example, in 2015, the SEC found that Houston-based global technology and engineering firm KBR Inc. violated Rule 21F–17 by requiring witnesses in certain internal investigations to sign confidentiality agreements containing language warning they could face discipline, including possible termination, if they discussed the matters with outside parties without the prior approval of the company's legal department.[24] The SEC's order stated that, although there were no apparent instances in which the company specifically prevented employees from communicating with the SEC about securities law violations, the company's blanket prohibition against witnesses discussing the substance of their interviews without prior approval under penalty of disciplinary action had a chilling effect that undermined the purpose of section 21F and Rule 21F–17, which is to encourage whistleblowers to report illegal conduct to the SEC. The company agreed as part of the settlement to amend its confidentiality statement to add language making clear that employees are free to report possible violations to the SEC and other Federal agencies without KBR approval or fear of retaliation.

Confidentiality agreements that risk leading to violations of whistleblower protection statutes—including section 1057 of the CFPA—can be formulated in different ways. Certainly, employers can draft them in an express manner that purports to forbid the sharing of information with outside parties with no acknowledgment of and exception for the exercise of whistleblower rights. The risk of a reasonable employee interpreting their required entry into such an agreement in circumstances involving potential wrongdoing as a threat against reporting information to the government is relatively high. But other confidentiality agreements that undermine whistleblower protections may reasonably be perceived by employees as threats against them for exercising their rights in such circumstances. For example, an agreement that forbids sharing information with third parties ''to the extent permitted by law'' may technically permit whistleblowing. However, an employee, who may not know that the law forbids restrictions on whistleblowing but understands that the consequence of violating the agreement is suffering adverse employment action, may reasonably interpret the agreement to bar providing information to a law enforcement agency or voluntarily cooperating in a government investigation depending on the circumstances in which the employer asks the employee to enter into the agreement. An employee reasonably may feel threatened by such language in certain circumstances, such as those described above, and decline to report suspected violations of law to the government.[25] An employer can significantly reduce the risk of this kind of perception—and thus of violating section 1057—by ensuring that its agreements expressly permit employees to communicate freely with government enforcement agencies and to cooperate in government investigations.

As explained above, suing or threatening to sue or otherwise punish employees for engaging in whistleblowing activity may constitute discrimination against whistleblowers. Accordingly, when covered persons require employees to sign broadly worded confidentiality agreements that do not clearly permit communicating with government enforcement agencies or cooperating with law enforcement, especially when circumstances bear indicia of potential or suspected wrongdoing, they may be threatening to take adverse action against those employees for reporting suspected violations of Federal consumer financial law to the CFPB or other regulators. Thus, covered persons who impose these types of agreements on their employees risk violating the prohibition on discrimination against whistleblowers contained in section 1057 of the CFPA.

**About Consumer Financial Protection Circulars**

*Consumer Financial Protection Circulars* are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial

[23] As noted above, section 1057(d) of the CFPA renders unenforceable ''any agreement, policy, form, or condition of employment'' that purports to waive the rights and remedies provided for in section 1057. 12 U.S.C. 5567(d)(1). And, the CFPB has explained that including unenforceable terms in a consumer contract may constitute a deceptive act or practice in violation of the CFPA's prohibition on unfair, deceptive, or abusive acts or practices. *See* CFPB, Consumer Financial Protection Circular 2024–03: *Unlawful and unenforceable contract terms and conditions* (June 4, 2024), *https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-03/.* Similarly, requiring employees to enter into overly broad confidentiality agreements that restrict or waive the employees' whistleblower rights could constitute a deceptive act or practice in appropriate circumstances. Although the CFPB typically has found deceptive acts or practices with respect to misrepresentations made to a consumer, deceptive acts or practices targeting other parties—such as a covered person's employees—may also violate the CFPA if the deception is in connection with the offering or provision of consumer financial products or services. *See* 12 U.S.C. 5531, 5536.

[24] *Supra* n.15.

[25] In a recently filed complaint, DOL explained how confidentiality provisions in employment agreements that require employees not to share the terms of the agreement except with the employee's immediate family or attorney or ''as required by law'' could cause employees to ''reasonably believe that they cannot disclose the terms of the agreements to [DOL] absent a subpoena or court order,'' and that these provisions, along with broad non-disparagement and non-disclosure provisions coupled with the threat of termination and monetary damages, dissuade employees from speaking freely with DOL investigators in violation of section 15(a)(3) of the Fair Labor Standards Act, 29 U.S.C. 215(a)(3). Complaint, ¶¶ 95–106, 129–38, 160–65, *Su* v. *Smoothstack, Inc.,* No. 1:24–cv–04789 (E.D.N.Y. July 10, 2024), available at *https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2024/07/SmoothstackInc-Complaint-24-1337-NAT.pdf.*

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

*Consumer Financial Protection Circulars* are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

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

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

**Rohit Chopra,**

*Director, Consumer Financial Protection Bureau.*

[FR Doc. 2024–17539 Filed 8–8–24; 8:45 am]

**BILLING CODE 4810–AM–P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

**RIN 3245–AH92**

### Small Business Lending Company Application Process

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notification.

**SUMMARY:** The purpose of this notification is to announce that the U.S. Small Business Administration's (SBA) Office of Capital Access (OCA) is opening the application period for new Small Business Lending Companies (SBLC) licenses from September 2, 2024, to October 15, 2024, and share the process by which interested entities may apply. SBA is similarly opening the application period for Community Advantage SBLCs (CA SBLCs) from September 2, 2024, to December 20, 2024, and will be reviewing and decisioning CA SBLC licenses on a rolling basis.

**DATES:**

*Applicability date:* This notification is applicable beginning August 1, 2024. SBA will accept applications for:

—New SBLC licenses from September 2, 2024–October 15, 2024.

—New CA SBLC licenses from September 2, 2024–December 20, 2024.

*Comment date:* Comments must be received on or before September 9, 2024.

**ADDRESSES:** You may submit comments, identified by SBA docket number SBA–2024–0011, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *Mail:* Jihoon Kim, Office of Financial Program Operations, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Darrel Eddingfield, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.*

If you wish to submit confidential business information (''CBI'') as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Jihoon Kim, Office of Financial Program Operations, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or send an email to *SBLCApps@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Jihoon Kim, Director, Office of Financial Program Operations (OFPO), Office of Capital Access, Small Business Administration, at 202–205–6024 or *Jihoon.Kim@sba.gov.* The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

**SUPPLEMENTARY INFORMATION:**

#### I. Background Information

Section 7(a)(17) of the Small Business Act states that SBA shall authorize lending institutions and other entities, in addition to banks, to make 7(a) loans. To this end, SBA has authorized Small Business Lending Companies (SBLCs) as defined in 13 CFR 120.10 to participate in the 7(a) Loan Program. On April 12, 2023, SBA published the Final Rule on Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization (88 FR 21890, effective May 12, 2023). Through that rule, SBA lifted the self-imposed moratorium on licensing new SBLCs and established the plan to approve three SBLCs in the first year following implementation. An SBLC, as defined in 13 CFR 120.10, is a non-depository lending institution authorized by SBA to make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. An SBLC is:

- Supervised and examined solely by SBA at the federal level;
- Subject to additional SBA Loan Program Requirements, as defined in 13 CFR 120.10, including but not limited to regulations specific to SBLCs regarding formation, capitalization, and enforcement actions; and
- Subject to all other 7(a) Loan Program Requirements specific to origination, servicing, and liquidation.

This SBLC moratorium was put in place in 1982, prior to access to modern digital tools that enhance oversight and mitigate risk. For 42 years, SBA has overseen the application and approval process 60 times for the transfer of the existing SBLC licenses by determining the capability and experience of the acquiring entity's leadership; the financial capacity to make, service, and liquidate loans; and the safety and soundness of its portfolio. This ensures compliance with SBA's regulatory requirements and origination of loans based on standards consistent with similarly sized commercial loans made by other lenders.

As stated above, the purpose of this notification is to announce that SBA's Office of Capital Access is opening the application period for new SBLC and CA SBLC licenses. SBA introduced the CA SBLC license to meet the credit, management, and technical assistance needs of small businesses in underserved markets. CA SBLC licenses provide mission-oriented lenders, primarily nonprofit financial intermediaries focused on economic development, access to 7(a) loans. CA SBLC's goals are to:

- Increase access to credit for small businesses located in underserved markets;
- Expand points of access to the SBA 7(a) loan program by allowing non-traditional, mission-oriented lenders to participate;
- Provide Management and Technical Assistance (M&TA) to small businesses as needed; and
- Manage portfolio risk.

**II. New Licenses Awarded**

SBA will award up to three new SBLC licenses and an indefinite number of new CA SBLC licenses. SBA may award new SBLC and CA SBLC licenses for a period of 1 year after the application period ends. SBA reserves the option to request updated information. SBLC licensees may make loans nationwide up to $5 million per borrower. SBA will limit CA SBLCs to certain geographic areas and loan amounts. SBA will also require CA SBLCs to make at least 60 percent of their loans to eligible small businesses in underserved markets.

**III. SBLC Requirements**

SBLCs must comply with SBA's requirements for SBA Lenders, SBA Supervised Lenders, and the additional requirements presented in 13 CFR part 120, subpart D, §§ 120.470 through 490 specifically for SBLCs.

SBLCs are subject to the requirements in SOP 50 56 1, *Lender Participation Requirements,* Section A, 7(a) Lender Participation, Chapters 1 and 2., and once tentatively approved, must fulfill SBLC requirements, including:

1. Submit to the D/OCRM via *OCRMSBLC@sba.gov* for review their policies for the following which must be acceptable to SBA in its discretion:

a. Policies that demonstrates compliance with title 13 of the CFR and SBA's Standard Operating Procedures (SOPs) for origination, servicing, and liquidation of 7(a) loans, including but not limited to policies on credit underwriting, hazard and other insurances (*e.g.,* product liability, dram shop/host liquor liability, disability, workers' compensation, malpractice, etc.), flood insurance, life insurance, equity, equity injection, verification of equity injection, collateral, owner/guarantor analysis (including the SBLC's policies on requiring owner financial statements), how the SBLC will verify an Applicant's financial information, and how the SBLC will document the refinancing of any debts.

b. Fees and interest rates, including frequency of interest rate adjustments, the SBLC charges to its Applicants/Borrowers.

c. Contents and maintenance of a complete loan file.

d. Closing documentation, including how the SBLC documents disbursements and verification of equity injection.

e. Borrower's access to funds.

f. For SBA Express, Export Express, CAPLines, and EWCP programs, the SBLC's policies demonstrating compliance with the additional program-specific requirements stated in SOP 50 56 1, Section A, Chapter 2, Paragraph A.f.–h.

2. Submit to the D/OCRM via *OCRMSBLC@sba.gov* for review and approval annual validation, with supporting documentation and methodologies demonstrating that any scoring model used by the SBLC is predictive of loan performance.

3. Each SBLC's board of directors must adopt and fully implement an internal control policy that provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The board-adopted internal control policy must, at a minimum, comply with 13 CFR 120.460. For example:

a. The internal control policy implemented must ensure satisfactory monitoring and management of the SBA loan portfolio, including but not limited to, providing for a periodic loan review function to be performed at least annually by a person who is not directly or indirectly responsible for loan making or by outside contractors.

b. It must include a list of monthly reports provided by the SBLC's management for Board review to support adequate Board oversight.

c. It must provide for internal controls for loan making, servicing and liquidation.

d. It must provide for a risk rating system to risk classify SBA loan assets satisfactory to SBA.

e. Internal control policies and procedures must include provisions to ensure compliance with SBA's Loan Program Requirements on eligibility.

f. Internal control policies and procedures must include provisions to ensure the SBLC exercises due diligence and prudent oversight of its third party vendors, including Lender Service Providers (LSP) and other loan Agents. Such policies and procedures should include, but not be limited to, monitoring performance of loans referred by an Agent or where an Agent provided assistance.

g. SBLCs must provide documentation demonstrating that the internal control policies and procedures are fully implemented and followed.

4. SBLCs must adhere to their internal policies and procedures for originating, closing, servicing, and, when necessary, liquidating SBA loans. When SBA procedures require Lenders to follow their own policies and procedures on their similarly sized, non-SBA guaranteed loans, SBLCs must follow the written policies and procedures that have been reviewed by SBA.

4. SBLCs may not lend to an Applicant that has received assistance from an affiliated Small Business Investment Company (SBIC). (13 CFR 120.476)

5. Minimum capital requirements for SBLCs: Beginning on January 4, 2024, each SBLC that makes or acquires a 7(a) loan must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least $5,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever is greater. Any SBLC approved on or after January 4, 2021, including in the event of a change of ownership or control, must maintain the minimum capital requirement set forth in subparagraph (a) above. Unless subject to subparagraph (a) or (b) above, an SBLC must comply with the minimum capital requirements that were in effect on January 3, 2021.

**IV. CA SBLC Requirements**

CA SBLCs must comply with SBA's requirements for SBA Lenders, SBA Supervised Lenders, and the additional requirements presented in 13 CFR part

120, subpart D, §§ 120.470 through 120.490 specifically for CA SBLCs.

CA SBLCs are subject to the requirements in SOP 50 56 1, *Lender Participation Requirements,* Section A, 7(a) Lender Participation Requirements, Chapters 1 and 2, and once approved, must fulfill requirements for SBLCs stated above and the following conditions:

1. The CA SBLC must be a nonprofit lending institution.

2. The CA SBLC must maintain the appropriate bond coverage levels for CA SBLCs, as determined by the SBA Administrator, published in Loan Program Requirements.

3. The CA SBLC must maintain a minimum amount of capital as determined at the discretion of the Administrator.

4. The CA SBLC shall maintain a loan loss reserve of 5 percent of the outstanding amount of the unguaranteed portion of the loan portfolio of the CA SBLC under the program for the first five years in the program and shall maintain a loan loss reserve equal to the average repurchase rate of the CA SBLC over the preceding 36-month period thereafter.

**V. SBLC Application**

The entity applying for a new SBLC license must submit an executed electronic scanned copy (in pdf format) to *SBLCApps@sba.gov* addressing each of the elements set forth below (''SBLC Application''). The SBLC application must be complete and organized in tabular format, and the information submitted must be sufficient to enable SBA to evaluate its application against the evaluation criteria. The application must include:

1. The Legal name, address, telephone, and email address of the proposed SBLC.

2. Identification of the form of organization of the proposed SBLC along with file-stamped copies of the concern's certificate of incorporation, certificate of formation or certificate of limited partnership (as applicable), and a copy of the concern's corporate bylaws, limited liability company operating agreement, or limited partnership agreement (as applicable).

3. Identification of the proposed SBLC's capitalization including the form of ownership, the identification of all classes of equity capital and proposed funding amounts, rights and preferences accorded to each class of stock or members interest (including voting rights, redemption rights, and rights of convertibility) and conditions for transfer, sale, or assignment of these interests.

4. The proposed SBLC's geographic area of operation.

5. Identification of all officers, directors, managing partners, managing members, Key Employee(s) of the proposed SBLC, which includes senior managers, members of loan committees, and individuals who have a meaningful participation in the direction of the operations, policies, or financial decisions of the proposed SBLC, and all other individuals or entities that propose to hold an equity interest of at least ten percent of the economic interest in any class of stock or ownership interest in the proposed SBLC (such identification should include a discussion of any prior SBA experience).

a. An organization chart showing the relationship of the proposed SBLC with all related Associates (see 13 CFR 120.10, Definitions) and affiliates within the organization.

b. All individuals or entities identified in this paragraph must submit an executed SBA Form 1081 and either a Form FD–258 (fingerprint card) or Electronic Fingerprint Submission. SBA Form 1081 and the Form FD–258 or Electronic Fingerprint Submission must be signed and dated within 90 days of submission to SBA.

6. Proof of fidelity insurance coverage as detailed in 13 CFR 120.470(e).

7. A comprehensive business plan that details:

a. The nature of proposed operations, including the organizational units involved in sourcing, evaluating, underwriting, closing, disbursing servicing, and liquidating small business loans in the organization;

b. The identification of all sources of capital used to finance lending operations;

c. An operations plan detailing the nature of the Lender's proposed loan activity, the volume of activity projected over the first 3 years as an SBA Lender, projected balance sheets, income statements and statement of cash flows of the Lender, with alternative profit and loss scenarios based on run rates equivalent to 70 percent and 50 percent of projected loan activity, the type and projected amount of financing needed to support its lending plan, along with a discussion of Lender's proposed wind-down plan in the event the Lender decides to leave the program;

d. A detailed analysis of the Lender's projected secondary market activities during the first 3 years of operation, including a sensitivity analysis of the effect any changes in premium from the sale of the guaranteed portion of 7(a) loans in SBA's secondary market may have on the Lender's prospective earnings. The analysis must also include a description of the Lender's plans (if any) to securitize or sell participations in the unguaranteed portion of 7(a) loans; and

e. If the Lender intends to acquire any 7(a) loans, a written plan detailing the extent of this acquisition activity in its operating plan, and how the Lender will manage the transition of the 7(a) loan portfolio.

8. All documents associated with any type of external financing expected to be undertaken by the proposed SBLC.

9. A written statement from an authorized official of the proposed SBLC certifying that the SBLC will not be primarily engaged in financing the operations of an Affiliate as defined in 13 CFR 121.103.

10. The most recent audited financial statements of the proposed SBLC if it has been in operation for more than 1 year, or the audited financial statements of the proposed SBLC's parent company.

11. A certified copy of a Board, limited partners, or members resolution specifying the individual(s) or official(s) granted the authority by the organization to submit this SBLC application.

12. A certification by the proposed SBLC that it is in full compliance with all Federal, State, and local laws.

13. A written legal opinion of independent counsel (''Independent Counsel'' is counsel that is not an Associate of the lender), satisfactory to SBA that addresses whether the proposed SBLC:

a. Is duly formed, organized, and validly existing in good standing under the laws of the State of its organization, and is in full compliance with all Federal, State, and local laws in connection with the formation and organization of the proposed SBLC; and

b. Has the power, legal right, and authority to enter into the sale transaction.

14. A written statement from an authorized official of the proposed SBLC that the entity intends to operate as an SBA Lender for a period of not less than three years and that the licensee's significant deviation from the 3-year business plan, as described in #7 above, may be subject to corrective action.

**VI. SBLC Evaluation Process**

SBA reserves the right to deny any entity applying for an SBLC license, in its sole discretion. In addition to SBA's evaluation of the elements required in the SBLC Application, SBA may consider additional factors in its

evaluation. These factors include, but are not limited to:

- The lending policies of the proposed SBLC and their alignment with SBA's mission;
- Historical performance measures (such as default, purchase and loss rate);
- Whether the applicant entity or any officers, directors, managing partners, managing members, Key Employee(s) of the proposed SBLC, which includes senior managers, members of loan committees, and individuals who have a meaningful participation in the direction of the operations, policies, or financial decisions of the proposed SBLC), or other individuals or entities that propose to hold an equity interest of at least ten percent of the economic interest in any class of stock or ownership interest in the proposed SBLC is subject to any legal proceedings, enforcement action, order or agreement with a regulator or the presence of other related concerns;
- Other performance data associated with the proposed SBLC, its parent company, or its senior management team, along with other relevant information;
- Ability to address gaps in small business lending, especially those not served by the existing 7(a) Lender population, including: small-dollar lending, loans to underserved populations, and loans to support small businesses' efforts to reduce climate change and/or to help small businesses through climate change. Applicants may present potential market gaps and address their plan and capability to address them;
- Affiliation with lenders or lender service providers previously sanctioned by SBA; and
- The ability to sustain significant SBA 7(a) lending activities for at least three years.

In the review process, SBA will *not* consider the timing of application submission as long as a substantially complete application is submitted within an open application period.

Once received, the Director, Office of Financial Program Operations (D/OFPO), in consultation with the Director, Office of Credit Risk Management (D/OCRM), Director, Office of Financial Assistance (D/OFA), Director, Office of Performance and System Management (D/OPSM), and the Deputy Associate Administrator of the Office of Capital Access (DAA/OCA) or designee, makes the final determination on the application.

SBA will provide written notification to all applicants whether they have been approved. SBA reserves the right to perform additional due diligence of a license awardee prior to a final decision.

**VII. SBLC Timeline**

The SBLC application period is open as of Monday, September 2, 2024, and SBA will continue accepting applications through 11:59 p.m. Eastern time on Tuesday, October 15, 2024. SBA will close the application period, review and process all applications in accordance with the instructions provided above, and award up to three SBLC licenses. SBA anticipates issuing new SBLC licenses in late 2024. SBA may issue licenses at a future date to applicants participating in this open period.

**VIII. CA SBLC Application**

The entity applying for a new CA SBLC license must submit an executed electronic scanned copy (in pdf format) to *CAloans@sba.gov* addressing each of the elements set forth below (''CA SBLC Application''). The CA SBLC Application must be complete and organized in tabular format. The application must include:

1. The Legal name, address, telephone, and email address of the proposed CA SBLC.

2. The following information:

a. A copy of the applicant's IRS Tax Exempt certification and evidence of continued non-profit status (in compliance with IRS Form 990 requirements, if applicable).

b. A copy of a Certificate of Good Standing from the Secretary of State from the State where the lender is organized.

c. An opinion of independent counsel that the lender is (1) duly formed, organized and validly existing and in good standing under the laws of the state of organization, (2) chartered or registered to conduct business in the lender's proposed operating area, and (3) in compliance with applicable local, State and Federal laws in connection with the formation and organization of the lender. ''Independent Counsel'' is counsel that is not an ''Associate of the lender'' as defined in 13 CFR 120.10.

d. A list of officers and directors. For each individual listed, include a resume and SBA Form 1081, *Statement of Personal History,* signed and dated within 90 days of submission to SBA. Pursuant to Procedural Notice 5000–856893 any officer or director who answers ''yes'' to question numbers 10a, 10b, 10c, 11a, or 11b on the form must also submit an explanation and fingerprint cards.

e. A list of key personnel (current and proposed) who will be involved in loan packaging, processing and underwriting, closing, disbursing, servicing and liquidating the lender's 7(a) loans. For each key individual listed, include a resume and SBA Form 1081 signed and dated within 90 days of submission to SBA. Pursuant to Procedural Notice 5000–856893 any key employee who answers ''yes'' to question numbers 10a, 10b, 10c, 11a, or 11b on the form must also submit an explanation and fingerprint card. If any of these services are contracted out, that should be noted in the applicant's business plan explaining what those services are and how the CASBLC Applicant exercises control over the services provided. A copy of the contract should also accompany the application.

f. A certified copy of a Resolution of the Board of Directors authorizing submission of the application.

g. A copy of the most recent certification from the U.S. Treasury Department or CDFI Fund (if applicable).

h. A business plan addressing the applicant's small business lending activities and proposed operations. The plan should include, at a minimum:

i. An organizational chart with narrative description of organizational units. The organizational chart must also present and describe affiliated entities and the relationship between them.

ii. A narrative description of proposed operations including the internal organizational units involved in sourcing, evaluating and underwriting, closing, disbursing, servicing and liquidating SBA 7(a) loans.

iii. Volume projections for planned CASBLC lending activity for the first three years of participation.

iv. Projected balance sheet, income statement and statements of cash flows for two years, along with the related interest rate, default, and prepayment assumptions. The plan projections should be assembled under three different operating scenarios—normalized activity, activity assuming a 30 percent reduction in projected lending, and activity assuming a 50 percent reduction in projected lending. If applicable, the projections should also address the planned level and type of secondary market activity.

v. Description of available M&TA or the procedure for referrals to outside assistance; a plan for identifying appropriate assistance for each borrower; a description of how the Lender will track the type of M&TA recommended for each borrower at the time the loan was made; and identification of M&TA services actually provided.

vi. Description of lending activities, particularly in the area of small business lending, including data on the applicant's existing small business loan portfolio, such as number of loans made, distribution of size and age of loans made, use of proceeds, type of loans made (secured or unsecured, revolving, term, etc.). Small business lending may have been done by a related organizational entity such as its parent or an affiliate. The Applicant must demonstrate that it has at least 20 similarly sized commercial or business loans (either guaranteed or non-guaranteed) in its portfolio. (If the lender plans to continue to work with the related organizational entity if approved as a CA Lender, an LSP agreement may be required. See SOP 50 10 for further guidance on LSP agreements.)

vii. Description and data on the applicant's client demographics and current and/or planned service area including the CA underserved markets in that area, the small business community and its financing needs, and the relevant economic, unemployment and poverty characteristics for the area.

i. Copies of the applicant's year-end audited financial statements for the last two years. If the applicant has no prior audited financial statements, it may submit consolidated financial statements that have been certified as ''true and correct'' by Lender's senior financial officer for consideration. (CASBLC licensees are required to comply with 13 CFR 120.463, SBA's regulatory accounting requirements for SBA Supervised Lenders)

j. Interim financial statements dated within 90 days of the application, covering the period from the last audited statement to the end of the most recent quarter.

k. A schedule of funding sources and funds received and available for the two year period covered by the audited financial statements.

l. Current delinquency, default and loss rates for the applicant's entire small business loan portfolio for the prior two fiscal years in consolidated format. Loan performance data is also acceptable for consideration from the applicant's parent or its affiliates to substantiate a sufficient history of similar small business lending experience in the organization.

m. A description of existing loan loss reserve methodology, including any risk assessments or classifications. This should include a schedule of loan loss reserve components with calculations for the previous eight quarters, and a description of the loan loss reserve allocations for all loan programs in which the applicant currently participates.

n. A copy of lending policies and procedures governing business loan origination, closing, servicing and liquidation.

o. Any other information the lender considers relevant for SBA to consider in evaluating the application. To the degree an applicant has provided equivalent information on or as part of an application or for continued participation in the CDC, Microloan, ILP or CDFI programs, that information may be substituted provided it meets the intent of the requirement. SBA may follow up if additional information is needed.

3. Certifications

a. The applicant must certify that it has provided filed articles of incorporation and by-laws to either the SBA or the CDFI Fund in connection with its participation in the 504, Microloan, ILP, and/or CDFI programs, and that those organizing documents have not materially changed. If material changes have occurred, a copy of the current articles of incorporation and/or by-laws must be included with the application.

b. The applicant must either certify that it is not subject to regulation by a state regulator or, if the applicant is subject to state regulation, it must demonstrate that it is in good standing with its state regulator. The lender's written request to participate must include a written statement that to the best of its knowledge, the lender has satisfactory: (i) financial condition (*e.g.,* capital and liquidity); (ii) small business credit administration policies, procedures, and practices that it continues to adhere to in its operations; and (iii) small business servicing policies, procedures, and practices that it continues to adhere to in its operations. When reviewing good standing, SBA will look to see that a lender does not have significant deficiencies or weaknesses in these areas. ''Significance'' may be evidenced by the number or seriousness of the deficiencies, as determined by SBA in its discretion. SBA will verify any good standing statement where possible with public (*e.g.,* Cease and Desist Orders and Call Reports) and/or non-public information from the lender's primary and/or other regulators. Additionally, the following information must be included:

- A copy of the State statute and/or regulations governing the applicant's operations;
- A copy of the latest examination report of the applicant by the State financial regulator, as authorized; and
- A description of the State prescribed capital requirements and a certification that the applicant meets these established requirements.

**IX. CA SBLC Evaluation Process**

SBA reserves the right to deny any entity applying for a CA SBLC license, in its sole discretion. In addition to SBA's evaluation of the elements required in the CA SBLC Application, SBA may consider additional factors in its evaluation. These factors include:

- The lending policies of the proposed CA SBLC and their alignment with SBA's mission;
- Historical performance measures (such as default, purchase and loss rate);
- Whether the applicant is subject to any legal proceedings, enforcement action, order or agreement with a regulator or the presence of other related concerns;
- Other performance data associated with the acquiring concern or its senior management team, along with other relevant information;
- Affiliation with lenders or lender service providers previously sanctioned by SBA; and
- Ability to address gaps in small business lending, especially those not served by the existing 7(a) Lender population, including small-dollar lending, loans to underserved populations, and loans to support small businesses through climate change. Applicants may present potential market gaps and address their plan and capability to address them.

In the review process SBA will not consider the timing of the application submission, so long as the application is submitted within the application period. The Director, Office of Credit Risk Management (D/OCRM) makes the final determination on the application.

SBA will provide written notification to all applicants whether they have been approved. Approval of a CA SBLC license awardee will be conditioned on completion of training on CA SBLC Loan Program Requirements.

**X. CA SBLC Timeline**

The CA SBLC application period is open as of Monday, September 2, 2024, and SBA will continue accepting applications through 11:59 p.m. Eastern time on Friday, December 20, 2024. During the application period, SBA will review applications on a rolling basis and approve based on each applicant's merit and readiness to become a CA-SBLC. SBA has discretion to eliminate any application that is incomplete or

inconsistent with the application instructions.

**Isabella Casillas Guzman,**

*Administrator.*

[FR Doc. 2024–17644 Filed 8–8–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 232

**[Release Nos. 33–11293; 34–100439; 39–2555; IC–35220]**

## Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is adopting amendments to Volume II of the Electronic Data Gathering, Analysis, and Retrieval system Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules and forms. EDGAR Release 24.2 will be deployed in the EDGAR system on July 1, 2024.

**DATES:** *Effective date:* August 9, 2024. The incorporation by reference of the revised Filer Manual is approved by the Director of the Federal Register as of August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the amendments to Volume II of the Filer Manual, please contact Rosemary Filou, Deputy Director and Chief Counsel, Laurita Finch, Senior Special Counsel, or Lidian Pereira, Senior Special Counsel, in the EDGAR Business Office at (202) 551–3900. For questions regarding the submission of forms related to registering with the Commission as a security-based swap execution facility, please contact Michael Coe, Assistant Director, in the Division of Trading and Markets at (202) 551–4875. For questions regarding the availability of exhibit EX–98 under Item 1607 of Regulation S–K, please contact Robert Errett, Chief, Disclosure Management Office, in the Division of Corporation Finance at (202) 551–3225, for questions regarding the removal of obsolete Forms 10–KSB and 10–QSB, please contact Sean Harrison, Special Counsel, Disclosure Management Office, in the Division of Corporation Finance at (202) 551–3249.

**SUPPLEMENTARY INFORMATION:** We are adopting an updated Filer Manual, Volume II: ''EDGAR Filing,'' Version 70 (July 2024) and amendments to 17 CFR 232.301 (''Rule 301''). The updated Filer Manual is incorporated by reference into the Code of Federal Regulations.

### I. Background

The Filer Manual contains information needed for filers to make submissions on EDGAR. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[1] Filers must consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

### II. EDGAR System Changes and Associated Modifications to Volume II of the Filer Manual

EDGAR is being updated in EDGAR Release 24.2 and corresponding amendments to Volume II of the Filer Manual are being made to reflect these changes, as described below.[2]

*Forms Related to Application for Registration as a Security-Based Swap Execution Facility*

On November 2, 2023, the Commission adopted a set of rules and forms to create a regime for the registration and regulation of security-based swap execution facilities and address other issues relating to security-based swap execution generally.[3] To reflect these rules and forms, EDGAR will allow filers to submit forms to apply for registration with the Commission as a security-based swap execution facility (Form SBSEF) under 17 CFR 242.803, to amend an application prior to full registration (Form SBSEF/A), to request to withdraw a pending application for registration (Form SBSEF–W), and to request to vacate an effective registration (Form SBSEF–V). Filers will be able to file Form SBSEF and certain of its related exhibits in custom XML, Inline XBRL, and PDF formats as provided in the Regulation SE adopting release.[4]

*Removal of Obsolete Forms 10–KSB and 10–QSB From the EDGAR Filer Manual*

The EDGAR Filer Manual will be updated to remove obsolete Forms 10–KSB and 10–QSB from the ''Index to Forms Table.'' Removal is consistent with the previous rescission of Regulation S–B and all forms with the ''SB'' designation.[5]

*Removal of Screenshots From Chapter 8*

The EDGAR Filer Manual will be updated to remove screenshots from Chapter 8 of the Filer Manual that duplicate instructions provided in the text.

### III. Other EDGAR Changes

*Availability of Exhibit EX–98 for Attachments Required Under Item 1607 of Regulation S–K*

In connection with the Commission's rules intended to enhance investor protections in initial public offerings by Special Purpose Acquisition Companies (SPACs), and in subsequent business combination transactions between SPACs and private operating companies, EDGAR will be updated to allow filers to attach any report, opinion, or appraisal required to be filed as an exhibit under Item 1607 of Regulation S–K as exhibit EX–98 to EDGAR submission variants of Forms S–1, S–4, F–1, F–4, and Schedules TO, 14A, and 14C.[6]

### IV. Amendments to Rule 301 of Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filerinformation/current-edgar-filer-manual.*

### V. Administrative Law Matters

Because the Filer Manual and rule amendments relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[7] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act[8] or a report to Congress

[1] See Rule 301 of Regulation S–T.

[2] EDGAR Release 24.2 was deployed on July 1, 2024.

[3] Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, Release No. 34–98845 (Nov. 2, 2023) [88 FR 87156, 87229–30 (Dec. 15, 2023)].

[4] *Id.*

[5] Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8876 (Dec. 19, 2007), [73 FR 934 (Jan. 4, 2008)].

[6] Special Purpose Acquisition Companies, Shell Companies, and Projections, Release No. 33–11265 (Jan. 24, 2024) [89 FR 14158 (Feb. 26, 2024)].

[7] 5 U.S.C. 553(b)(A).

[8] 5 U.S.C. 601 through 612.

under the Small Business Regulatory Enforcement Fairness Act of 1996.[9]

The effective date for the updated Filer Manual and related rule amendments is August 9, 2024. In accordance with the APA,[10] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the related system upgrades.

**VI. Statutory Basis**

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[11] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[12] Section 319 of the Trust Indenture Act of 1939,[13] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[14]

**List of Subjects in 17 CFR Part 232**

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

**Text of the Amendments**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78n–1,78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

**§ 232.301 EDGAR Filer Manual.**

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 41 (December 2022). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 70 (July 2024). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for inspection at the Commission and at the National Archives and Records Administration (NARA). The EDGAR Filer Manual is available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. For information on the availability of the EDGAR Filer Manual at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The EDGAR Filer Manual may also be obtained from *https://www.sec.gov/edgar/filerinformation/current-edgar-filer-manual.*

By the Commission.

Dated: July 1, 2024.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2024–17563 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 5 U.S.C. 804(3)(c).

[10] 5 U.S.C. 553(d)(3).

[11] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[12] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78w, and 78*ll.*

[13] 15 U.S.C. 77sss.

[14] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

## DEPARTMENT OF JUSTICE

## 28 CFR Part 35

**[CRT Docket No. 143; AG Order No. 5982–2024]**

**RIN 1190–AA78**

## Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (''Department'') issues this final rule revising the regulation implementing title II of the Americans with Disabilities Act (''ADA''). The rule establishes requirements, including the adoption of specific technical standards and scoping requirements, for making accessible to the public the services, programs, and activities that State and local governments offer through their Medical Diagnostic Equipment (''MDE'').

**DATES:** This rule is effective October 8, 2024.

**FOR FURTHER INFORMATION CONTACT:** Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice or TTY) or (833) 610–1264 (TTY). You may obtain copies of this rule in an alternative format by calling the ADA Information Line at (800) 514–0301 (voice) or (833) 610–1264 (TTY). This rule is also available on *www.ada.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity (also referred to as a ''State or local government entity'').[1] In this final rule, the Department is revising its title II ADA regulation, 28 CFR part 35, to adopt the standards for accessible MDE issued by the Architectural and Transportation Barriers Compliance Board (''Access Board''), 36 CFR part 1195 (revised as of July 1, 2017) (''MDE Standards'' or ''Standards for Accessible MDE'').[2]

MDE includes equipment like medical examination tables, weight scales, dental chairs, and radiological diagnostic equipment such as mammography machines. Without accessible MDE, individuals with disabilities may not be afforded an equal opportunity to receive medical care,

[1] 42 U.S.C. 12132. The Department uses the phrases ''State and local government entities'' and ''public entities'' interchangeably throughout this rule to refer to ''public entit[ies]'' as defined in 42 U.S.C. 12131(1) that are covered under part A of title II of the ADA.

[2] As discussed in the explanation of § 35.104 in the appendix to this rule, the Department is declining to adopt two sunset provisions in the January 9, 2017, version of the Access Board's MDE Standards codified on July 1, 2017, because, if the Department included those two provisions, part of the Department's rule would lack effect upon publication. Other than those two provisions, the Department is adopting the January 9, 2017, version of the Access Board's MDE Standards, as reflected at 36 CFR part 1195 (revised as of July 1, 2017), in full.

including routine examinations, which could have serious implications for their health. A lack of accessible MDE may also undermine the quality of care that individuals with disabilities receive, delay the provision of medical care, exacerbate existing medical conditions, and increase the likelihood of developing secondary medical conditions.[3] For instance, patients with disabilities have had to forgo Pap smears because they could not safely transfer from their wheelchairs to fixed-height examination tables.[4] Similarly, inaccessible mammography machines have contributed to low breast cancer screening rates for patients with disabilities.[5]

The Access Board issued the MDE Standards under section 510 of the Rehabilitation Act of 1973, 29 U.S.C. 794f (''section 510''). The MDE Standards set forth minimum technical criteria for MDE used in physicians' offices, clinics, emergency rooms, hospitals, and other medical settings to ensure that such equipment is accessible to and usable by individuals with accessibility needs, including people with disabilities.[6] By issuing this rule, the Department is adding a new subpart I to the title II ADA regulation that adopts the MDE Standards and makes them enforceable under title II of the ADA. This will ensure that MDE used by public entities to offer services, programs, and activities at places such as hospitals and health care clinics is accessible to individuals with disabilities.

This rule generally requires all MDE that public entities purchase, lease, or otherwise acquire more than 60 days after this final rule is published to meet the MDE Standards, unless and until the rule's scoping requirements are met. The scoping requirements state that where public entities' services, programs, and activities use MDE, at least 10 percent of the total number of units, but no fewer than 1 unit, of each type of equipment in use must meet the MDE Standards. The scoping requirements further state that in rehabilitation facilities that specialize in treating conditions that affect mobility, outpatient physical therapy facilities, and other services, programs, or activities that specialize in treating conditions that affect mobility, at least 20 percent, but no fewer than 1 unit, of each type of equipment in use must meet the MDE Standards. The rule allows public entities to use designs, products, or technologies as alternatives to those prescribed by the MDE Standards, as long as the alternatives provide substantially equivalent or greater accessibility and usability than the MDE Standards require. Facilities with multiple departments, clinics, or specialties must disperse their accessible MDE proportionately. The rule also requires public entities that use examination tables or weight scales to acquire at least one accessible unit of each such category of equipment within two years after this final rule is published.

In addition to adopting the MDE Standards and establishing the requirements described in the preceding paragraph, the rule clarifies that a public entity may not deny services that it would otherwise provide to a patient with a disability, or otherwise discriminate against patients with disabilities, because the public entity's MDE is not readily accessible to or usable by individuals with disabilities. The rule also clarifies that public entities' services, programs, and activities offered through or with the use of MDE must be, in their entirety, readily accessible to and usable by individuals with disabilities. Public entities are not necessarily required to make every unit of MDE accessible to and usable by individuals with disabilities. For example, they may be able to make their services, programs, and activities, in their entirety, readily accessible to and usable by individuals with disabilities by acquiring accessible MDE, delivering services at alternate accessible locations, or conducting home visits. Finally, the rule requires public entities to ensure that their staff can successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the rule's requirements for existing MDE.

There are limitations on public entities' obligations under this rule. As with the current ADA regulation,[7] this rule does not require public entities to take any action that would constitute a fundamental alteration of the service, program, or activity being offered or cause undue financial and administrative burdens. Public entities are also not required to take any action that would alter their equipment's diagnostically required structural or operational characteristics and prevent the equipment from being used for its intended diagnostic purpose.

More information about what this rule requires is provided in the appendix.

## II. Background

### *A. Statutory and Rulemaking Overview*

Title II of the ADA protects qualified persons with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.[8]

The ADA authorizes the Attorney General to promulgate regulations to carry out the provisions of title II, with the exception of certain matters within the scope of the authority of the Secretary of Transportation.[9] The ADA also authorizes the Attorney General to promulgate regulations to carry out the provisions of title III, which focuses on public accommodations.[10] In 1991, the Department issued its final rules implementing titles II and III, which were codified at 28 CFR part 35 (title II) and part 36 (title III) and which adopted the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (''ADA Standards for Accessible Design'').[11]

In 2004, the Department published an advance notice of proposed rulemaking (''ANPRM'') to begin the process of updating the 1991 regulations and to adopt revised ADA Standards based on the relevant parts of the Access Board's 2004 ADA/Architectural Barriers Act Accessibility Guidelines (''2004 ADA/ABA Guidelines'').[12] The 2004 ANPRM asked for public comment on a range of issues not specifically addressed in the 1991 ADA regulation, including coverage of movable or portable equipment and furniture.[12] The Department subsequently issued a notice of proposed rulemaking (''NPRM'') in 2008.[13] Although public comments in response to the ANPRM had supported the promulgation of specific accessibility standards for equipment and furniture, the Department's 2008 NPRM announced its decision not to address equipment and furniture at that time.[14] Instead, the Department continued its approach of requiring covered entities to provide accessible equipment and furniture as

[3] Nat'l Council on Disability, *Enforceable Accessible Medical Equipment Standards: A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities* 7 (May 20, 2021) (''NCD Report''), *https://www.ncd.gov/assets/uploads/reports/ncd_medical_equipment_report_508.pdf* [*https://perma.cc/6W4U-TVEX*].

[4] *See id.* at 17.

[5] *See id.* at 18.

[6] 29 U.S.C. 794f(a).

[7] *See, e.g.,* 28 CFR 35.150(a)(3).

[8] 42 U.S.C. 12132.

[9] *Id.* section 12134. Sections 229(a) and 244 of the ADA direct the Secretary of Transportation to issue regulations implementing part B of title II, except for section 223. *See* 42 U.S.C. 12149, 12164.

[10] *Id.* section 12186(b).

[11] 56 FR 35694 (July 26, 1991); 56 FR 35544 (July 26, 1991).

[12] 69 FR 58774–75.

[13] 73 FR 34466 (June 17, 2008).

[14] *Id.* at 34474–75.

needed to comply with the ADA's general nondiscrimination requirements under the Department's existing regulations.[15]

On July 26, 2010, the Department announced its plan to issue final rules updating its title II and III regulations and adopting standards consistent with 2004 ADA/ABA Guidelines and the requirements contained in 28 CFR 35.151, naming them the 2010 ADA Standards for Accessible Design (''2010 ADA Standards'').[16] On that same day, the Department issued an ANPRM to consider possible changes to requirements under the ADA to ensure that equipment and furniture, including MDE, used in services, programs, and activities provided by State and local governments and public accommodations, are accessible to people with disabilities.[17] The Department subsequently bifurcated the rulemaking considered in the 2010 ANPRM, with the intent to address the accessibility requirements for MDE in a separate rulemaking.[18] However, in December 2017, the Department withdrew the 2010 ANPRM to reevaluate whether the imposition of specific regulatory standards for the accessibility of nonfixed equipment and furniture was necessary and appropriate.[19]

In 2021, the Department indicated its plan to issue an ANPRM on possible revisions to its ADA regulation to ensure the accessibility of equipment and furniture in public entities' and public accommodations' programs and services.[20] Subsequently, in 2022, the Department decided to bifurcate that rulemaking and announced that it planned to publish a separate ANPRM that solely addressed the accessibility of MDE under both title II and title III.[21] The Department ultimately proceeded with its MDE rulemaking under title II through an NPRM, rather than first issuing an ANPRM.

In the NPRM, published on January 12, 2024, the Department proposed to revise its title II regulation to adopt the Access Board's technical standards and to establish scoping requirements to make accessible to the public the services, programs, and activities that State and local governments offer through their MDE.[22] The Department also published a fact sheet describing the NPRM's proposed requirements in plain language to help ensure that members of the public understood the rule and had an opportunity to provide feedback.[23] The public comment period closed on February 12, 2024. The Department received approximately 200 comments from members of the public, including individuals with disabilities and their family members, public entities, disability advocacy groups, members of the medical community, industry groups, and others. The Department also received two letters from Members of Congress, which addressed issues discussed in many of the other comments submitted on this rulemaking.[24]

The Department is coordinating its publication of this rule with the Department of Health and Human Services (''HHS''). In September 2023, HHS issued an NPRM that addressed the requirements for accessibility of MDE for recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (''section 504'').[25] HHS issued its final section 504 rule on May 9, 2024.[26]

Title II is modeled on section 504,[27] and title II and section 504 are generally understood to impose similar requirements, given the similar language employed in the ADA and the Rehabilitation Act.[28] The legislative history of the ADA makes clear that title II was intended to extend the requirements of section 504 to apply to all State and local governments, regardless of whether they receive Federal funding, demonstrating Congress's intent that title II and section 504 be interpreted consistently.[29] The legislative history of the Rehabilitation Act Amendments of 1992 [30] provides that the revisions to the Rehabilitation Act's findings, purpose, and policy provisions are a confirmation of the principles of the ADA,[31] and that these principles are intended to guide the Rehabilitation Act's policies, practices, and procedures.[32] Further, courts interpret the ADA and section 504 consistently.[33] Thus, the Department believes there is and should be parity between the relevant provisions of title II and section 504.

Given the relationship between title II and section 504 and the congressional intent that the two disability rights laws be interpreted consistently, the Department's rule, which applies to public entities subject to title II of the ADA, imposes virtually the same requirements as HHS's rule, which applies to recipients of Federal financial assistance subject to section 504. The Department will continue to consider issues concerning MDE under title III as well as equipment and furniture other than MDE under both titles, although those issues are not the subjects of rulemaking at this time.

### *B. Legal Foundation for Accessible MDE*

This final rule applies to health care services, programs, and activities that public entities offer through or with the use of MDE. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities offered by public entities.[34] As a result of this mandate and the Department's implementing regulation, public entities must provide accessible equipment and furniture as necessary to comply with title II's reasonable modification, effective communication, and program accessibility requirements.

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[15] *Id.*

[16] *See* Press Release, U.S. Dep't of Just., *Justice Department's 2010 ADA Standards for Accessible Design Go into Effect* (Mar. 15, 2012), *https://www.justice.gov/opa/pr/justice-department-s-2010-ada-standards-accessible-design-go-effect* [*https://perma.cc/52UB-WRR4*]. These final rules were published on September 15, 2010. *See* 75 FR 56164 (Sept. 15, 2010); 75 FR 56236 (Sept. 15, 2010).

[17] 75 FR 43452 (July 26, 2010).

[18] *See* Off. of Mgmt. & Budget, Off. of Info. & Regul. Affs., *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Fall 2011), *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201110&RIN=1190-AA66* [*https://perma.cc/D6TE-RUHR*].

[19] 82 FR 60932 (Dec. 26, 2017).

[20] *See* Off. of Mgmt. & Budget, Off. of Info. & Regul. Affs., *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Fall 2021), *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1190-AA76* [*https://perma.cc/D6TE-RUHR*].

[21] *See* Off. of Mgmt. & Budget, Off. of Info. & Regul. Affs., *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Spring 2022), *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1190-AA78* [*https://perma.cc/8BJ3-RYYY*].

[22] 89 FR 2183 (Jan. 12, 2024).

[23] U.S. Dep't of Just., Civ. Rts. Div., *Fact Sheet: Notice of Proposed Rulemaking on Accessibility of Medical Diagnostic Equipment, https://www.ada.gov/resources/2024-01-10-mde-nprm/* [*https://perma.cc/R69R-4QBW*].

[24] Sen. Robert P. Casey, Jr., et al., Comment Letter on Proposed Rule Regarding Nondiscrimination on the Basis of Disability: Accessibility of Med. Diagnostic Equip. of State & Loc. Gov't Entities (Mar. 25, 2024), *https://www.regulations.gov/comment/DOJ-CRT-2024-0001-0196* [*https://perma.cc/QB8A-LW5G*]; Rep. Ayanna Pressley, et al., Comment Letter on Proposed Rule Regarding Nondiscrimination on the Basis of Disability: Accessibility of Med. Diagnostic Equip. of State & Loc. Gov't Entities (Apr. 2, 2024), *https://www.regulations.gov/comment/DOJ-CRT-2024-0001-0197* [*https://perma.cc/39MU-PXA5*].

[25] 88 FR 63392 (Sept. 14, 2023).

[26] 89 FR 40066 (May 9, 2024).

[27] *See, e.g.,* H.R. Rep. No. 101–485, pt. 2, at 84 (1990).

[28] *See, e.g.,* 42 U.S.C. 12201(a).

[29] *See* H.R. Rep. No. 101–485, pt. 2, at 84 (1990).

[30] Public Law 102–569, 106 Stat. 4344.

[31] S. Rep. No. 102–357, at 14 (1992).

[32] *See id.; see also* H.R. Rep. No. 102–822, at 81 (1992).

[33] *See, e.g., Smith* v. *Harris Cnty.,* 956 F.3d 311, 317 (5th Cir. 2020); *K.M. ex rel. Bright* v. *Tustin Unified Sch. Dist.,* 725 F.3d 1088, 1098 (9th Cir. 2013).

[34] 42 U.S.C. 12132.

Under title II, public entities must provide reasonable modifications when necessary to avoid discrimination on the basis of disability unless those modifications would fundamentally alter the nature of the public entity's service, program, or activity.[35] Title II entities also must ensure that communications with individuals with disabilities are as effective as communications with others, including through the provision of appropriate auxiliary aids and services.[36] These auxiliary aids include the ''[a]cquisition or modification of equipment or devices.'' [37]

Under the program accessibility requirement of title II, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.[38] A public entity must operate each service, program, or activity so that, when viewed in its entirety, the service, program, or activity is readily accessible to and usable by persons with disabilities, subject to the fundamental alteration or undue burdens limitations.[39] A public entity may comply with the program accessibility requirement through such means as redesign or acquisition of equipment.[40]

As with many other statutes, the ADA's requirements are broad and its implementing regulations do not include specific standards for every obligation under the statute. This has been the case in the context of the accessibility of MDE under the ADA. While public entities were already required to comply with the ADA with respect to MDE even before this rulemaking, the Department had not adopted technical standards specifying what constitutes accessible MDE.

### *C. Overview of the Access Board's MDE Standards*

Section 510 of the Rehabilitation Act requires the Access Board to promulgate regulatory standards setting forth minimum technical criteria for MDE used in physicians' offices, clinics, emergency rooms, hospitals, and other medical settings.[41] Under the statute, the standards must ensure that such equipment is accessible to and usable by individuals with accessibility needs, including people with disabilities.

In implementing the mandate set forth in section 510 to promulgate technical standards for accessible MDE, the Access Board received input from various stakeholders through a multi-year deliberative process and published the MDE Standards on January 9, 2017.[42] The January 9, 2017, revisions were codified on July 1, 2017.[43] The Access Board divides the MDE Standards into four separate technical criteria based on how the equipment is used by the patient: (1) in the supine, prone, or side-lying position; (2) in the seated position; (3) seated in a wheelchair; and (4) in the standing position.[44] For each category of use, the MDE Standards provide for independent entry to, use of, and exit from the equipment by patients with disabilities to the maximum extent possible.

The technical requirements for MDE used by patients in the supine, prone, or side-lying position (such as examination tables) and MDE used by patients in the seated position (such as examination chairs) focus on ensuring that the patient can transfer from a mobility device onto the MDE.[45] The other two categories set forth the necessary technical requirements to allow the patient to use the MDE while seated in their wheelchair (such as during a mammogram) or while standing (such as on a weight scale), respectively.[46] The MDE Standards also include technical criteria for supports, including for transfer, standing, leg, head, and back supports; instructions or other information communicated to patients through the equipment; and operable parts used by patients.[47]

The January 9, 2017, version of the Access Board's MDE Standards contained a temporary standard governing the minimum low height requirement for transfers from diagnostic equipment used by patients in the supine, prone, side-lying, or seated position.[48] Specifically, the temporary standard provided for a minimum low transfer height requirement of 17 inches to 19 inches. The temporary nature of this standard was due to insufficient data on the extent to which, and how many, individuals would benefit from a transfer height lower than 19 inches. Under this standard, any low transfer height between 17 inches and 19 inches meets the MDE Standards. The January 9, 2017, version of the Access Board's MDE Standards included a sunset provision which stated that the 17-inch to 19-inch low transfer height range would remain in effect only until January 10, 2022.[49]

On May 23, 2023, the Access Board issued an NPRM that proposed replacing the temporary 17-inch to 19-inch low transfer height range with a permanent 17-inch low transfer height standard.[50] On July 25, 2024, the Access Board published a final rule replacing the temporary 17-inch to 19-inch low transfer height range with a permanent 17-inch low transfer height standard. The Department will consider issuing a supplemental rulemaking under title II proposing to adopt the Access Board's updated standard.

### *D. Need for the Adoption of MDE Standards*

While section 510 directs the Access Board to develop standards for accessible MDE, it does not give the Access Board authority to enforce those standards.[51] Compliance with the MDE Standards is mandatory only if an enforcing authority adopts them as mandatory for entities subject to its jurisdiction.[52] By issuing this rule, the Department adopts the MDE Standards under title II of the ADA.

The accessibility of MDE is essential to providing equal access to medical care to people with disabilities. In developing this subpart, the Department considered the well-documented barriers that individuals with disabilities face when accessing MDE, as well as the benefits for people with disabilities and health care workers alike of using accessible MDE.[53] The

[35] 28 CFR 35.130(b)(7)(i).

[36] *See id.* § 35.160.

[37] *Id.* § 35.104; *see also* 82 FR 2848 (setting forth technical standards for MDE that communicates instructions or other information to the patient).

[38] 28 CFR 35.149.

[39] *Id.* § 35.150(a).

[40] *Id.* § 35.150(b)(1).

[41] 29 U.S.C. 794f(a).

[42] 82 FR 2810. For further detail on the Access Board's extensive deliberative process, see generally Architectural and Transportation Barriers Compliance Board, *Rulemaking Docket: Medical Diagnostic Equipment Accessibility Standards, https://www.regulations.gov/docket/ATBCB-2012-0003/document* [*https://perma.cc/5GZF-8TAZ*].

[43] 36 CFR part 1195 (revised as of July 1, 2017).

[44] *Id.* part 1195, appendix, sections M301–04 (revised as of July 1, 2017).

[45] *See id.* sections M301–02.

[46] *See id.* sections M303–04.

[47] *See id.* sections M305–07.

[48] *See id.* sections M301.2.1, 302.2.1.

[49] *See id.*

[50] 88 FR 33056 (May 23, 2023).

[51] 29 U.S.C. 794f.

[52] *See* 36 CFR 1195.1 (stating that other agencies, referred to as enforcing authorities, may adopt the standards as mandatory requirements for entities subject to their jurisdiction); 36 CFR part 1195, appendix, section M101.3 (revised as of July 1, 2017) (stating that enforcing authorities may include the Department of Justice).

[53] Nat'l Council on Disability, *The Current State of Health Care for People with Disabilities* (Sept. 30, 2009), *https://files.eric.ed.gov/fulltext/ED507726.pdf* [*https://perma.cc/5FR5-DZU6*]; *see,*

Continued

accessibility or inaccessibility of MDE impacts a substantial population—according to an estimate by the Centers for Disease Control and Prevention, as of 2023, approximately 61 million adults lived with a disability in the United States, and 13.7 percent of those individuals had a mobility disability with serious difficulty walking or climbing stairs.[54]

While not all individuals with a mobility disability will require accessible MDE or benefit from it to the same extent, significant portions of this population will benefit from accessible MDE. Further, a number of studies and reports have shown that individuals with disabilities may be less likely to get routine or preventative medical care than people without disabilities because of barriers to accessing appropriate care that involves MDE.[55] In one example, a patient with a disability remained in his wheelchair for the entirety of his annual physical examination, which consisted of his doctor listening to his heart and lungs underneath his clothing, looking inside his ears and throat, and then stating, ''I assume everything below the waist is fine.'' [56] In another example, a patient with a disability reported that even if she could be transferred to a standard examination table, extra staff was needed to keep her from falling off the table because it did not have any side rails. As a result of this and a number of other frightening experiences, the patient avoided going to the doctor unless she was very ill.[57]

Many individuals who submitted comments on the Department's NPRM agreed that there is a need for a regulation on the accessibility of MDE. Comments from individuals with disabilities and from caregivers included anecdotes describing inadequate care and humiliations that individuals with disabilities had experienced due to a lack of accessible MDE. A young person who uses a wheelchair due to a spinal cord injury wrote that she developed cancer shortly after her injury but that doctors stopped part of her cancer treatment because of a lack of accessible equipment to measure her bone density. Other commenters described having to go to veterinarians' offices to use their larger footprint weight scales, a situation that one commenter described as ridiculous and challenging. In addition to commenters personally impacted by the rulemaking, State and local government entities, medical associations, academic institutions, and disability rights advocacy groups expressed strong support for the rulemaking.

In addition to the comments submitted on the NPRM, many of which described the effect of inaccessible MDE, multiple studies have found that individuals with certain disabilities face barriers to accessing MDE and are often denied accessible MDE by their health care providers.[58] Accessible MDE is thus often critical to a public entity's ability to provide a person with a disability equal access to, and opportunities to benefit from, its health care services, programs, and activities.

In the over 30 years since the ADA was enacted, the Department, in implementing and enforcing the ADA, has gained a better understanding of the ongoing barriers posed by inaccessible MDE and the solutions provided by accessible MDE. The Department has received numerous complaints from patients with disabilities whose health care providers did not provide the most basic forms of care—from performing a full body examination to obtaining an accurate weight before administering anesthesia—because of the lack of accessible MDE. In recognition of the importance of accessible health care, the Department launched the Barrier-Free Health Care Initiative, which, among other goals, sought to advance physical access to medical care for people with disabilities. As part of this initiative, the Department has entered into numerous settlement agreements with health care providers that have required the providers to purchase accessible MDE, including examination and treatment equipment, for their facilities.[59] These settlement agreements, and a description of the Barrier-Free Health Care Initiative, are available to the public at *www.ada.gov/barrierfreehealthcare.htm* [*https://perma.cc/9TT7-BCRN*].

The Department has also consistently provided information to covered entities on how they can make their health care services, programs, and activities accessible to individuals with disabilities. For example, the Department and HHS jointly issued a technical assistance document on medical care for people with mobility disabilities, addressing how accessible MDE can be critical to ensuring that people with disabilities receive medical services equal to those received by people without disabilities.[60] In particular, the document explains that the availability of accessible medical equipment is an important part of providing accessible medical care, and that health care providers must ensure that medical equipment is not a barrier to individuals with disabilities.[61] The guidance also provides examples of accessible medical equipment, including adjustable-height examination tables and chairs, wheelchair-accessible scales, adjustable-height radiologic equipment, portable floor and overhead track lifts, gurneys, and stretchers, and it discusses how people with mobility disabilities use this equipment.

The Department recognizes that in addition to its efforts to enforce and provide technical assistance on the ADA to ensure that people with disabilities have equal access to medical care, providing enforceable technical standards helps ensure clarity to public entities on how to fulfill their existing obligations under title II in their health care services, programs, and activities. The COVID–19 pandemic had a devastating and disproportionate impact on people with disabilities and underscored how dire the consequences

*e.g.,* U.S. Dep't of Health & Human Servs., Admin. for Community Living, *Wheelchair-Accessible Medical Diagnostic Equipment: Cutting Edge Technology, Cost-Effective for Health Care Providers, and Consumer-Friendly, https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/MDE%20Fact%20Sheet%20Final.docx* [*https://perma.cc/GW83-62WW*].

[54] U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *Disability Impacts All of Us, https://perma.cc/AX9E-9WU3.* The Department also acknowledges that in addition to disability impacting a substantial portion of the population, disability discrimination frequently co-occurs with other types of discrimination.

[55] *See, e.g.,* Anna Marrocco & Helene J. Krouse, *Obstacles to Preventive Care for Individuals with Disability: Implications for Nurse Practitioners,* 29 J. Am. Ass'n of Nurse Pract. 282, 289 (May 2017) *https://pubmed.ncbi.nlm.nih.gov/28266148/* [*https://perma.cc/5UBX-WEFE*]; U.S. Dep't of Health & Human Servs., Office of the Surgeon Gen., *The Surgeon General's Call to Action to Improve the Health and Wellness of Persons with Disabilities* (2005), *https://www.ncbi.nlm.nih.gov/books/NBK44667/* [*https://perma.cc/77DZ-WRM9*]; NCD Report at 14.

[56] NCD Report at 15.

[57] *Id.* at 16–17.

[58] *See* Anne Ordway et al., *Health Care Access and the Americans with Disabilities Act: A Mixed Methods Study,* 14 Disability and Health J. 1, 2, 5 (2021) (stating that of 562 people with disabilities surveyed, 27 percent had difficulty accessing examination tables); *see also* Jennifer L. Wong et al., *Identification of Targets for Improving Access to Care in Persons with Long Term Physical Disabilities,* 12 Disability & Health J. 366, 369 (2019) (stating that of the 462 people who needed a height-adjustable examination table, 56 percent received it).

[59] *See, e.g.,* Settlement Agreement Between the United States and Charlotte Radiology, P.A. (Aug. 13, 2018), *https://archive.ada.gov/charlotte_radiology_sa.html* [*https://perma.cc/ZC5W-LV3M*]; Settlement Agreement Between the United States and Tufts Medical Center (Feb. 28, 2020), *https://archive.ada.gov/tufts_medical_ctr_sa.html* [*https://perma.cc/YQG3-ZDZC*].

[60] *See* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities* (June 26, 2020), *https://www.ada.gov/resources/medical-care-mobility/* [*https://perma.cc/UH8Y-NZWL*].

[61] *Id.*

may be for those who lack adequate access to medical care and treatment. As a National Council on Disability (''NCD'') report on accessible medical equipment standards notes, significant health care disparities for persons with disabilities are due in part to the lack of physical access to MDE, and ensuring access to health care services through accessible MDE is necessary to provide equitable medical care.[62] As a result of its findings, NCD called upon the Department to revise its ADA regulation to formally adopt the MDE Standards.[63]

By issuing this final rule, the Department is revising its ADA regulation to help ensure that vital health care services, programs, and activities are equally available to individuals with disabilities. Specifically, the Department is adopting and incorporating into its title II ADA regulation the specific technical requirements for accessible MDE that are set forth in the Access Board's MDE Standards.[64]

## III. Regulatory Process Matters

The Department has examined the likely economic and other effects of this rule addressing the accessibility of MDE under applicable Executive orders,[65] Federal administrative statutes (*e.g.,* the Regulatory Flexibility Act,[66] Paperwork Reduction Act,[67] and Unfunded Mandates Reform Act [68]), and other regulatory guidance.[69]

As discussed previously, the purpose of this rule is to revise the regulation implementing title II of the ADA in order to ensure that the services, programs, and activities offered by State and local government entities through or with the use of MDE are accessible to people with disabilities. The Department is adopting specific technical standards and scoping requirements related to the accessibility of MDE. This rule is necessary to help public entities understand how to ensure that people with disabilities have equal access to the services, programs, and activities public entities provide through or with the use of MDE.

The Department has carefully crafted this final rule to better ensure compliance with the protections of title II of the ADA, while at the same time doing so in an economically efficient manner. After reviewing the Department's assessment of the likely costs of this regulation, the Office of Management and Budget (''OMB'') has determined that it is a significant regulatory action within the meaning of Executive Order 12866, as amended. As such, the Department has undertaken a Final Regulatory Impact Analysis (''FRIA'') pursuant to Executive Orders 12866 and 14094. The Department has also undertaken a Final Regulatory Flexibility Analysis (''FRFA'') as specified in section 603(a) of the RFA. The results of these analyses are summarized below. In addition, the Department has determined that this rule complies with the requirements of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, sec. 12(d), 110 Stat. 783, and with the Department's plain language policies. Lastly, the Department does not believe that this regulation will have any impact—significant or otherwise—relative to the federalism principles outlined in Executive Order 13132, the Paperwork Reduction Act, or the Unfunded Mandates Reform Act.

### *A. Final Regulatory Impact Analysis (''FRIA'') Summary and Final Regulatory Flexibility Analysis (''FRFA'') Summary*

#### 1. FRIA Summary

The Department prepared a FRIA for this rulemaking. The Department contracted with Eastern Research Group Inc. (''ERG'') to prepare this economic assessment. This summary of the FRIA provides an overview of the Department's final economic analysis and key findings. The full FRIA will be made available at *www.ada.gov/assets/pdfs/mde-fria.pdf.*

The Department estimates that this title II ADA regulation will affect 6,911 public entities.[70] The Department quantifies incremental costs that affected entities may incur in (1) purchasing or leasing accessible MDE and (2) ensuring qualified staff. The Department also quantifies incremental benefits that people with mobility disabilities may enjoy due to higher shares of accessible MDE, which may yield improved health outcomes. In addition, the Department discusses other benefits flowing from the final rule that cannot be quantified due to lack of data or other methodological reasons.

Table 1 summarizes findings of the economic impact analysis of the likely incremental monetized costs and benefits of the final rule, on an annualized basis. All monetized costs and benefits are estimated for a 10-year period using a discount rate of 3 or 7 percent.

TABLE 1—ANNUALIZED VALUE OF MONETIZED COSTS AND BENEFITS UNDER THE FINAL RULE OVER A 10-YEAR PERIOD

[In millions of 2023 dollars]

| Quantity | Discount rate (3 percent) | Discount rate (7 percent) |
|---|---|---|
| Monetized Incremental Costs | $40.3 | $40.7 |
| Monetized Incremental Benefits | 9.0 | 5.3 |

Regarding costs, the Department finds that the final rule would result in annualized costs over a 10-year period of $40.3 million or $40.7 million, corresponding to a 3 or 7 percent discount rate.[71] These costs include

[62] NCD Report at 14.

[63] *Id.* at 52.

[64] As explained in the section-by-section analysis of § 35.104 in the appendix to this rule, the Department is declining to adopt the two sunset provisions in the January 9, 2017, version of the Access Board's MDE Standards. Other than those two provisions, the Department is adopting the January 9, 2017, version of the Access Board's MDE Standards, as contained in 82 FR 2845 through 2848, in full.

[65] *See* E.O. 13563, 76 FR 3821 (Jan. 18, 2011); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 13132, 64 FR 43255 (Aug. 4, 1999); E.O. 12866, 58 FR 51735 (Sept. 30, 1993), as amended by E.O. 14094, 88 FR 21879 (Apr. 6, 2023).

[66] Regulatory Flexibility Act of 1980 (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*

[67] Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

[68] Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

[69] *See* Office of Mgmt. & Budget, *Circular A–4* (Sept. 17, 2003) (superseded by Office of Mgmt. & Budget, *Circular A–4* (Nov. 9, 2023)).

[70] The estimate of 6,911 public entities comes from HHS and the Centers for Medicare & Medicaid Services, based on information in the U.S. Census Bureau's 2019 Statistics of U.S. Businesses Annual Data Table by Establishment Industry, U.S. & States, 6-digit NAICS. *See* Table 2 of the FRIA for more information.

[71] *See* Table 11 of the FRIA for derivation of this estimate.

incremental costs that affected entities may incur in purchasing or leasing accessible MDE and ensuring qualified staff. All values are presented in 2023 dollars, as 2024 data were not yet available at the time this analysis was performed.

Regarding benefits, the FRIA finds that the final rule would result in annualized benefits over a 10-year period of $9.0 million at a 3 percent discount rate or $5.3 million at a 7 percent discount rate. Monetized benefits are based on an assessment of reduced mortality and morbidity risks from cancer diagnoses for individuals with mobility disabilities.

In addition to providing a monetized benefit estimate, the FRIA discusses potentially enormous unquantified benefits under the rule. The Department expects that the rule will result in myriad benefits for individuals with mobility disabilities flowing from greater access to health care, such as the benefits of accurate drug dosing for persons with disabilities who will now be able to be weighed and given proper drug regimens due to accessible weight scales. Other unquantified benefits include increased equality, dignity, and the prevention of frustration, embarrassment, and harms to self-esteem.

As further discussed in section 2.d of the FRIA, all public entities in the health care sector likely receive some form of Federal financial assistance. Therefore, all, or virtually all, entities that are subject to title II of the ADA are also subject to section 504 of the Rehabilitation Act. Further, as noted above, title II and section 504 impose parallel requirements, and courts have interpreted them to be consistent. Maintaining that consistency, this rule under title II imposes virtually the same obligations on public entities as HHS's rule imposes under section 504. If this rule did not adopt the MDE Standards and otherwise parallel the requirements set forth in HHS's section 504 rule, courts might interpret title II to impose obligations on public entities that differ from those under section 504, resulting in confusion, uncertainty, duplication, litigation, and increased compliance costs for the many entities covered by both statutes. The adoption of this rule under title II, which parallels the MDE provisions of HHS's section 504 rule, avoids these pitfalls.

2. FRFA Summary

The Department examined the impact of the rule on small entities as required by the RFA. In the NPRM, the Department certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.[72] The Department sought public comment on this certification and its underlying analysis, including the costs to small entities. A few commenters stated that the costs of complying with this rule would be much higher than the Department estimated, particularly for small entities. However, these comments made only general statements and provided no data to adjust the costs. Commenters provided no specific information that would call into question the validity of the data and methods used to calculate costs both for government entities in general and small government entities in particular.

The Department has prepared a FRFA to comply with its obligations under the RFA. The FRFA will be published along with the Department's FRIA, and it will be made available to the public at *www.ada.gov/assets/pdfs/mde-fria.pdf.* The FRFA describes and estimates the number of small entities to which this rule applies and estimates the economic impacts on small entities. The FRFA examines which industry groups would be financially impacted the most by this rule. The FRFA also explains the assumptions on which it is based and explains the criteria used to assess what constitute ''significant economic impacts'' and ''a substantial number'' of small entities. Based on this analysis, the Attorney General has again reviewed this regulation in accordance with the RFA, 5 U.S.C. 605(b), and certifies that the rule will not have a significant economic impact on a substantial number of small entities.

*B. Executive Order 13132: Federalism*

Executive Order 13132 requires executive branch agencies to consider whether a rule will have federalism implications.[73] That is, the rulemaking agency must determine whether the rule is likely to have substantial direct effects on State and local governments, the relationship between the Federal Government and the States and localities, or the distribution of power and responsibilities among the different levels of government. If an agency believes that a rule is likely to have federalism implications, it must consult with State and local government officials about how to minimize or eliminate those effects.

Title II of the ADA covers State and local government services, programs, and activities, and therefore clearly has some federalism implications. State and local governments have been subject to the ADA since 1991, and the many State and local government entities that receive Federal financial assistance have also been required to comply with the requirements of section 504. Hence, neither the ADA nor the title II regulation is novel for State and local governments.

In crafting this regulation, the Department has been mindful of its obligation to meet the objectives of the ADA while also minimizing conflicts between State law and Federal interests, consistent with section 4(c) of Executive Order 13132. The Department sought public comment in the NPRM on the potential federalism implications of this rule, including whether the rule may have direct effects on State and local governments, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. The Department received no comments from State or local governments on this issue.

The Department clarifies that, consistent with 42 U.S.C. 12201(b), this rule preempts State laws affecting entities subject to the ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities. This rule does not invalidate or limit the remedies, rights, or procedures of any State laws that provide greater or equal protection for the rights of individuals with disabilities. Moreover, the Department's provision on equivalent facilitation at § 35.211(d) provides that nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed by the MDE Standards, provided they result in substantially equivalent or greater accessibility and usability of the health care service, program, or activity. Accordingly, for example, if a State law required public entities in that State to comply with a different standard than the MDE Standards, nothing in this rule would prevent a public entity from complying with the different standard if the use of that standard resulted in substantially equivalent or greater accessibility and usability of the public entity's health care service, program, or activity. Responsibility for demonstrating equivalent facilitation rests with the public entity.

*C. National Technology Transfer and Advancement Act of 1995*

The National Technology Transfer and Advancement Act of 1995 (''NTTAA'') directs that, as a general matter, all Federal agencies and departments shall use technical standards that are developed or adopted

[72] *See* 89 FR 2193.

[73] 64 FR 43255 (Aug. 4, 1999).

by voluntary consensus standards bodies, which are private, generally nonprofit, organizations that develop technical standards or specifications using well-defined procedures that require openness, balanced participation among affected interests and groups, fairness and due process, and an opportunity for appeal, as a means to carry out policy objectives or activities.[74] In addition, the NTTAA directs agencies to consult with voluntary, private sector consensus standards bodies and requires that agencies participate with such bodies in the development of technical standards when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources.[75]

The Department is adopting the MDE Standards issued by the Access Board as the accessibility standard to apply to the services, programs, and activities that State and local governments offer using MDE.[76] As discussed in section II.C, the MDE Standards were adopted by the Access Board, an independent Federal agency that includes public members and holds regular public meetings, in 2017 after a five-year review period. The review included participation by an Advisory Committee composed of representatives from the health care industry, architects, persons with disabilities, and organizations representing a variety of interested stakeholders. The MDE Standards were developed after extensive notice and comment. These standards were developed as required by section 510, as amended, and were developed in consultation with the Food and Drug Administration. The Department is unaware of any privately developed standards created with the same wide participation and open process. As a result, the Department believes that it is appropriate to use the MDE Standards for this rule.

*D. Plain Language Instructions*

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line at (800) 514–0301 (voice); (800) 610–1264 (TTY) that the public is welcome to call to get assistance understanding anything in this rule. In addition, the ADA.gov website provides information in plain language about the ADA and the Department's ADA rules, including this final rule.

*E. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (''PRA''), no person is required to respond to a ''collection of information'' unless the agency has obtained a control number from OMB.[77] This final rule does not contain any collections of information as defined by the PRA.

*F. Unfunded Mandates Reform Act*

Section 4(2) of the Unfunded Mandates Reform Act of 1995 excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' [78] Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

*G. Congressional Review Act*

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 801 *et seq.*

**List of Subjects for 28 CFR Part 35**

Administrative practice and procedure, Buildings and facilities, Civil rights, Individuals with disabilities, State and local requirements.

By the authority vested in me as Attorney General by law, including 5 U.S.C. 301; 28 U.S.C. 509, 510; sections 201 and 204 of the Americans with Disabilities Act, Public Law 101–336, as amended, and section 506 of the ADA Amendments Act of 2008, Public Law 110–325, and for the reasons set forth in appendix E to 28 CFR part 35, chapter I of title 28 of the Code of Federal Regulations is amended as follows—

## PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

■ 1. The authority citation for part 35 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

### Subpart A—General

■ 2. Amend § 35.104 by adding definitions of ''Medical diagnostic equipment'' and ''Standards for Accessible Medical Diagnostic Equipment'' in alphabetical order to read as follows:

**§ 35.104 Definitions.**

* * * * *

*Medical diagnostic equipment* (''*MDE*'') means equipment used in, or in conjunction with, medical settings by health care providers for diagnostic purposes. MDE includes, for example, examination tables, examination chairs (including chairs used for eye examinations or procedures and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.

* * * * *

*Standards for Accessible Medical Diagnostic Equipment* (''*Standards for Accessible MDE*'') means the standards promulgated by the Architectural and Transportation Barriers Compliance Board under section 510 of the Rehabilitation Act of 1973, as amended, found at 36 CFR part 1195 (revised as of July 1, 2017), with the exception of M301.2.2 and M302.2.2.

* * * * *

■ 3. Add subpart I to read as follows:

### Subpart I—Accessible Medical Diagnostic Equipment

Sec.



**§ 35.210 Requirements for medical diagnostic equipment.**

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the health care services, programs, or activities of a public entity offered through or with the use of medical diagnostic equipment (''MDE''), or otherwise be subjected to discrimination by any public entity because the public entity's MDE is not readily accessible to or usable by persons with disabilities.

[74] Public Law 104–113, sec. 12(d)(1); *see also* Office of Mgmt. & Budget, *Circular A–119* (Jan 27, 2016), *https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf* [*https://perma.cc/A5LP-X3DB*].

[75] Public Law 104–113, sec. 12(d)(2).

[76] As explained in the analysis and response to public comments regarding § 35.104 in the appendix to this rule, the Department is not adopting the sunset provisions at M301.2.2 and M302.2.2.

[77] 44 U.S.C. 3501 *et seq.*

[78] 2 U.S.C. 1503(2).

**§ 35.211 Newly purchased, leased, or otherwise acquired medical diagnostic equipment.**

(a) *Requirements for all newly purchased, leased, or otherwise acquired medical diagnostic equipment.* All MDE that public entities purchase, lease (including via lease renewals), or otherwise acquire after October 8, 2024, shall, subject to the requirements and limitations set forth in this section, meet the Standards for Accessible MDE, unless and until the public entity satisfies the scoping requirements set forth in paragraph (b) of this section.

(b) *Scoping requirements*—(1) *General requirement for medical diagnostic equipment.* Where a service, program, or activity of a public entity, including physicians' offices, clinics, emergency rooms, hospitals, outpatient facilities, and multi-use facilities, utilizes MDE, at least 10 percent of the total number of units, but no fewer than one unit, of each type of equipment in use must meet the Standards for Accessible MDE.

(2) *Facilities that specialize in treating conditions that affect mobility.* In rehabilitation facilities that specialize in treating conditions that affect mobility, outpatient physical therapy facilities, and other services, programs, or activities that specialize in treating conditions that affect mobility, at least 20 percent, but no fewer than one unit, of each type of equipment in use must meet the Standards for Accessible MDE.

(3) *Facilities with multiple departments.* In any facility or program with multiple departments, clinics, or specialties, where a service, program, or activity uses MDE, the facility shall disperse the accessible MDE required by paragraphs (b)(1) and (2) of this section in a manner that is proportionate by department, clinic, or specialty using MDE.

(c) *Requirements for examination tables and weight scales.* Within two years after August 9, 2024, public entities shall, subject to the requirements and limitations set forth in this section, purchase, lease, or otherwise acquire the following, unless the entity already has them in place:

(1) At least one examination table that meets the Standards for Accessible MDE, if the public entity uses at least one examination table; and

(2) At least one weight scale that meets the Standards for Accessible MDE, if the public entity uses at least one weight scale.

(d) *Equivalent facilitation.* Nothing in this section prevents the use of designs, products, or technologies as alternatives to those prescribed by the Standards for Accessible MDE, provided they result in substantially equivalent or greater accessibility and usability of the health care service, program, or activity. The responsibility for demonstrating equivalent facilitation rests with the public entity.

(e) *Fundamental alteration and undue burdens.* This section does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with paragraph (a) or (c) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(f) *Diagnostically required structural or operational characteristics.* A public entity meets its burden of proving that compliance with paragraph (a) or (c) of this section would result in a fundamental alteration under paragraph (e) of this section if it demonstrates that compliance with paragraph (a) or (c) of this section would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose. This paragraph (f) does not excuse compliance with other technical requirements where compliance with those requirements does not prevent the use of the equipment for its diagnostic purpose.

**§ 35.212 Existing medical diagnostic equipment.**

(a) *Accessibility.* A public entity shall operate each service, program, or activity offered through or with the use of MDE so that the service, program, or activity, in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph (a) does not—

(1) Necessarily require a public entity to make each of its existing pieces of MDE accessible to and usable by individuals with disabilities; or

(2) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this paragraph (a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services, programs, and activities provided by the public entity.

(3) A public entity meets its burden of proving that compliance with this paragraph (a) would result in a fundamental alteration under paragraph (a)(2) of this section if it demonstrates that compliance with this paragraph (a) would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose.

(b) *Methods.* A public entity may comply with the requirements of this section through such means as reassignment of services to alternate accessible locations; home visits; delivery of services at alternate accessible sites; purchase, lease, or other acquisition of accessible MDE; or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to purchase, lease, or otherwise acquire accessible MDE where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to

qualified individuals with disabilities in the most integrated setting appropriate.

**§ 35.213 Qualified staff.**

Public entities must ensure their staff are able to successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the program access obligation regarding existing MDE.

**§§ 35.214–35.219 [Reserved]**

■ 4. Add appendix E to part 35 to read as follows:

## Appendix E to Part 35—Guidance to Revisions to ADA Title II Regulation on Accessibility of Medical Diagnostic Equipment of State and Local Government Entities

**Note:** This appendix contains guidance providing a section-by-section analysis of the revisions to this part published on August 9, 2024.

**Section-by-Section Analysis and Response to Public Comments**

This appendix provides a detailed description of the Department's changes to this part (the title II regulation), the reasoning behind those changes, and responses to significant public comments received in connection with the rulemaking. The Department made changes to subpart A of this part and added subpart I to this part. The section-by-section analysis addresses the changes in the order they appear in the title II regulation.

**Subpart A—General**

*Section 35.104 Definitions*

The Department is revising § 35.104 to add definitions for the terms ''medical diagnostic equipment'' and ''Standards for Accessible Medical Diagnostic Equipment.''

Medical Diagnostic Equipment

The Department is defining the term ''medical diagnostic equipment,'' consistent with the MDE Standards, as ''[e]quipment used in, or in conjunction with, medical settings by health care providers for diagnostic purposes.'' This definition includes the examples in 29 U.S.C. 794f, which requires the MDE Standards to set forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physicians' offices, clinics, emergency rooms, hospitals, and other medical settings, and also requires the MDE Standards to apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals. These examples are illustrative of some types of MDE but are not exhaustive. The Department received one comment recommending that the Department specifically require that diagnostic equipment used by optometrists and ophthalmologists be accessible. The regulatory text explains that MDE includes examination chairs used for eye examinations or procedures, but the Department cannot and need not provide an exhaustive list of all medical specialties whose equipment is covered by subpart I of this part. Equipment is covered by subpart I if health care providers use it in, or in conjunction with, medical settings for diagnostic purposes.

The Department received several comments requesting clarification on whether the definition of ''medical diagnostic equipment'' applies to equipment used outside of a medical facility, such as in home settings, mobile health clinics, or through telehealth appointments or remote diagnostic assessments. Some commenters recommend that the Department explicitly state that the definition of ''medical diagnostic equipment'' extends to equipment used in such settings.

MDE is ''[e]quipment used in, or in conjunction with, medical settings by health care providers for diagnostic purposes,'' and the obligations set forth in subpart I of this part apply to ''service[s], program[s], or activit[ies] offered through or with the use of MDE,'' subject to the limitations described in subpart I. Whether a public entity needs to ensure that a specific piece of equipment used in the provision of health care services, programs, or activities in home or other settings complies with the MDE Standards would depend on the particular factual circumstances in question.

Standards for Accessible Medical Diagnostic Equipment

The Department is defining the term ''Standards for Accessible Medical Diagnostic Equipment'' in accordance with the standards promulgated by the Access Board on January 9, 2017, under section 510 of the Rehabilitation Act of 1973, as amended, and codified on July 1, 2017, found at 36 CFR part 1195 (revised as of July 1, 2017). That is the version of the Access Board's MDE Standards that was in effect when the Department issued its notice of proposed rulemaking (NPRM).[1] The Department is not, however, adopting two provisions that were included in the January 9, 2017, version of the Access Board's standards, M301.2.2 and M302.2.2 (''the sunset provisions''). The sunset provisions stated that the 17-inch to 19-inch low transfer height range set forth in M301.2.1 and M302.2.1 would cease to have effect on January 10, 2022.[2] Accordingly, if the definition of the MDE Standards that the Department is adopting did not exclude the sunset provisions, there would be no enforceable minimum low transfer height standard, since this final rule is being promulgated after January 10, 2022. By adopting the January 9, 2017, version of the MDE Standards that was codified on July 1, 2017, but excluding the sunset provisions, the Department is adopting and making enforceable the 17-inch to 19-inch low transfer height range set forth in M301.2.1 and M302.2.1 of the January 9, 2017, version of the MDE Standards. Under the final rule, public entities acquiring accessible MDE have the option of acquiring MDE that lowers to between 17 inches and 19 inches. However, under § 35.212(a), public entities are required to operate their services, programs, and activities that use MDE so that they are readily accessible to and usable by individuals with disabilities, regardless of whether the entities' MDE lowers to 17 inches or 19 inches.

Several commenters submitted comments on the low transfer height requirement. One commenter recommended that the Department make the temporary low transfer height range a permanent requirement. Some commenters expressed concern about the feasibility of complying with a 17-inch low transfer height standard, and several other commenters said the Department should adopt a 17-inch low transfer height standard in anticipation of the Access Board finalizing a 17-inch standard. As noted in the previous paragraph, the Department is adopting the 17-inch to 19-inch low transfer height range, without adopting the sunset provisions. The Department believes it is appropriate to adopt the MDE Standards promulgated by the Access Board, which were the product of a multi-year deliberative process. As to the comments supporting or opposing a 17-inch low transfer height standard, the Access Board had not yet issued a final rule establishing a 17-inch low transfer height standard when the Department issued its NPRM. Therefore, it would have been premature for the Department to have sought public comment on or proposed adopting the 17-inch standard in the NPRM, and the Department declines to adopt and make enforceable such a standard in the final rule without public comment. As noted in section II.C of the preamble to the final rule, however, since the Access Board has now issued a final rule updating the low transfer height standard, the Department will consider issuing a supplemental rulemaking under title II proposing to adopt it, and the Department will solicit comments on the updated standard as part of any such rulemaking.

Some commenters urged the Department to work with the Access Board to account for the needs of particular disability groups more explicitly. Commenters asked that the Department consider more specifically the needs of individuals with nonmobility disabilities, people with respiratory disabilities, people who are blind or have other sensory disabilities, higher weight people, and people with intellectual disabilities. The MDE Standards account for the needs of individuals with nonmobility

[1] Although HHS's final rule addressing the accessibility of medical diagnostic equipment under section 504 contains a different citation in its definition of the term *Standards for Accessible Medical Diagnostic Equipment, see* 89 FR 40184, that difference is the result of citation formatting conventions of the Office of the Federal Register. There is no substantive difference between the definition of the term *Standards for Accessible Medical Diagnostic Equipment* adopted in HHS's final rule and the definition of that term adopted in DOJ's final rule.

[2] 36 CFR part 1195, appendix, section M301.2.2 (stating that M301.2.1 and M302.2.1 would cease to have effect on January 10, 2022).

disabilities to some extent,[3] and any new standards to account for additional disabilities or factors that the Access Board did not incorporate into the MDE Standards should be developed by the Access Board, which has authority to promulgate such standards under section 510. The Department notes that the Access Board received comments recommending that the MDE Standards address ''individuals with autism, Alzheimer's, sensory disabilities, cognitive disabilities, and bariatric patients,'' and noted that while it could not accommodate those comments in this round of rulemaking, it committed to ''address[ing] other barriers in future updates to the MDE Standards.'' [4] Therefore, while the Department appreciates commenters' viewpoints, it declines to update this part to account for additional disabilities or factors at this time.

The Department also received many comments from diverse stakeholders on whether the Department should apply the Access Board's MDE Standards to medical equipment that is not used for diagnostic purposes. Many commenters supported applying the MDE Standards to nondiagnostic medical equipment, especially equipment used for therapeutic or treatment purposes. Other commenters urged the Department not to expand the requirements beyond MDE at this time. Some commenters also stated that the Department lacks technical expertise to unilaterally impose technical standards on a broad range of nondiagnostic medical equipment. One commenter recommended that if the Department adopts enforceable standards regarding the accessibility of nondiagnostic medical equipment, the Department should first explain its proposed approach in detail to allow for additional public input on the types of nondiagnostic medical equipment to which those standards would apply.

The Department agrees that any extension of the MDE Standards to nondiagnostic medical equipment, or the adoption of any new standards for nondiagnostic medical equipment, should be informed by the Access Board's extensive knowledge and technical acumen, as well as by additional public input. If, in the future, the Department adopts enforceable technical standards concerning the accessibility of nondiagnostic medical equipment, it will consult with the Access Board and other Federal partners and make clear to covered entities what types of equipment will be required to meet those standards. But because the Access Board has not developed specific technical standards regarding the accessibility of nondiagnostic medical equipment, and given the need to provide public entities with clarity about the scope of any standards the Department is adopting, the Department declines to adopt enforceable technical standards for nondiagnostic medical equipment or otherwise extend the Access Board's standards at this time.

The Access Board's standards apply only to equipment that is used in, or in conjunction with, medical settings by health care providers for diagnostic purposes. As noted in the NPRM, equipment used for both diagnostic purposes and other purposes (such as therapeutic or treatment purposes) is MDE if it otherwise meets this definition, and must therefore meet the requirements for accessible MDE set forth in subpart I of this part. The Department will continue to consider whether to conduct further rulemaking in the future.

Several commenters emphasized the importance of accessibility in the provision of health care services that use medical equipment, whether that equipment is used for diagnostic purposes or not. The Department clarifies that public entities are already obligated to ensure that their services, programs, and activities do not exclude or discriminate against individuals with disabilities and are readily accessible to and usable by individuals with disabilities.[5] This obligation encompasses the provision of health care services by public entities, whether those services use MDE or not.

**Subpart I—Accessible Medical Diagnostic Equipment**

The Department is creating a new subpart in its title II regulation. Subpart I of this part addresses the accessibility of public entities' medical diagnostic equipment.

*Section 35.210 Requirements for Medical Diagnostic Equipment*

This section provides general accessibility requirements for services, programs, and activities that public entities provide through or with the use of MDE. Public entities must ensure that their services, programs, and activities offered through or with the use of MDE are accessible to individuals with disabilities.

Under this general provision (barring an applicable limitation or defense), a public entity that provides health care cannot deny services that it would otherwise provide to a patient with a disability because the provider lacks accessible MDE. A provider also cannot require a patient with a disability to bring someone along with them to help during an examination if similar requirements are not imposed on patients without disabilities. A patient may choose to bring another person such as a friend, family member, or personal care aide to an appointment, but regardless, the provider may need to provide reasonable assistance to enable the patient to receive medical care.[6] Such assistance may include, for example, helping a person who uses a wheelchair to transfer from their wheelchair to the examination table or diagnostic chair.[7] The provider cannot require the person accompanying the patient to assist.

Individuals and groups, including disability advocacy organizations, individuals with disabilities and their family members, health care providers and associations, and manufacturers of medical equipment, submitted comments on the Department's proposed rule. Overwhelmingly, the commenters expressed strong support for adopting the MDE Standards and requiring public entities to ensure that their services, programs, and activities offered through or with the use of MDE are accessible to individuals with disabilities.

Many commenters described the importance of accessible MDE and provided firsthand accounts of instances when they or their family members were unable to receive health care or received substandard health care because providers lacked accessible examination tables, weight scales, or radiological or other diagnostic equipment. Several commenters recounted instances when they or their family members were unable to receive preventative health care services such as mammograms, prostate examinations, or dental examinations. Other commenters noted that they could not have their weight checked regularly because of the lack of accessible weight scales, resulting in health care risks such as a failure to provide the amount of medication required. Some commenters described entities' expectations that individuals with mobility disabilities would be accompanied by companions to physically transfer them onto MDE. Disability advocacy groups also shared representative accounts submitted by their members, documenting the harms experienced by people with disabilities due to health care providers' lack of accessible MDE.

The Department agrees with commenters that accessible MDE is vital for health equity, person-centered care, and access to medical care for patients with disabilities. As discussed in the NPRM, research has documented that the scarcity of accessible MDE constitutes a significant barrier to access to care for patients with disabilities, resulting in a failure to provide adequate preventative health care and diagnostic examinations.[8]

As explained in more detail in the NPRM, the Department is aware of many instances in which people with disabilities were denied access to needed care, were subjected to demeaning situations, or received substandard care because health care providers lacked accessible MDE.[9] The Department has taken action to enforce the ADA as it applies to the provision of health care services.[10] However, the lack of technical standards for accessible MDE before the Access Board issued the MDE Standards in 2017, and the fact that, until now, the MDE Standards were not enforceable under title II, mean that these circumstances remain all too prevalent. Section 35.210 will help clarify public entities' nondiscrimination obligations as

[3] *See, e.g.,* 36 CFR part 1195, appendix (revised as of July 1, 2017) (discussing, in M306, requirements for communication necessary for performance of a diagnostic procedure).

[4] *Id.* at 2812.

[5] *See, e.g.,* §§ 35.130 and 35.150.

[6] *See id.* § 35.130(b)(7).

[7] *See* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities* (June 26, 2020), *https://www.ada.gov/resources/medical-care-mobility/* [*https://perma.cc/UH8Y-NZWL*].

[8] 89 FR 2186.

[9] *Id.*

[10] *See, e.g.,* Settlement Agreement Between the United States and Charlotte Radiology, P.A. (Aug. 13, 2018), *https://archive.ada.gov/charlotte_radiology_sa.html* [*https://perma.cc/ZC5W-LV3M*]; Settlement Agreement Between the United States and Tufts Medical Center (Feb. 28, 2020), *https://archive.ada.gov/tufts_medical_ctr_sa.html* [*https://perma.cc/YQG3-ZDZC*].

they pertain to services, programs, and activities that use MDE.

*Section 35.211 Newly Purchased, Leased, or Otherwise Acquired Medical Diagnostic Equipment*

For MDE that public entities purchase, lease, or otherwise acquire after October 8, 2024, which is 60 days after the publication of the final rule in the **Federal Register**, the Department is adopting an approach that draws on the approach that the existing title II regulation applies to new construction and alterations of buildings and facilities.[11] Section 35.211(a) requires that all MDE that a public entity purchases, leases, or otherwise acquires more than 60 days after publication must be accessible, unless and until the scoping requirements set forth in more detail in § 35.211(b) are satisfied.

As in the fixed or built environment, the accessibility of MDE is governed by a specific set of design standards promulgated by the Access Board that sets forth technical requirements for accessibility. So long as a public entity has the amount of accessible MDE set forth in the scoping requirements, the public entity is not required to continue to obtain accessible MDE when it purchases, leases, or otherwise acquires MDE after the final rule's effective date. However, a public entity may choose to acquire additional accessible MDE even after it satisfies the scoping requirements.

*Section 35.211(a) Requirements for Newly Purchased, Leased, or Otherwise Acquired Medical Diagnostic Equipment*

Paragraph (a) adopts the January 9, 2017, version of the Access Board's MDE Standards that was codified on July 1, 2017 (with the exception of the Access Board's sunset provisions, as explained in the section-by-section analysis of the definition of the term ''Standards for Accessible Medical Diagnostic Equipment'' in § 35.104), as the standard governing whether MDE is accessible, and establishes one of the key requirements of subpart I of this part: that subject to applicable limitations and defenses, all MDE that public entities purchase, lease, or otherwise acquire more than 60 days after the publication of the final rule must meet the MDE Standards unless and until the public entity already has a sufficient amount of accessible MDE to satisfy the scoping requirements in § 35.211(b).

As explained in more detail in section II.C of the preamble to the final rule (''Overview of Access Board's MDE Standards''), the MDE Standards include technical criteria for equipment that is used when patients are (1) in a supine, prone, or side-lying position; (2) in a seated position; (3) in a wheelchair; or (4) in a standing position. They also contain standards for supports, communication, and operable parts. In addition, the MDE Standards contain requirements for equipment to be compatible with patient lifts where a patient would transfer under positions (1) and (2).

Consistent with the language in 29 U.S.C. 794f(b), MDE covered under subpart I of this part includes examination tables, examination chairs (including chairs used for eye examinations or procedures and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals. As noted in the section-by-section analysis of § 35.104, subpart I of this part covers medical equipment used by health professionals for diagnostic purposes even if it is also used for treatment purposes. Given the many barriers to health care that people with disabilities encounter due to inaccessible MDE, adopting the MDE Standards will give many people with disabilities an equal opportunity to participate in and benefit from public entities' health care services, programs, and activities.

In the NPRM, the Department sought comment on whether 60 days is an appropriate amount of time for these requirements to take effect. A number of commenters said 60 days is the right amount of time, including one commenter who recommended no more than 60 days and another who recommended no less than 60 days. However, a few commenters thought 60 days would not be enough time to comply with these requirements. Those commenters expressed concern that it could be difficult for public entities to obtain accessible MDE and carry out this section's requirements within 60 days, and that a 60-day requirement would be too burdensome for small or under-resourced public entities in particular. One commenter said 60 days is the right amount of time for MDE that does not require construction, but that a longer timeframe should apply to MDE that necessitates construction in the room in which the MDE will be located, such as magnetic resonance imaging (''MRI'') scanners. One commenter recommended 180 days, not 60 days, to give public entities time to carry out this section's requirements, and asked the Department to clarify whether public entities will be expected to comply with the scoping requirements set forth in § 35.211(b) upon the effective date of the final rule or later. The commenter recommended that public entities be given at least two years from the final rule's publication date to achieve compliance with the scoping requirements.

The Department agrees with the majority of commenters who commented on this issue and concludes that 60 days is the appropriate amount of time for the requirements set forth in § 35.211(a) to take effect because it strikes an appropriate balance between the immediate and urgent health care needs of individuals with disabilities and the constraints facing public entities. Therefore, all MDE that public entities acquire more than 60 days after publication shall meet the MDE Standards, unless and until the scoping requirements in § 35.211(b) are met. In response to the commenters who are concerned that a 60-day time period will be too burdensome, the Department notes that public entities are not required to take steps that would result in an undue burden or a fundamental alteration, as set forth in more detail in § 35.211(e). The Department also notes that public entities have been on notice since the NPRM was issued in January 2024 that the Department was considering imposing this requirement, giving them time to prepare to carry out the requirements of subpart I of this part.

The Department also clarifies that, once it takes effect 60 days after publication, § 35.211(a) will only require MDE to meet the MDE Standards if it is acquired after the effective date (subject to the scoping requirements and the other requirements and limitations of subpart I of this part). That means, for example, that if a public entity does not acquire any MDE until 180 days after publication, the MDE that the entity acquires 180 days after publication will be required to meet the MDE Standards (assuming the entity has not already met the scoping requirements and no limitations apply), but the entity's existing MDE will not be required to meet the MDE Standards. In other words, although the timeframe set forth in § 35.211(a) is 60 days after publication, the question of when a particular public entity's MDE will be required to meet the MDE Standards will depend on when the entity acquires MDE after publication, which could be more than 60 days after publication. This reinforces the Department's conclusion that 60 days is the appropriate amount of time for § 35.211(a) to take effect.

The Department also clarifies that to ''purchase, lease, or otherwise acquire'' MDE more than 60 days after publication means to acquire MDE by any means. A few commenters requested that the Department make clear that leases include lease renewals, and that acquisitions include acquisitions in any form, including, but not limited to, acquisitions via gifts or loans, as well as both temporary and permanent acquisitions. To avoid any confusion, the Department is clarifying in the § 35.211(a) regulatory text that the term ''lease'' includes the renewal of existing leases. The Department's intent is that the term ''lease'' includes lease renewals, and it is modifying the § 35.211(a) regulatory text to avoid any confusion. The Department also agrees with commenters that to ''purchase, lease, or otherwise acquire'' MDE in the context of subpart I of this part means to acquire MDE through any means, including, but not limited to, acquisitions via donations or loans, as well as both temporary and permanent acquisitions. This intent is reflected by the term ''otherwise acquire'' in the regulatory text.

*Section 35.211(b) Scoping*

Section 35.211(b) establishes scoping requirements for accessible MDE. Accessibility standards generally contain scoping requirements (how many accessible features are needed) and technical requirements (what makes a particular feature accessible). For example, the 2010 ADA Standards provide scoping requirements for how many toilet compartments in a particular toilet room must be accessible and provide technical requirements on what makes these toilet compartments accessible.[12] The MDE Standards issued by the Access Board

[11] *See generally* § 35.151.

[12] *See* 36 CFR part 1191, appendix B, section 213.3.1.

contain technical requirements, but they do not specify scoping requirements. Rather, they state that ''[t]he enforcing authority shall specify the number and type of diagnostic equipment that are required to comply with the MDE Standards.'' [13] For the technical requirements to be implemented and enforced effectively, it is necessary for the Department to provide scoping requirements to specify how much accessible MDE is needed for a public entity's health care service, program, or activity to comply with the ADA.

Paragraphs (b)(1) through (3) of § 35.211 lay out scoping requirements for this section. The scoping requirements that the Department is establishing are based on the requirements that the 2010 ADA Standards establish for accessible patient sleeping rooms and parking in hospitals, rehabilitation facilities, psychiatric facilities, detoxification facilities, and outpatient physical therapy facilities.[14] Because public entities must comply with title II of the ADA, many public entities are likely already familiar with these standards.

The Department drew on the following approaches from the 2010 ADA Standards in formulating the scoping requirements for the final rule. According to the 2010 ADA Standards, licensed medical care facilities and licensed long-term care facilities where the period of stay exceeds 24 hours shall provide accessible patient or resident sleeping rooms and disperse them proportionately by type of medical specialty.[15] Where sleeping rooms are altered or added, the sleeping rooms being altered or added shall be made accessible until the minimum number of accessible sleeping rooms is provided.[16] Hospitals, rehabilitation facilities, psychiatric facilities, and detoxification facilities that do not specialize in treating conditions that affect mobility shall have at least 10 percent of their patient sleeping rooms, but no fewer than one sleeping room, provide specific accessibility features for patients with mobility disabilities.[17] Hospitals, rehabilitation facilities, psychiatric facilities, and detoxification facilities that specialize in treating conditions that affect mobility must have 100 percent of their patient sleeping rooms provide specific accessibility features for patients with mobility disabilities.[18] In addition, at least 20 percent of patient and visitor parking spaces at outpatient physical therapy facilities and rehabilitation facilities specialized in treating conditions that affect mobility must be accessible.[19] Several of these approaches are reflected in the scoping requirements adopted in paragraph (b) of § 35.211 for MDE.

Paragraph (b)(1) of § 35.211 provides the general requirement for physicians' offices, clinics, emergency rooms, hospitals, outpatient facilities, multi-use facilities, and other medical services, programs, and activities that do not specialize in treating conditions that affect mobility. When these entities use MDE to provide services, programs, or activities, they must ensure that at least 10 percent, but no fewer than one unit, of each type of equipment complies with the MDE Standards. For example, a medical practice with 20 examination chairs must have 2 examination chairs (10 percent of the total) that comply with the MDE Standards. In a medical practice with five examination chairs, the practice must have one examination chair that complies with the MDE Standards (because every entity covered by this provision must have no fewer than one unit of each type of equipment that is accessible). If a dental practice has one x-ray machine, that x-ray machine must be accessible. However, these requirements do not apply until an entity newly acquires MDE, as explained in the section-by-section analysis of § 35.211(a).

Paragraph (b)(2) of § 35.211 provides the scoping requirement for rehabilitation facilities that specialize in treating conditions that affect mobility; outpatient physical therapy facilities; and other medical services, programs, and activities that specialize in treating conditions that affect mobility. This paragraph requires that at least 20 percent of each type of MDE used in these types of services, programs, and activities, but no fewer than one unit of each type of MDE, must comply with the MDE Standards. Because these facilities specialize in treating patients who are likely to need accessible MDE, it is reasonable for them to be required to have more accessible MDE than is required for the health care providers covered by paragraph (b)(1), who do not have the same specialization. As with paragraph (b)(1), the scoping requirements of paragraph (b)(2) do not apply until an entity newly acquires MDE.

The Department received many comments on the scoping percentages in § 35.211(b)(1) and (2). Many commenters acknowledged the need to provide accessible MDE and supported the inclusion of scoping requirements. Some commenters expressed concern that the scoping requirements could have a profound financial and operational impact on small hospitals, potentially leading to reduced availability of essential diagnostic services in rural and underserved areas; expressed concern about the amount of accessible MDE currently available on the market; or requested more time to acquire MDE that meets the MDE Standards and resources to help health care providers comply. Many other commenters, including disability advocates and disability rights organizations, voiced concerns that the scoping provisions are too low to meet demand among people with mobility disabilities. Without a requirement that a larger percentage of MDE or 100 percent of MDE be accessible, they asserted that patients with disabilities will have fewer scheduling options or longer wait times than nondisabled patients. One commenter also stated that it would be simpler and clearer to require all newly acquired MDE to be accessible. Another commenter noted that while it would be ideal for all MDE to be accessible, this would place an undue burden on health care providers, and the needs of individuals with disabilities can be fully addressed if health care providers have some accessible MDE and engage in proper planning to prevent delays and denials in the delivery of health care services.

Many of the commenters who viewed the scoping requirements as too low objected to modeling the scoping requirements on the requirements that the 2010 ADA Standards establish for accessible patient sleeping rooms and parking in hospitals, rehabilitation facilities, psychiatric facilities, detoxification facilities, and outpatient physical therapy facilities. Those commenters cited factors such as the prevalence of disability; the belief that accessible MDE is more in demand than accessible parking spaces; and the fact that, unlike accessible parking spaces, accessible MDE can also be used by nondisabled individuals. Some commenters suggested instead modeling the scoping requirements on the ''replacement rule'' that applies to transportation services under title II, which requires that all newly purchased and leased vehicles be readily accessible to and usable by people with disabilities.[20] Other commenters suggested different approaches, such as imposing higher scoping requirements for MDE that is used to provide preventive services outlined by the U.S. Preventive Services Task Force, or imposing higher scoping requirements for MDE that is used more frequently.

While several commenters opposed having different scoping requirements in § 35.211(b)(1) and (2), others supported the approach of imposing a higher scoping requirement in § 35.211(b)(2) (for facilities that specialize in treating conditions that affect mobility) than in § 35.211(b)(1) (for other facilities). Other commenters noted the importance of considering the department and type of facility in formulating the scoping requirements.

The Department appreciates all of the comments on the scoping requirements in § 35.211(b). The Department acknowledges the concerns of commenters who believe health care providers might have difficulty complying with the scoping requirements, as well as the countervailing concerns of commenters seeking more stringent scoping requirements. As discussed in section III.A.2 of the preamble to the final rule, the Department certifies that the final rule will not have a significant impact on a substantial number of small entities. While the Department appreciates that the final rule may result in increased demand for accessible MDE, commenters did not submit data to suggest that the market cannot bear the additional demand. In any case, if equipment that meets the MDE Standards is unavailable, the fundamental alteration or undue burdens limitations may apply, as explained in § 35.211(e).

The Department recognizes that there are many potential models on which it could base its scoping requirements and

[13] 36 CFR part 1195, appendix, section M201 (revised as of July 1, 2017).

[14] *See* 36 CFR part 1191, appendix B, sections 208.2.2, 223.2.1, 223.2.2.

[15] *See* § 35.151(h); 36 CFR part 1191, appendix B, section 223.1.

[16] *See* 36 CFR part 1191, appendix B, section 223.1.1.

[17] *See id.* section 223.2.1.

[18] *See id.* section 223.2.2.

[19] *See id.* section 208.2.2.

[20] *See* 49 CFR part 37, subpart D.

acknowledges that the needs underlying the accessible parking model are not perfectly aligned with the needs underpinning accessible MDE. However, the Department continues to believe that the use of MDE is analogous to the use of parking spaces at rehabilitation facilities because, as with parking spaces, several different patients with mobility disabilities can use the same piece of MDE in a day.

As explained in the NPRM, the Department considered whether to require 100 percent of MDE in these programs to be accessible, like section 223.2.2 of the 2010 ADA Standards, which requires that 100 percent of patient sleeping rooms in similar facilities provide specific accessibility features for patients with mobility disabilities. The Department concluded that the time-limited use of MDE is more analogous to the use of parking spaces at a rehabilitation facility than to the use of sleeping rooms because, unlike MDE, sleeping rooms are generally occupied for all or a significant part of the day. Thus, § 35.211(b) draws on the 2010 ADA Standards' scoping requirements by requiring, in § 35.211(b)(1), at least 20 percent (but no fewer than one unit) of each type of equipment in use in facilities that specialize in treating conditions that affect mobility to meet the MDE Standards, and requiring, in § 35.211(b)(2), at least 10 percent (but no fewer than one unit) of each type of equipment in use in other facilities to meet the MDE Standards. Imposing higher scoping requirements for facilities that specialize in the treatment of conditions that affect mobility has proven to be a workable framework in the context of the 2010 ADA Standards' scoping requirements, and the Department believes this will also be a helpful framework for the MDE scoping requirements.

In view of demands on provider entities,[21] the Department will not increase the scoping requirements beyond 10 percent for § 35.211(b)(1) and 20 percent for § 35.211(b)(2) at this time. The Department does not agree with several commenters who opined that the use of MDE is analogous to the use of vehicles covered by the ADA title II transportation accessibility requirements. MDE often cannot be retrofitted to be accessible with the same ease or cost ratio as transportation retrofits. For example, inaccessible weight scales typically do not have large platforms that are required for wheelchair access. Inaccessible examination tables are usually fixed height ''box'' tables with static bases, and possibly drawers, that cannot easily be replaced with adjustable mechanisms.[22] The Department therefore declines to adopt an approach akin to the ''replacement rule'' that applies in the title II transportation accessibility context, which would require that 100 percent of newly acquired MDE be accessible.[23] And although one commenter suggested relying on the U.S. Preventive Services Task Force recommendations, the Department does not believe that these recommendations would serve as a useful basis for the scoping requirements in § 35.211(b). The U.S. Preventive Services Task Force makes evidence-based recommendations on clinical preventive services and health promotion in primary care settings,[24] but those recommendations are not primarily about the use of MDE and therefore do not serve as a useful model for scoping requirements related to MDE.

The Department also does not believe it is necessary to impose higher scoping requirements for MDE that is used more frequently than other types of MDE, as some commenters suggested. Providers are likely to have more units of the types of MDE that are used more frequently, and the more units of MDE a provider has, the more units will need to be accessible according to the scoping requirements.

The Department therefore will not increase the scoping requirements set forth in § 35.211(b) at this time or eliminate the distinction between the general scoping requirements in § 35.211(b)(1) and the scoping requirements for facilities that specialize in treating conditions that affect mobility in § 35.211(b)(2). The Department notes that, because paragraph (b) requires that at least one unit of each type of MDE in use meet the MDE Standards irrespective of the percentage requirements, some smaller health care providers will be required to have a proportion of accessible MDE that exceeds 10 percent for paragraph (b)(1) or 20 percent for paragraph (b)(2). For example, barring an applicable limitation or defense, a provider with two dental chairs will be required to have at least one dental chair that meets the MDE Standards, which is 50 percent of the provider's total.

The Department also clarifies that the scoping requirements set forth in § 35.211(b) must be read in conjunction with the requirements set forth elsewhere in subpart I of this part. Section 35.210 prohibits public entities from excluding, denying benefits to, or otherwise discriminating against people with disabilities in services, programs, or activities that use MDE, and § 35.212 requires that each service, program, or activity that uses MDE be readily accessible to and usable by people with disabilities in its entirety, independent of the scoping requirements for newly acquired MDE set forth in § 35.211(b). That means, for example, that denying a physical examination to a patient with a disability because of the lack of accessible MDE may violate the nondiscrimination obligation set forth in § 35.210, even if the scoping requirements set forth in § 35.211(b)(1) and (2) have not yet been triggered by the new acquisition of MDE. As another example, if, even after a provider complies with the scoping requirements set forth in § 35.211(b)(1) and (2), patients with disabilities have significantly fewer scheduling options than nondisabled patients, that could implicate the obligation in § 35.212 to make public entities' services, programs, and activities readily accessible to and usable by individuals with disabilities. Public entities may determine that the most effective way to carry out the obligations set forth in §§ 35.210 and 35.212 will be to acquire additional accessible MDE beyond the scoping requirements set forth in § 35.211(b)(1) and (2).

Finally, one commenter requested clarification on whether the required number of units of accessible MDE should be rounded up or down if application of the scoping percentages does not yield a whole number. If application of the scoping percentages yields a number less than one, the number will need to be rounded up to one because § 35.211(b)(1) and (2) require that no fewer than one unit of each type of equipment in use meet the MDE Standards. If application of the scoping percentages yields a number greater than one, the standard mathematics rule on rounding decimals to whole numbers applies to the scoping requirements in § 35.211(b)(1) and (2).[25]

Section 35.211(b)(3) addresses facilities or programs with multiple departments, clinics, or specialties. In any facility or program that has multiple departments, clinics, or specialties, where a service, program, or activity utilizes MDE, the accessible MDE required by paragraphs (b)(1) and (2) shall be dispersed proportionately across departments, clinics, or specialties. For example, a hospital that is required to have five accessible x-ray machines cannot place all the accessible x-ray machines in the orthopedics department and none in the emergency department. This dispersion requirement is analogous to the existing title II ADA regulation that requires dispersion of accessible sleeping rooms in medical care facilities that do not specialize in the treatment of conditions that affect mobility.[26]

[21] *See* FRIA at 69–70 (considering the costs of increasing the scoping requirements in § 35.211(b)(1) and (2) to 20 percent and 40 percent respectively, as well as the costs of requiring that 100 percent of newly acquired MDE meet the MDE Standards and concluding that those alternative potential scoping requirements could more than double the annualized costs of the final rule).

[22] ADA Nat'l Network, *Accessible Medical Examination Tables and Chairs* (2017), *https://adata.org/factsheet/accessible-medical-examination-tables-and-chairs [https://perma.cc/Y6MR-9QGL].*

[23] *See* 49 CFR part 37, subpart D.

[24] *See* U.S. Preventive Services Task Force, *About the USPSTF, https://www.uspreventiveservices taskforce.org/uspstf/about-uspstf* [*https://perma.cc/FTL2-TLXX*].

[25] That is, numbers that end in a digit less than five are rounded down to the nearest whole number, and numbers that end in a digit greater than or equal to five are rounded up to the nearest whole number. For example, if a program that did not specialize in treating conditions that affect mobility used four units of MDE, then it would be required to have at least one unit of accessible MDE because, even though 0.4 units (10 percent of four) would be rounded down to zero, the final rule requires that each service, program, or activity have at least one unit of accessible MDE. If there were 12 units of MDE in use, the program would be required to have one unit of accessible MDE because 1.2 (10 percent of 12) is rounded down to one. If there were 15 units of MDE in use, the program would be required to have two units of accessible MDE because 1.5 (10 percent of 15) is rounded up to two.

[26] *See* § 35.151(h). A similar dispersion requirement was not necessary for medical care facilities that specialize in the treatment of conditions that affect mobility because all patient sleeping rooms in those facilities are required to be accessible. *See* 36 CFR part 1191, appendix B, section 223.2.2.

Section 35.211(b)(3) does not require that accessible MDE be dispersed with exact mathematical proportionality, which at times would be impossible. Section 35.211(b)(3) also does not require public entities to acquire additional MDE, beyond the amount specified in paragraphs (b)(1) and (2), to ensure that accessible MDE is available in every department, clinic, and specialty. This approach is consistent with many provisions of the 2010 ADA Standards.[27] Additionally, if § 35.211(b)(3) were to require full dispersion across every department, clinic, and specialty, it could create inconsistency or confusion between the dispersion and scoping requirements. For example, if a health care program that operated out of three clinics was required to have two units of accessible MDE according to the scoping provisions, then if paragraph (b)(3) required public entities to disperse their accessible MDE across every department, clinic, and specialty, the entity could meet the scoping requirements but would nonetheless violate the dispersion requirements because the two units of accessible MDE that the scoping provision required would not be enough to fully disperse across all three clinics. If paragraph (b)(3) required public entities to disperse fully across every department, clinic, and specialty, it could also be difficult to determine whether more precise dispersion requirements had been met. For example, a clinic may be part of a department and also part of a specialty (or include providers with multiple specialties), so determining whether accessible MDE was dispersed with precision across each department, clinic, and specialty could become complex.

Even if a public entity's facility or program with multiple departments, clinics, or specialties will not be able to disperse its accessible MDE with mathematical precision across every department, clinic, and specialty, public entities must still afford people with disabilities an opportunity to benefit from each type of medical care that is equal to the opportunity provided to people without disabilities.[28] The Department recognizes that it is critically important for people with disabilities to have access to all types of medical care. Therefore, public entities are still required to ensure that all of their services, programs, and activities are accessible to and usable by individuals with disabilities, regardless of whether the dispersion provision in paragraph (b)(3) requires a specific department, clinic, or specialty to have accessible MDE.

The Department appreciates the comments it received on its proposed dispersion requirements. Though some commenters supported the Department's proposed approach to dispersion, many commenters did not believe the dispersion requirements were sufficient to meet the needs of individuals with disabilities. These commenters felt that additional requirements should be added to ensure adequate dispersion. Commenters proposed a range of different requirements, including requirements for each department or specialty; for every floor and building; for each facility; for every subpart of a larger entity that has the capacity to manage its own booking system; and for a particular geographic radius. Some commenters also proposed that each department, clinic, or specialty be required to have one or two examination tables and weight scales. One commenter supported a flexible approach to dispersion, whereby accessible MDE would be made available where it is needed.

For the reasons discussed in the section-by-section analysis of § 35.211(b), the Department continues to believe that the approach to dispersion set forth in § 35.211(b)(3) is appropriate and consistent with existing law. In light of the demands that increased dispersion requirements would impose on public entities, the Department is not expanding the dispersion requirements at this time. However, the Department emphasizes that compliance with the dispersion requirement does not excuse public entities from complying with their nondiscrimination obligations under the existing title II regulation or §§ 35.210 and 35.212.

The National Council on Disability, an independent Federal agency charged with advising the President, Congress, and other Federal agencies on policies, programs, practices, and procedures that affect people with disabilities, stated that the Department should require that as a facility or program acquires accessible MDE, it should ensure that at least one accessible examination table and one weight scale are located in every department, clinic, or specialty. The Department declines to adopt this suggestion so that public entities will retain the flexibility to determine how they will comply with the dispersion requirements in § 35.211(b)(3), in light of each public entity's particular circumstances. Though the text of § 35.211(b)(3) requires public entities to disperse, in a proportionate manner, the accessible MDE required by paragraphs (b)(1) and (2), the Department encourages public entities to disperse all of their accessible MDE proportionately, where they have more accessible MDE than paragraphs (b)(1) and (2) require.

Other commenters proposed that the Department require the dispersion of equipment or personnel other than MDE, such as wheelchairs that can be used around MRI scanners and patient lifts or transfer teams, as well as the dispersion of MDE based on weight or size capacity. The Department declines to adopt requirements for the other types of dispersion proposed by these commenters at this time. In this rulemaking, the Department is adopting the January 9, 2017, version of the MDE Standards promulgated by the Access Board [29] (with the exception of the sunset provisions, as explained in the section-by-section analysis of § 35.104) and making those standards enforceable. The MDE Standards do not include requirements for wheelchairs, equipment with greater weight or size capacity, patient lifts, or transfer teams. The Department will relay the commenters' views to the Access Board for consideration if the Access Board revises the MDE Standards on this subject in the future.

Many commenters raised concerns about the burdens that the approach to dispersion in subpart I of this part could impose on people with disabilities. These included delays in diagnosis and care, with the possibility of associated harm to the patient's health or life; increased wait times; cancelled or rescheduled appointments; a lack of expertise if patients need to receive some care from other departments or specialties; less effective treatment; the need for accessible, affordable transportation to other locations where accessible MDE is available; a lack of choice for patients with disabilities about where they will receive care; a lack of privacy if accessible MDE is located in a shared space; and embarrassment, humiliation, frustration, stress, and pain.

The Department reiterates that the lack of additional or more specific dispersion requirements than those set forth in § 35.211(b)(3) does not excuse public entities from complying with their nondiscrimination obligations under the existing title II regulation or §§ 35.210 and 35.212. If public entities' dispersion of accessible MDE imposes the burdens on individuals with disabilities that some commenters described, then that situation could result in discrimination because the public entity's MDE is not readily accessible to and usable by persons with disabilities as required by § 35.210. Likewise, such a situation could result in the public entity's service, program, or activity in its entirety not being readily accessible to and usable by patients with disabilities as required by § 35.212. Public entities are encouraged to acquire additional accessible MDE and disperse that MDE across departments, clinics, and specialties to better meet the needs of patients with disabilities.

One commenter proposed that the Department adopt a specific limit on wait times to ensure that people with disabilities do not have to wait significantly longer to access services than people without disabilities because of the amount of accessible MDE in a particular location or because patients need to travel to a different location to use accessible MDE. The Department declines to adopt a specific wait time limit because whether a particular wait time is justifiable may depend on the circumstances, including the overall demand for services and the wait times experienced by patients without disabilities. However, the Department notes that if patients with disabilities experience significantly longer wait times than patients without disabilities seeking comparable services at comparable times, this could violate § 35.210 or § 35.212.

Other commenters asked the Department to require public entities to offer and pay for accessible transportation when patients need to travel to other locations to use accessible MDE. The Department declines to adopt this requirement at this time because it has concluded that the requirements set forth elsewhere are sufficient to address the commenters' concerns. More specifically, a

[27] *See, e.g.,* 36 CFR part 1191, appendix B, sections 221.2.3, 224.5, 225.3.1, 235.2.1. According to these sections, when the required number of accessible elements has been provided, further dispersion is not required.

[28] *See* §§ 35.130(b)(1)(ii) and 35.150(a).

[29] 36 CFR part 1195 (revised as of July 1, 2017).

failure to provide accessible transportation when patients with disabilities need to travel to other locations to use accessible MDE, but nondisabled patients do not need to travel to other locations to receive care, or a requirement that patients incur additional costs to use accessible MDE, could violate § 35.210 or § 35.212 or more generalized nondiscrimination requirements in the existing title II regulation.[30]

Many commenters also raised concerns about the burdens that the approach to dispersion in § 35.211(b)(3) may impose on public entities. Some commenters stated that it might be difficult or impossible for some types of MDE to be moved, but commenters also noted that some types of MDE might be more portable or easily shared. A few commenters stated that there might not be sufficient space in some existing medical facilities for accessible MDE. Other commenters noted potential difficulties that may arise if public entities share accessible MDE between clinics or departments. These include delays and increased wait times; the need to identify, locate, move, and track accessible MDE; the need to transport patients; the need to recalibrate MDE after it is moved; unnecessary work for staff to locate or move accessible MDE if the patient who needed it has to reschedule; conflicts among multiple patients or departments who need the accessible MDE; last-minute needs for accessible MDE; and the need to determine how to provide care if shared accessible MDE is not available. While the Department acknowledges and appreciates the concerns raised by these commenters, it declines to change the dispersion requirement of paragraph (b)(3) because, for all of the reasons already stated, it finds that the current requirement is appropriate. Further, some of the challenges noted by these commenters might be mitigated by exercising the flexibility public entities retain to determine how they will meet the dispersion and nondiscrimination requirements in subpart I of this part, so long as they satisfy the minimum scoping requirements in § 35.211(b)(1) and (2).

Commenters also stated that, to share or move accessible MDE, patients would need to provide notice of their need for accessible MDE when booking an appointment and opined that booking systems and public information should clearly indicate where and when accessible MDE is available. At this time, the Department declines to adopt additional procedural requirements that certain information about the availability of accessible MDE be made available or that the need for accessible MDE be recorded as part of the booking process because public entities should have flexibility to meet the requirements of subpart I of this part in a manner that is appropriate to their resources and systems. However, it may be helpful or necessary for public entities to request information about patients' needs and make information about accessible MDE available to patients and staff where feasible. Doing so is likely to better position public entities to provide care in a nondiscriminatory manner, while enabling patients with disabilities to make informed decisions about their care. Providing information to staff about the availability of accessible MDE may also enable public entities to meet their other obligations under subpart I of this part, including the obligation in § 35.213 to ensure that their staff are able to carry out the program accessibility obligation set forth in § 35.212.

The Department recognizes there may be situations in which a public entity's facility or program shares one piece of a particular type of accessible MDE among all departments, clinics, or specialties. In a small facility or program with a limited number of departments, clinics, or specialties in the same building, that situation may provide equal access for all patients with disabilities who need accessible MDE. However, depending on the circumstances, it may be necessary or advisable to have at least one unit of accessible MDE in each department, clinic, or specialty, so that patients with disabilities do not need to traverse between departments, clinics, or specialties for care. The Department recognizes the varying circumstances of different public entities and health care settings. Whether a public entity can share accessible MDE between departments, clinics, or specialties and still carry out its obligations under subpart I of this part will depend on the circumstances.

Public entities must ensure that the dispersion of their accessible MDE does not discriminate against people with disabilities. If a public entity requires a patient with a disability who needs accessible MDE to use the MDE of another department, clinic, or specialty, or to use MDE in a different location, the public entity must ensure that the MDE and the service, program, or activity in its entirety are readily accessible to and usable by the patient, as required by §§ 35.210 and 35.212. Factors to consider in determining whether this standard has been met may include, among other things, whether the MDE is readily available and not a significant distance from where the patient is seeking care; whether changing locations during the patient visit significantly increases wait times; whether the patient is required to be undressed or partially dressed to use the MDE (if, for example, the patient has to go to a different part of the same building to use the accessible MDE); and whether the public entity provides assistance in moving between locations.

A public entity may be able to take other measures to ensure that its MDE and its services, programs, and activities in their entirety are readily accessible to and usable by patients with disabilities. For example, it could offer home visits that provide equal access to care or accessible transportation to patients with disabilities at no cost to them within a reasonable timeframe.

*Section 35.211(c) Requirements for Examination Tables and Weight Scales*

Section 35.211(c) sets forth specific requirements for examination tables and weight scales. Paragraph (c)(1) requires public entities that use at least one examination table in their service, program, or activity to purchase, lease, or otherwise acquire, within two years after the publication of this part in final form, at least one examination table that meets the requirements of the MDE Standards, unless the entity already has one. Similarly, paragraph (c)(2) requires public entities that use at least one weight scale in their service, program, or activity, to purchase, lease, or otherwise acquire, within two years after the publication of this part in final form, at least one weight scale that meets the requirements of the MDE Standards, unless the entity already has one. This requirement is subject to the other requirements and limitations set forth in § 35.211. Thus, § 35.211(c) does not require a public entity to acquire an accessible examination table and an accessible weight scale if doing so would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens, as explained in § 35.211(e) and (f). In addition, public entities may use designs, products, or technologies as alternatives to those prescribed by the MDE Standards if the criteria set forth in § 35.211(d) are satisfied.

The Department received many comments in support of the requirements set forth in § 35.211(c), including comments from public entities and individuals with disabilities. Many commenters provided firsthand accounts of being unable to receive health care or receiving substandard care because of a lack of accessible examination tables or weight scales. Commenters also described receiving incomplete physical examinations because they could not transfer to an examination table, or forgoing routine examinations, such as abdominal palpations and breast examinations, due to a lack of accessible examination tables. Some noted that many medicines, including chemotherapy and anesthesia, are dosed based on weight, yet a lack of accessible weight scales makes it impossible for many people with disabilities to be accurately weighed. Similarly, disability advocacy groups shared representative accounts of harms that people with disabilities have experienced due to the inaccessibility of examination tables and weight scales.

Some commenters expressed concern that the requirements set forth in § 35.211(c) are insufficient. A few commenters urged the Department to require public entities to obtain more than one examination table or weight scale, particularly in facilities that focus on conditions that affect mobility. Other commenters asked the Department to require one examination table and weight scale per department, clinic, or specialty. The Department clarifies that the requirements in § 35.211(c) must be viewed in conjunction with the other requirements of subpart I of this part. For example, although § 35.211(c) requires public entities to obtain at least one accessible examination table and at least one accessible weight scale within two years, public entities may be required to obtain more than one examination table or weight scale based on the scoping requirements set forth in § 35.211(b). In addition, public entities are subject to the nondiscrimination and program access obligations in §§ 35.210 and 35.212, and the acquisition of multiple accessible examination tables or weight

[30] *See, e.g.,* §§ 35.130(b)(1)(ii) and (f) and 35.150(a).

scales may be the most effective way to satisfy those obligations.

The Department requested public comment on the potential impact of the requirements in § 35.211(c) on people with disabilities and public entities. Several disability advocacy groups wrote that there are accessible weight scales on the market at varying costs, and that covered entities can also purchase or lease refurbished weight scales. The National Council on Disability commented that the economic impact on public entities will be modest and will be offset by the positive economic impact of more people being able to access preventative care. One commenter who uses a wheelchair noted that frequent delays during medical appointments due to a shortage of accessible examination tables and weight scales cost her money by preventing her from working.

Offering a different perspective, a few commenters expressed concern that it will be too expensive or logistically burdensome for providers to acquire the accessible MDE that § 35.211(c) requires. Some commenters suggested that the Department help providers pay for accessible MDE, including accessible examination tables and weight scales.

While the Department acknowledges the concerns of health care providers that will be required to carry out the obligations set forth in § 35.211(c), giving providers two years to meet the requirement for examination tables and weight scales, in particular, will improve access to basic diagnostic services for individuals with disabilities, while permitting providers to plan for the costs. Many of the comments that the Department received that describe the experiences of people with disabilities demonstrate the need for this requirement and the harm that a lack of accessible examination tables and weight scales can cause.

Regarding commenters' concerns about the cost of compliance, the Department does not currently operate a grant program to assist public entities in complying with the ADA. However, the Department notes that, pursuant to § 35.211(e), public entities are not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. Given the availability of these limitations, the Department believes it is appropriate to retain the requirements set forth in § 35.211(c).

Regarding whether two years is an appropriate amount of time for entities to comply with the requirements in § 35.211(c), commenters had diverse perspectives. While many commenters agreed with the Department's choice of two years, some, including individuals with disabilities, the National Council on Disability, and disability advocacy groups, stated that two years is too long. Others stated that two years is not long enough for public entities to comply with this requirement, particularly if entities have limited resources or if equipment is not readily available. Some commenters suggested a phased implementation approach.

Given the health disparities and barriers to care facing individuals with disabilities,[31] and the importance of examination tables and weight scales for the provision of basic health care services, the Department does not believe an extension of the two-year requirement or a phased implementation period for particular types of public entities is warranted. The fundamental alteration and undue burdens provisions account for the difficulty that some entities might have complying with the requirements of subpart I of this part.

The Department also does not believe a period shorter than two years for compliance with § 35.211(c) is warranted. Although the Department recognizes that individuals with disabilities face urgent health care needs, the Department must also consider the ability of entities to budget for and obtain accessible examination tables and weight scales under a feasible timeframe. Given all of these factors, the Department finds it appropriate to impose a two-year timeline for complying with the requirements for examination tables and weight scales in § 35.211(c).

The Department notes, however, that even before the two-year requirement goes into effect, public entities are required to make their services, programs, and activities, including those that use MDE, accessible to people with disabilities. Even before the two-year deadline, if an entity denies a physical examination or fails to take an accurate weight because of a lack of an accessible examination table or weight scale, that may implicate the nondiscrimination obligation set forth in § 35.210 and the program access obligation set forth in § 35.212, as well as the obligations set forth in the existing title II regulation.

Some commenters, including a State entity, the National Council on Disability, and multiple disability advocacy groups, expressed concern that, other than examination tables and weight scales, public entities are not required to obtain additional types of MDE within a specified period of time. The Department imposed a two-year requirement for examination tables and weight scales because those two types of equipment are very common among primary care providers, important for a range of basic diagnostic health services, and relatively attainable compared to more expensive accessible imaging equipment.[32] Many people with disabilities are unable to receive even the most basic health care services because of inaccessible examination tables and weight scales. In view of demands on provider entities, particularly small practices and rural facilities, the Department will not require public entities to obtain accessible MDE other than examination tables and weight scales within two years. Public entities will, however, be required to ensure that other types of MDE are accessible when they are acquired in accordance with § 35.211(a), and they will be required to comply with §§ 35.210 and 35.212. And as discussed elsewhere in this appendix, the most effective way to carry out the requirements set forth in §§ 35.210 and 35.212 may be to acquire multiple types of accessible MDE, not only examination tables and weight scales.

*Section 35.211(d) Equivalent Facilitation*

Paragraph (d) of § 35.211 specifies that a public entity may use designs, products, or technologies as alternatives to those prescribed by the MDE Standards, for example, to incorporate innovations in accessibility. However, this provision applies only where the use of the alternative designs, products, or technologies results in substantially equivalent or greater accessibility and usability of the health care service, program, or activity than the MDE Standards require. It does not permit a public entity to use an innovation that reduces access below what the MDE Standards would require. The responsibility for demonstrating equivalent facilitation rests with the public entity.

Several commenters wrote in support of the equivalent facilitation provision in § 35.211(d). A couple of commenters

[31] *See* C. Brooke Steele et al., *Prevalence of Cancer Screening Among Adults With Disabilities, United States, 2013,* 14 Preventing Chronic Disease (Jan. 2017), *https://www.cdc.gov/pcd/issues/2017/16_0312.htm* [*https://perma.cc/T36Y-NCJM*] (finding disparate access to cancer screenings); Gloria Krahn, *Persons with Disabilities as an Unrecognized Health Disparity Population,* 105 Amer. J. Pub. Health 198 (Apr. 2015), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4355692/* [*https://perma.cc/J8E4-J63T*] (finding higher prevalence of obesity and cardiovascular diseases); *see also* Michael Karpman et al., *QuickTake: Even with Coverage, Many Adults Have Problems Getting Health Care, with Problems Most Prevalent Among Adults with Disabilities,* Urban Inst. Health Pol'y Ctr. (Sept. 2015), *https://apps.urban.org/features/hrms/quicktakes/Many-Adults-Have-Problems-Getting-Health-Care.html* [*https://perma.cc/V6GB-AEPH*]; Carrie Henning-Smith et al., *Delayed and Unmet Need for Medical Care Among Publicly Insured Adults with Disabilities,* 51 Med. Care 1015 (Nov. 2013), *https://pubmed.ncbi.nlm.nih.gov/24113815/* [*https://perma.cc/KSY2-DGEV*]; Amanda Reichard et al., *Prevalence and Reasons for Delaying and Foregoing Necessary Care by the Presence and Type of Disability Among Working-Age Adults,* 10 Disability & Health J. 39 (Jan. 2017), *https://pubmed.ncbi.nlm.nih.gov/27771217/* [*https://perma.cc/V7D7-LCQK*]; Michelle Stransky et al., *Provider Continuity and Reasons for Not Having a Provider Among Persons With and Without Disabilities,* 12 Disability & Health J. 131 (Jan. 2019), *https://pubmed.ncbi.nlm.nih.gov/30244847/* [*https://perma.cc/2LSR-PEGJ*]; Sarah Bauer et al., *Disability and Physical and Communication-Related Barriers to Health Care Related Services Among Florida Residents: A Brief Report,* 9 Disability & Health J. 552 (July 2016), *https://pubmed.ncbi.nlm.nih.gov/27101882/* [*https://perma.cc/YH6F-22UW*] (finding barriers to access to care).

[32] *See* Access Board, *Access Board Review of MDE Low Height and MSRP* (May 23, 2023), *https://www.regulations.gov/document/ATBCB-2023-0001-0002* [*https://perma.cc/WU3U-DP65*] (listing available examination table models that meet the height requirements of the MDE Standards and their retail prices). On the affordability of accessible examination tables and weight scales compared to imaging equipment, see 82 FR 2829 (stating that commenters were concerned about immediate compliance with the MDE Standards for ''more expensive imaging equipment'' compared to other accessible MDE). *See also* Block Imaging, *2024 Mammography Price Guide, https://www.blockimaging.com/bid/95356/digital-mammography-equipment-price-cost-info* [*https://perma.cc/2STC-34VW*].

suggested that the Department clarify that use of equivalent facilitation must not result in improved access to one group of people with disabilities at the expense of reduced access for others. The Department agrees that this provision does not apply if the use of an alternative design, product, or technology would make the health care service, program, or activity less accessible or usable for individuals with disabilities (or any group of individuals with disabilities) than the MDE Standards require.

The same commenters also recommended that the Department require entities to individually assess the preferences and needs of people with disabilities and receive informed consent before using an alternative option. The Department declines to require entities to individually assess the preferences and needs of people with disabilities and receive informed consent before using alternative designs, products, or technologies. This provision is modeled on existing language in the ADA Standards.[33] Adopting the approach that commenters proposed would create inconsistency between subpart I of this part and other portions of the Department's title II regulation,[34] which does not include the requirements for equivalent facilitation that commenters suggested. Further, requiring entities to engage in that sort of assessment with current or prospective patients could create an unworkable framework for public entities that had already obtained products that afforded equivalent or greater accessibility than the MDE Standards. However, nothing in this part requires patients to receive diagnostic health care services that they would prefer not to receive.

*Section 35.211(e) Fundamental Alteration and Undue Burdens*

Paragraph (e) of § 35.211 addresses the fundamental alteration and undue financial and administrative burdens limitations. While subpart I of this part generally requires public entities to adhere to the MDE Standards when newly purchasing, leasing, or otherwise acquiring MDE, it does not require public entities to take steps that would result in a fundamental alteration in the nature of their services, programs, or activities or in undue financial and administrative burdens. These limitations mirror the existing title II regulation at § 35.150(a)(3). If a particular action would result in a fundamental alteration or undue burdens, the public entity is obligated to take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services the public entity provides.

Many commenters wrote in support of the fundamental alteration and undue burdens limitations, with some noting that the approach strikes a thoughtful balance that will promote equal access to MDE for people with disabilities while mitigating the challenges and costs of implementation for public entities. While some commenters objected to the cost of complying with subpart I of this part, others said cost and acquisition difficulties should not be an excuse for noncompliance. A few commenters wrote that it is unlikely that an entity will reasonably be able to rely on these limitations at all. Some commenters wrote that people with disabilities historically have been forced to carry the burden, and the provision should consider the burden on people with disabilities in terms of factors like wait times, extra costs, and the availability of accessible providers. Some commenters asked the Department to clarify or define certain terms, such as ''undue burden'' or ''fundamental alteration.'' One comment suggested a particular method for making an undue burden calculation.

A few commenters recommended that the Department establish exceptions according to a different framework. One suggested that the Department exempt whole categories of entities, including small practices, new practices, and practices in areas with a health professional shortage. Others suggested that the Department extend the compliance timeframes for certain categories of entities, including small, rural, and ''safety-net'' entities.

The Department acknowledges commenters' concerns that the fundamental alteration and undue burdens limitations will undermine access for people with disabilities. However, these limitations fall within the well-established title II framework,[35] and it is important for these limitations on obligations to remain consistent with part 35 as a whole. These limitations also require a more individualized inquiry than the categorical exceptions that some commenters suggested and will therefore strike a better balance between the accessibility needs of individuals with disabilities and the potential difficulties of compliance in particular circumstances. As noted in the preceding paragraphs, if an action would result in a fundamental alteration or undue burdens, the public entity must still take any other action that would ensure that individuals with disabilities receive the benefits or services the public entity provides.

Because fundamental alteration and undue burdens are longstanding limitations under the ADA,[36] members of the public and public entities should already be familiar with these limitations in other contexts. The Department has provided guidance that addresses the fundamental alteration and undue burdens limitations, and will consider providing more in the future.[37] The Department's existing guidance documents provide details on fundamental alteration and undue burdens determinations, including language explaining that such determinations should consider all resources available for use in the funding and operation of the service, program, or activity.[38] In the Department's view, this guidance will help public entities use the fundamental alteration and undue burdens limitations appropriately.

*Section 35.211(f) Diagnostically Required Structural or Operational Characteristics*

Paragraph (f) of § 35.211 incorporates what M201.2 of the Access Board's MDE Standards refers to as a General Exception.[39] The paragraph states that, where a public entity can demonstrate that compliance with the MDE Standards would alter diagnostically required structural or operational characteristics of the equipment, preventing the use of the equipment for its intended diagnostic purpose, compliance with the Standards would result in a fundamental alteration and therefore is not required.

In the NPRM, the Department sought comment on whether the proposed exception in § 35.211(f) is needed. Multiple commenters supported the Department's approach, describing it as ''thoughtful'' and ''balance[d].'' Other commenters disagreed with this exception and recommended that the Department remove or amend it, stating that the exception is unnecessary, that it will be an overused loophole, or that it will stifle innovation.

While the Department appreciates commenters' opinions and concerns and recognizes the importance of providing accessible MDE to people with disabilities, the Department continues to believe that this exception is sometimes needed to preserve the functionality of MDE. For instance, as noted in the NPRM, the Department is aware that certain positron emission tomography (''PET'') machines cannot meet the MDE Standards' technical requirements for accessibility and still serve their diagnostic function. Commenters did not provide information that called this into question. Rather, the Department received numerous comments, including several comments regarding radiological diagnostic services, stating that this exception is essential. These commenters expressed concern that the MDE Standards are incompatible with the safe design and use of some types of diagnostic imaging equipment. With respect to MRI machines in particular, a disability rights organization observed that structural attributes may prevent certain equipment from being made accessible, and noted the importance of providing alternatives to ensure accessibility for individuals who use metal wheelchairs or assistive equipment.

In light of these factors, the Department will retain the exception in § 35.211(f). The Department expects, however, that this exception will apply only in rare cases. In such circumstances, the public entity must still take any other action that would not result in a fundamental alteration or undue burdens but would nevertheless ensure that individuals with disabilities receive the services, programs, or activities the public entity provides. For example, a PET machine that could not meet the MDE Standards and

[33] 28 CFR part 36, appendix D, at 1000 (2022) (1991 ADA Standards); 36 CFR part 1191, appendix B, at 329 (2022) (2010 ADA Standards).

[34] *See, e.g.,* § 35.151(c) (allowing or requiring public entities to comply with the 1991 ADA Standards or 2010 ADA Standards).

[35] *See* appendix B to this part.

[36] *See id.* §§ 35.130(b)(7), 35.150(a)(3), and 35.164.

[37] *See, e.g.,* U.S. Dep't of Just., *ADA Update: A Primer for State and Local Governments, ADA.gov* (Feb. 28, 2020), *https://www.ada.gov/resources/title-ii-primer/* [*https://perma.cc/ZV66-EFWU*].

[38] *Id.*

[39] 36 CFR part 1195, appendix, section M201.2 (revised as of July 1, 2017).

still serve its diagnostic function would not be required to meet the MDE Standards as a whole, but the public entity would still be required to meet all other applicable provisions of the MDE Standards, and to take any other action that would ensure that individuals with disabilities receive the public entity's benefits or services without fundamentally altering the nature of the service, program, or activity, or imposing undue financial and administrative burdens. Such actions could include, for example, assisting patients with transferring to the scan table so that they can receive a PET scan.

With respect to a commenter's concern that this exception will stifle innovation, the Department appreciates both the value of innovation and the importance of ensuring that MDE used by individuals with disabilities can be used safely and in accordance with its intended diagnostic purpose, given the constraints of existing technology. The Department believes § 35.211(f) strikes an appropriate balance between these interests. Further, the reason for allowing for equivalent facilitation in § 35.211(d) is to encourage flexibility and innovation by public entities while still ensuring equal or greater access to MDE.

In addition to commenters who recommended that the Department eliminate the exception in § 35.211(f), some commenters suggested changes to the regulatory text. One commenter suggested that the regulatory text should include language from the section-by-section analysis relating to the rare use of the provision and assistance transferring to a PET machine. The Department declines to incorporate these points into the regulatory text. Because the forgoing discussion reflects the Department's expectation about the rare applicability of this provision, and because the discussion about PET scans is one representative example, this discussion is more appropriately situated in this appendix than in the regulatory text.

A few commenters asked the Department to require that, where equipment's structural or operational characteristics implicate the fundamental alteration limitation, covered entities must consider all possibilities to ensure the dignity and independence of the person with a disability. The Department declines to amend the regulatory text to explicitly state that public entities must consider all possibilities to ensure the dignity and independence of people with disabilities. While the Department encourages public entities to do so to the extent feasible, the Department believes that the obligations set forth in the regulatory text in §§ 35.210 and 35.212, when read together with the ADA and the general prohibition on discrimination in its implementing regulation, are sufficient to prevent discrimination without further changes to this section.[40]

*Section 35.212 Existing Medical Diagnostic Equipment*

In addition to the requirements for newly purchased, leased, or otherwise acquired MDE, § 35.212 requires that public entities address access barriers resulting from a lack of accessible MDE in their existing inventory of equipment. Here subpart I of this part adopts an approach analogous to the concept of program accessibility in the existing regulation implementing title II of the ADA.[41] Under this approach, public entities may make their services, programs, and activities available to individuals with disabilities, without extensive retrofitting of their existing buildings and facilities that predate the regulation, by offering access to those programs through alternative methods. The Department adopts a similar approach with respect to MDE to provide flexibility to public entities, address financial concerns about acquiring new MDE, and at the same time ensure that individuals with disabilities will have access to public entities' health care services, programs, and activities.

Section 35.212 requires that each service, program, or activity of a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. Section 35.212(a)(1) makes clear, however, that a public entity is not required to make each piece of its existing MDE accessible. Like § 35.211(e), § 35.212(a)(2) incorporates the concepts of fundamental alteration and undue financial and administrative burdens. As addressed in more detail in the discussion of these limitations in the section-by-section analysis of § 35.211(e), the fundamental alteration and undue burdens provisions do not excuse a public entity from addressing the accessibility of the program. If a particular action would result in a fundamental alteration or undue burdens, the public entity is still obligated to take any other action that would ensure that individuals with disabilities are able to receive the public entity's benefits and services. As with the fundamental alteration and undue burdens limitations, the discussion of the exception relating to diagnostically required structural or operational characteristics contained in the section-by-section analysis of § 35.211(f) applies equally to the Department's approach to this exception in § 35.212(a)(3).

The Department is also correcting a typographical error in § 35.212(a)(3). Section 35.212(a)(3) states that an entity meets its burden of proving that compliance with § 35.212(a) would result in a fundamental alteration under § 35.212(a)(2) if it demonstrates that compliance with § 35.212(a) would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose. The NPRM mistakenly referred to § 35.211(a) and (c) rather than to § 35.212(a).

Section 35.212(b) describes various methods by which public entities can make their services, programs, and activities readily accessible to and usable by individuals with disabilities when the requirements set forth in § 35.211 have not been triggered by the new acquisition of MDE. Of course, the purchase, lease, or other acquisition of accessible MDE may often be the most effective way to achieve program accessibility. However, except as stated in § 35.211, a public entity is not required to purchase, lease, or otherwise acquire accessible MDE if other methods are effective in achieving compliance with subpart I of this part.

For instance, if doctors at a medical practice have staff privileges at a local hospital that has accessible MDE, the medical practice may be able to achieve program accessibility by ensuring that the doctors see a person with a disability who needs accessible MDE at the hospital, rather than at the local office, so long as the person with a disability is afforded an opportunity to participate in or benefit from the service, program, or activity equal to that afforded to others. Similarly, if a medical practice has offices in several different locations, and one of the locations has accessible MDE, the medical practice may be able to achieve program accessibility by serving the patient who needs accessible MDE at that location. However, such an arrangement would not provide an equal opportunity to participate in or benefit from the service, program, or activity if it was, for example, significantly less convenient for the patient or if the visit to a different location resulted in higher costs for the patient.

Similarly, if the scoping requirements set forth in § 35.211(b) require a public entity's medical practice to have three accessible examination tables and an accessible weight scale, but the practice's existing equipment includes only one accessible examination table and one accessible scale, then until the practice must comply with § 35.211, the practice can ensure that its services are readily accessible to and usable by people with disabilities by establishing operating procedures such that, when a patient with a mobility disability schedules an appointment, the accessible MDE can be reserved for the patient's visit. In some cases, a public entity may be able to make its services readily accessible to and usable by individuals with disabilities by using a patient lift or a trained lift team, especially in instances in which a patient cannot or chooses not to independently transfer to the MDE in question.[42]

If a public entity carries out its obligation under § 35.212(a) to make a service, program, or activity readily accessible to and usable by people with disabilities by purchasing, leasing, or otherwise acquiring accessible MDE, then that newly purchased, leased, or otherwise acquired MDE must comply with the requirements set forth in § 35.211.

Several commenters recommended that the Department include more specificity regarding the methods by which public entities must make their services, programs, and activities readily accessible to and usable by individuals with disabilities. For example, one commenter suggested that the Department establish a clear and defined test to assess compliance with the program access obligation. Another commenter suggested

[40] *See, e.g.,* 42 U.S.C. 12101(a); § 35.130(b).

[41] *See* § 35.150.

[42] *See* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities* (June 26, 2020), *https://www.ada.gov/resources/medical-care-mobility/* [*https://perma.cc/UH8Y-NZWL*].

that the Department establish thresholds to determine whether public entities provide an equal opportunity to participate in or benefit from the service, program, or activity. Citing the Department's statement in the NPRM that allowing a patient to use accessible MDE at an alternative location would not give a patient with a disability an equal opportunity to participate in or benefit from the service, program, or activity if it was significantly less convenient or resulted in higher costs for the patient, the commenter suggested that the Department define how inconvenient an alternative location must be, either in terms of distance or in terms of travel time, in order to violate § 35.212(a).

The Department acknowledges these concerns and the commenters' desire for more clearly defined parameters, but notes that the concept of services, programs, and activities being readily accessible to and usable by individuals with disabilities is a longstanding requirement under title II of the ADA in other contexts.[43] Therefore, members of the public and State and local governments should already be familiar with this obligation. The Department has also provided guidance that addresses this concept,[44] and will consider providing more in the future. The Department operates a toll-free ADA Information Line that the public can call for assistance understanding the requirements of the ADA. The question of whether a particular service, program, or activity, in its entirety, is readily accessible to and usable by individuals with disabilities will be an inherently fact-bound inquiry.

Some commenters recommended that the Department require public entities to engage in an interactive process with patients and consider patients' preferences and needs in determining how to carry out their program access obligations. An ''interactive process'' is a term of art that applies in the ADA title I context but not the ADA title II context, and the Department declines to require such a process in subpart I of this part.[45] However, it may often be helpful or necessary for public entities to consider patients' preferences and needs in order to ensure that the entity's services, programs, and activities, in their entirety, are readily accessible to and usable by individuals with disabilities. For example, using the scenario discussed in the preceding paragraphs, a medical practice that lacks accessible MDE at its primary location might be able to achieve program accessibility by serving a patient who needed accessible MDE at an alternative location. But the practice would first need to determine how difficult it would be for the patient to travel to the alternative location. As explained in the preceding paragraphs, if the alternative location was significantly less convenient or resulted in higher costs for the patient, it would not provide an equal opportunity to participate in or benefit from the service, program, or activity.

One commenter asked whether public entities can continue to use existing MDE that meets some but not all of the requirements set forth in the MDE Standards. The commenter asked whether, for example, an entity can use an adjustable height examination table that lowers to the minimum height but does not raise to the upper height set forth in the MDE Standards. As § 35.212(b) explains, § 35.212(a) does not require public entities to acquire MDE that meets all of the requirements set forth in the MDE Standards if other methods enable them to make their services, programs, and activities, in their entirety, readily accessible to and usable by individuals with disabilities. Using MDE that meets some but not all of the requirements set forth in the MDE Standards may, in some cases, be one way for public entities to carry out their program access obligation under § 35.212(a). In contrast, newly acquired MDE must meet all of the requirements set forth in the MDE Standards pursuant to § 35.211(a), absent an applicable limitation.

Finally, one commenter recommended that the Department add a requirement from the ADA title III regulations that ''a public accommodation shall remove architectural barriers in existing facilities where such removal is readily achievable, *i.e.,* easily accomplishable and able to be carried out without much difficulty or expense.'' [46] The readily achievable barrier removal standard applies to architectural barriers, not barriers in equipment, and importing requirements from the ADA title III regulation into subpart I of this part could create confusion and inconsistency with the other obligations in subpart I and with the rest of the title II regulation. Additionally, MDE often cannot be retrofitted to be accessible with the same ease or cost ratio as many forms of readily achievable barrier removal, such as adding raised markings to elevator buttons or providing paper cups at an inaccessible water fountain. The Department therefore declines to import the readily achievable barrier removal standard into the final rule.

*Section 35.213 Qualified Staff*

Section 35.213 requires public entities to ensure that their staff members are able to successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the program access obligation with respect to existing MDE. This will enable public entities to carry out their obligation to make the programs, services, and activities that they offer through or with the use of MDE readily accessible to and usable by individuals with disabilities. The Department believes that public entities must have, at all times when services are provided to the public, appropriate and knowledgeable personnel who can operate MDE in a manner that ensures services are available and timely provided. Often, the most effective way for public entities to ensure that their staff members are able to successfully operate accessible MDE is to provide staff training on the use of MDE, but the final rule does not mandate that approach.

The Department received comments on this issue from a range of stakeholders, including individuals with disabilities, disability advocacy organizations, and health care providers. Many commenters supported the Department's proposal. In response to the Department's request for comments on the effectiveness of programs used to ensure that staff are qualified, several disability advocacy organizations noted that even when a health care provider has accessible MDE, staff are sometimes unable to operate it. Many people with disabilities and disability advocacy organizations also described interactions with staff who were not able to provide assistance with transfers or did not provide program access in other ways. These accounts supported the need for § 35.213, which explicitly requires public entities to ensure that their staff members are able to successfully operate accessible MDE, assist with transfers, and ensure program access.

A disability advocacy organization proposed that the Department revise the text of § 35.213 to include personnel who are responsible for scheduling appointments and maintaining accessible MDE, and to require public entities to ensure that staff members are able to maintain accessible MDE and ensure scheduling times and reservations appropriate for patients with disabilities. The Department believes that the current language of the general nondiscrimination obligation set forth in § 35.210 and the program access obligation set forth in § 35.212, in conjunction with the other provisions in the title II regulation that require equal access and maintenance of accessible features,[47] is sufficient to address the issues raised by the commenter. The Department also notes that § 35.213 pertains to public entities' staff but is not limited to particular types of staff. As with the other topics for training discussed in the section-by-section analysis of § 35.213, public entities may find that providing their staff with the training this commenter described is often the most effective way to meet their obligations under subpart I of this part and other parts of the ADA. The lack of a specific requirement to provide training to these personnel regarding these issues would not excuse a related ADA violation.

Only one commenter opposed § 35.213. This commenter stated that requiring public entities to ensure that their staff members are able to assist with transfers would lead to discrimination against employees with disabilities who are not physically able to assist with transfers. The Department notes that subpart I of this part does not supersede or alter title I of the ADA or occupational safety standards, or redefine the essential functions of any particular employee's job.[48] Qualified employees with disabilities remain entitled to reasonable accommodations as specified in existing law.[49] However, an individual employee's need for accommodations does not diminish the rights of other individuals with disabilities to have

[43] *See, e.g.,* §§ 35.150 and 35.151.

[44] *See, e.g.,* U.S. Dep't of Just., Civ. Rts. Div., *ADA Update: A Primer for State and Local Governments* (Feb. 28, 2020), *https://www.ada.gov/resources/title-ii-primer/* [*https://perma.cc/ZV66-EFWU*]; U.S. Dep't of Just., *Title II Assistance Manual: Covering State and Local Government Programs and Services, https://archive.ada.gov/taman2.html* [*https://perma.cc/6QNC-3RRA*].

[45] *See* 29 CFR 1630.2(o)(3).

[46] 28 CFR 36.304(a).

[47] *See, e.g., id.* §§ 35.130 and 35.133.

[48] *See* 42 U.S.C. 12111–12117.

[49] 42 U.S.C. 12112(b)(5); 29 CFR 1630.9.

equal access to the services, programs, and activities provided by a public entity.

Many commenters encouraged the Department to establish more explicit and specific requirements for training. Commenters provided a variety of suggestions for what these requirements should be, including certification; training by the manufacturers of accessible MDE; periodic ''refresher'' training; and training on additional topics, such as the maintenance of accessible MDE, appointment scheduling and booking accessible MDE, attitudinal barriers, implicit bias, ableism, disability culture, disability history, providing care to individuals with disabilities, transfer support and practice, the use of lifts, plain language, effective communication, and reasonable modifications. One commenter suggested that the Department should withhold Federal funding if certain training is not conducted. Many commenters stated that people with disabilities should be involved in training so that public entities are able to draw from individuals' lived experiences.

In response to the Department's request for comments on the costs of programs for ensuring qualified staff, a few commenters stated that the cost of training would be minimal, especially in comparison to the cost of an injury to individuals with disabilities or personnel. These commenters stated that proper training reduces the number of injuries to individuals with disabilities and staff, ultimately reducing costs for covered entities.

After considering all of these comments, the Department declines to impose more specific requirements in § 35.213. Training, including training on the topics commenters suggested, will often be the most effective way to for public entities to ensure compliance with the entity's obligations under subpart I of this part. Training developed in consultation with, or provided by, individuals with disabilities may be particularly effective. And the Department appreciates commenters' views that training may ultimately reduce costs. However, the Department believes it is important to provide public entities with flexibility to determine how they will comply with the qualified staff requirement. Appropriate methods for meeting this requirement may differ for small health care providers as opposed to large hospital systems, for example. The Department has therefore decided not to mandate one specific process or curriculum that all public entities must follow to comply with § 35.213.

Several commenters suggested steps the Department could take to assist covered entities in complying with this requirement and the other requirements set forth in subpart I of this part. Suggestions included providing additional guidance, technical assistance, training, and financial resources. Some commenters also suggested that the Department collaborate with manufacturers to provide instructions on how to use accessible MDE or encourage covered entities to request instructions during procurement. The Department notes that it has already provided some technical assistance.[50] If public entities would find it helpful to seek additional information from MDE manufacturers or vendors, the Department encourages entities to do so. As noted in the discussion of § 35.211(c), the Department does not currently operate a grant program to assist public entities in complying with the ADA. The Department will, however, continue to consider what additional guidance, technical assistance, or training it can provide that will assist regulated entities in complying with their obligations under subpart I of this part.

**Public Comments on Other Issues in Response to NPRM**

The Department received comments on a variety of other issues in response to the NPRM. Several commenters recommended that the Department prescribe specific steps that all entities must take in order to carry out the primary requirements in subpart I of this part, such as employing scheduling and reservation systems; maintaining and publishing lists of accessible inventory, including the location of such equipment; reimbursing patients for transportation costs to accessible facilities; using certain staff-to-patient ratios; having staff take notes on each patient's needs and the patient's level of understanding; providing communication access in American Sign Language and Braille; using patient lifts or transfer teams; and offering scales and health monitoring tools for home use to patients with transportation difficulties. Another commenter suggested that entities subcontract with disability groups to test MDE that the entities have purchased. Some commenters also suggested that the Department issue guidance on various topics.

While the Department appreciates commenters' thoughtful suggestions, the Department declines to prescribe that public entities must take these specific steps in order to carry out the requirements in subpart I of this part. The Department intends to instead give public entities and members of the public clarity about the requirements in subpart I of this part, while also giving public entities flexibility in determining how best to carry out those requirements based on their individual circumstances. Public entities may find that many of the approaches recommended in the comments summarized in the preceding paragraph will enable them to carry out the requirements in subpart I of this part. The Department will also consider providing additional guidance to public entities about how to comply with subpart I of this part.

Commenters also expressed concern that people with disabilities are not involved in decisions associated with their care, in general. One commenter suggested that all policies about people with disabilities should be formed in consultation with an advisory council of people with a range of disabilities. The Department agrees that it is important to involve people with disabilities in decisions involving the creation and implementation of disability-related rules and policies. Indeed, the technical standards that the Department is adopting were created by the Access Board, a coordinating body that includes 13 members of the public, most of whom are required to have a disability in order to be appointed to the Access Board.[51] The Department has also carefully considered comments on the NPRM from many members of the public who self-identified as having a disability. In addition, individuals with disabilities can file a complaint with the Department or file a private lawsuit if a public entity fails to carry out its title II obligations. Given the existing mechanisms to solicit feedback and receive complaints about implementation from individuals with disabilities, the Department declines to create an advisory council in connection with this part.

The Department also received a comment suggesting that it regularly review and update accessibility standards to reflect technological advancements and the evolving needs of individuals with disabilities. Executive Order 13563 already requires the Department to review its regulations periodically to determine whether they should be modified, streamlined, expanded, or repealed.[52] Further, section 510 of the Rehabilitation Act requires the Access Board, in consultation with the Food and Drug Administration, to periodically review and, as appropriate, amend the MDE standards.[53] Therefore, a separate mechanism for reviewing the effectiveness of this part is not necessary.

Finally, the Department received a few comments asking that it make the MDE Standards enforceable against title III entities. As noted in section II.A of the preamble to the final rule (''Statutory and Rulemaking Overview''), the Department will continue to consider issues concerning MDE under title III. The Department will also continue to consider further rulemaking on this topic. However, title III entities are not the subjects of this rulemaking.

Dated: July 26, 2024.

**Merrick B. Garland,**

*Attorney General.*

[FR Doc. 2024–16889 Filed 8–8–24; 8:45 am]

**BILLING CODE 4410–13–P**

[50] *See, e.g.,* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities* (June 26, 2020), *https://www.ada.gov/resources/medical-care-mobility/* [*https://perma.cc/UH8Y-NZWL*].

[51] U.S. Access Board, *About the U.S. Access Board, https://www.access-board.gov/about/* [*https://perma.cc/L9N7-56YV*].

[52] E.O. 13563, sec. 6, 3 CFR, 2011 Comp., p. 215.

[53] 29 U.S.C. 794f(c).

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2024–0711]**

**RIN 1625–AA00**

## Safety Zone; M/V JACOB PIKE Dead Ship Tow, Harpswell, ME to South Portland, ME

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone on the navigable waters between Harpswell, ME and South Portland, ME. This safety zone will surround the M/V JACOB PIKE, once refloated, and dead ship towed from Harpswell, ME though Casco Bay to Turner Island Marine Rail located on the Fore River in South Portland, ME. The safety zone will extend 200-yards on all sides of the M/V JACOB PIKE during the dead ship tow transit. Vessels and people are prohibited from entering this safety zone.

**DATES:** This rule is effective without actual notice from August 9, 2024 through August 31, 2024. For the purposes of enforcement, actual notice will be used from August 6, 2024, until August 9, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0711 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 MSTC Zachary Wetzel, Sector Northern New England, U.S. Coast Guard; telephone 207–808–9137, email *NNEWaterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Northern New England
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule
M/V Motor Vessel

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because specifics details concerning the salvage operations associated with the M/V JACOB PIKE and the subsequent transit to a facility were not received in time to publish an NPRM and seek comments before the subject transit. Publishing an NPRM and delaying the effective date of this rule to await public comments would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to fulfill its statutory missions to protect the safety of the public, and vessels transiting the waters of the Casco Bay during the dead ship movement of the M/V JACOB PIKE.

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 impractical because immediate action is needed to minimize the potential safety hazards associated with the salvage and dead ship movement of the M/V JACOB PIKE.

## III. Legal Authority and Need for Rule

Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Northern New England (COTP) has determined that potential hazards associated with the salvage recovery and dead ship movement of the M/V JACOB PIKE will be a safety concern for anyone within 200-yards radius of the M/V JACOB PIKE and any towing vessel supporting the operation. This rule is needed to protect personnel, vessels, and the marine environment during the salvage operation and during the dead ship movement of the M/V JACOB PIKE from its location in Harpswell, ME, along its route to Turner Island Marine Rail located in South Portland, ME.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone August 6, 2024, through August 31, 2024, however the zone will only be enforced while the M/V JACOB PIKE, an 83-foot wooden sardine carrier which sank early this year, is dead ship towed. The moving 200-yard safety zone will be established for the M/V JACOB PIKE and all towing vessels supporting its operations during transit from Harpswell, ME though Casco Bay to Turner Island Marine Rail located on the Fore River in South Portland, ME. Salvage operations are expected to begin August 6, 2024, and take three days. Once the M/V JACOB PIKE is raised the dead ship tow transit is anticipated to take eight hours. The salvage date and dead ship tow transit is tentative and subject to change due to weather or other unforeseen circumstances. The Coast Guard is proposing this rule remain effective through August 31, 2024, in case the salvage operation is delayed due to weather or other unforeseen circumstances. The COTP will issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) of the exact date and times in advance of the enforcement period to the local maritime community. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the dead ship movement of M/V JACOB PIKE while transiting the Casco Bay area. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, duration and time-of-day of the safety zone. The zone is limited in size, location, and duration as it will cover a portion of navigable waters off Harpswell, ME, Casco Bay, and the Fore River in South Portland, ME within a 200-yard radius of the vessel M/V JACOB PIKE and any towing vessels supporting the operation. The zone is limited in scope as vessel traffic may be able to safely transit around this safety zone and vessels may seek permission from the COTP to enter the zone. The zone is limited in duration in that it will be enforced for approximately three days surrounding salvage operations and another eight hours for the dead ship tow transit. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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 temporary safety zone that will move and prohibit entry within a 200-yard radius around the recovery of the M/V JACOB PIKE and its dead ship tow from Harpswell, ME to South Portland, ME. This zone is expected to last approximately eight-hours during the dead ship tow movement. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

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

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

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

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

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

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

■ 2. Add § 165.T01–0711 to read as follows:

**§ 165.T01–0711 Safety Zone; M/V JACOB PIKE Dead Ship Tow, Harpswell, ME to South Portland, ME.**

(a) *Location.* The following area is a safety zone: The moving safety zone will include all navigable waters off Harpswell, ME, Casco Bay, and the Fore River in South Portland, ME, within a 200-yard radius of the vessel M/V JACOB PIKE and all towing vessels supporting its operations, while transiting to Turner Island Marine Rail located in South Portland, ME.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Northern New England (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio channel 16 or phone at 833–449–2407. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective from noon on Tuesday, August 6, 2024, through 11:59 p.m. on Saturday, August 31, 2024. The safety zone will be enforced while M/V JACOB PIKE and all towing vessels supporting its operations are transiting, until safely moored at Turner Island Marine Rail, South Portland, ME.

Dated: August 5, 2024.

**Matthew S. Baker,**

*Captain, U.S. Coast Guard, Captain of the Port Northern New England.*

[FR Doc. 2024–17914 Filed 8–8–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2024–0714]**

**RIN 1625–AA00**

## Safety Zone, Lake Erie, Cleveland, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of Lake Erie offshore of Edgewater Beach in Cleveland, Ohio. This action is necessary to provide for the safety of the swimming event participants on these waters during the Tri CLE Rock and Roll Run, to be held on August 17 and 18, 2024. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Eastern Great Lakes, or a designated representative.

**DATES:** This rule is effective from 10 a.m. on August 17, 2024, through 10:30 a.m. on August 18, 2024, with enforcement periods of 10 a.m. through 1:30 p.m. on August 17, 2024, and 4 a.m. through 10:30 a.m. on August 18, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0714 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 Cody Mayrer at Marine Safety Unit Cleveland's Waterways Management Division, U.S. Coast Guard; telephone 216–937–0111, email *D09-SMB-MSUCLEVELAND-WWM@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 because this annual event requires a temporary location change from the usual event site and prompt action is required to establish the safety zone in order to ensure the safety of swimming event participants.

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** because this annual event requires a temporary location change from the usual event site and prompt action is required to establish the safety zone in order to ensure the safety of swimming event participants.

### 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 Eastern Great Lakes (COTP) has determined that a safety zone is required to ensure the safety of participants and the navigable waters within the course of the swimming portion of the triathlon before, during, and after the scheduled marine event.

### IV. Discussion of the Rule

The COTP is establishing a temporary safety zone from 10:00 a.m. on August 17, 2024, through 10:30 a.m. on August 18, 2024, with enforcement periods of 10 a.m. through 1:30 p.m. on August 17, 2024, and 4 a.m. through 10:30 a.m. on August 18, 2024.

The safety zone would cover all navigable waters and tributaries of Lake Erie offshore Edgewater Beach and immediately adjacent waters in Cleveland, OH. The boundaries of the safety zone form a rectangle with the four corners of the polygon located in the following positions: (1) 41°29′15.76″ N, 081°44′46.34″ W; (2) 41°29′27.96″ N, 081°44′49.87″ W; (3) 41°29′31.98″ N, 081°44′24.01″ W, (4) 41°29′27.46″ N, 081°44′22.51″ W. The duration of the zone is intended to ensure the safety of participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock Roll Run triathlon. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### V. Regulatory Analyses

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

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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under 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 rule. This safety zone would restrict navigation for a relatively small area near Edgewater Beach for the swimming area for 3.5 hours on August 17, 2024, and 6.5 hours on August 18, 2024.

#### *B. Impact on Small Entities*

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

significant economic impact on a substantial number of small entities.

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will restrict navigation through the swimming area for 3.5 hours on August 17, 2024, and 6.5 hours on August 18, 2024. It is categorically excluded from further review under paragraph L63a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

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

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

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

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

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

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

■ 2. Add § 165.T09–0714 to read as follows:

**§ 165.T09–0714 Safety Zone, Lake Erie, Cleveland, OH.**

(a) *Location.* The safety zone covers all navigable waters and tributaries of Lake Erie within Edgewater Beach and immediately adjacent waters in Cleveland, OH. The boundaries of the safety zone form a rectangle with the corners of the polygon located at the following coordinates: (1) 41°29′15.76″ N, 081°44′46.34″ W; (2) 41°29′27.96″ N, 081°44.49′87″ W; (3) 41°29′31.98″ N, 081°44′24.01″ W; (4) 41°29′27.46″ N, 081°44′22.51″ W, then return to position (1) above (NAD 83).

(b) *Enforcement period.* This section will be enforced from 10 a.m. through 1:30 p.m. on August 17, 2024, and from 4 a.m. through 10:30 a.m. on August 18, 2024.

(c) *Definitions. Official Patrol Vessel* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Eastern Great Lakes, (COTP) in the enforcement of the regulations in this section. Participant means all persons and vessels attending the event.

(d) *Regulations.* (1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels designated or assigned by the Captain of the Port Sector Eastern Great Lakes, to patrol the event.

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

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

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

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

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary.

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

Dated: August 5, 2024.

**Mark I. Kuperman,**

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

[FR Doc. 2024–17714 Filed 8–8–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2024–0666]**

## Safety Zones; Annual Fireworks Displays Within the Puget Sound

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce regulations for the Medina Days safety zone in Medina Beach Park on Lake Washington, Seattle, Washington to provide for the safety of life on navigable waters during an annual fireworks display. This safety zone will consist of all navigable waters within a 450-yard radius surrounding the event's launch site. Our regulation for safety zones within the Captain of the Port, Puget Sound Area of Responsibility identifies the specific location for this launch site and the corresponding safety zone for the event.

**DATES:** The regulations in 33 CFR 165.1332 for the Medina Beach Park location will be enforced from 5 p.m. on August 10, 2024, through 1 a.m. on August 11, 2024.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Mr. Jeffrey Zappen, Sector Puget Sound Waterways Management, U.S. Coast Guard; telephone 206–217–6076, or email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce safety zone regulations in 33 CFR 165.1332 for the Annual Fireworks Display at Medina Beach Park on Lake Washington from 5 p.m. on August 10, 2024, through 1 a.m. on August 11, 2024. This action is being taken to provide for the safety of life on navigable waterways during this 1-day event at the following location:

| Event name (typically) | Event location | Latitude | Longitude |
|---|---|---|---|
| Medina Days | Medina Beach Park | 47°36.867′ N | 122°14.500′ W |

The special requirements listed in 33 CFR 165.1332(b) related to fireworks barges and fireworks launch sites, or both, shall apply and be implemented during the specified enforcement period of this safety zone.

During the specified enforcement period, no vessel operator may enter, transit, moor, or anchor within this safety zone unless authorized by the Captain of the Port or their designated representative(s). The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or their designated representative(s) by contacting the on-scene patrol craft on VHF Ch. 13 or Ch. 16, or calling Coast Guard Sector Puget Sound's Joint Harbor Operations Center (JHOC); telephone 206–217–6002.

In addition to the notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Dated: July 31, 2024.

**Mark A. McDonnell,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Puget Sound.*

[FR Doc. 2024–17710 Filed 8–8–24; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3006

**[Docket No. RM2024–5; Order No. 7331]**

**RIN 3211–AA38**

## Freedom of Information Act

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopts amendments to its Freedom of Information Act (FOIA) regulations. The final rules: improve readability and clarity for the public; better align the Commission's existing FOIA regulations with the practices of other agencies subject to the FOIA (as necessarily adapted to the Commission's size and area of regulatory oversight); and improve the efficiency of the Commission's FOIA administration.

**DATES:** Effective September 9, 2024.

**ADDRESSES:** For additional information, Order No. 7331 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**



### I. Background

The Commission is a micro agency with fewer than 100 employees and is also subject to the FOIA. Generally, most FOIA requests received by the Commission are intended for the Postal Service and the requester is therefore directed to the Postal Service, as a best practice. On April 18, 2024, the Commission issued Order No. 7052, which served as a notice of proposed rulemaking that proposed amendments to its FOIA regulations in existing 39

CFR part 3006.[1] In response to Order No. 7052, only the Public Representative filed comments.[2]

## II. Basis and Purpose of the Final Rules

The Public Representative generally supports the proposed amendments and suggests some revisions. After considering the comments, the Commission adopts the rules as proposed in Order No. 7052, with slight revisions to improve typographical consistency and to better aid readers regarding the FOIA's exemptions.

## III. Final Rules

The Commission adopts final rules in 39 CFR part 3006 that: improve readability and clarity for the public; better align the Commission's existing FOIA regulations with the practices of other agencies subject to the FOIA (as necessarily adapted to the Commission's size and area of regulatory oversight); and improve the efficiency of the Commission's FOIA administration.

## List of Subjects in 39 CFR Part 3006

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements, Sunshine Act.

■ For the reasons stated in the preamble, the Commission revises 39 CFR part 3006 to read as follows:

# PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

### Subpart A—General Provisions



### Subpart B—Procedures for Freedom of Information Act Requests



### Subpart C—Fees for Freedom of Information Act Requests



**Authority:** 5 U.S.C. 552; 39 U.S.C. 407, 503, 504.

## Subpart A—General Provisions

### § 3006.100 Applicability and scope.

(a) The rules in this part apply to requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines).

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Commission's Privacy Act regulations appearing in part 3005 of this chapter and § 3006.204.

### § 3006.101 Commission policy.

(a) The Commission shall be proactive and timely in identifying and posting public records and other frequently requested records to its website.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, such as information specifically exempted from disclosure by statute (for example 39 U.S.C. 410(c)), or disclosure is otherwise prohibited by law. Publicly available information regarding exemptions and examples of exempt information are available at the Department of Justice's FOIA website, *https://www.foia.gov.*

(c) This Commission policy does not create any right enforceable in court.

### § 3006.102 Proactive disclosures.

(a) Except as provided in § 3006.101(b) and in part 3011 of this chapter, Commission records, required by the FOIA to be made available, will be made available on the Commission's website, *https://www.prc.gov.*

(b) Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, and procedural and substantive rules, are published in the **Federal Register** publication system, and are available on the Commission's website, *https://www.prc.gov.*

### § 3006.103 Reading room.

(a) The Commission maintains an electronic reading room at *https://www.prc.gov.*

(b) The records available for public inspection include, for example, decisions; reports; opinions; orders; notices; findings; determinations; statements of policy; copies of selected records released under FOIA; indexes required to be maintained under FOIA; and records relating to any matter or proceeding before the Commission.

(c) The Commission shall make available, in an electronic form, records previously released under FOIA and which the Commission determines are or are likely to become of significant public interest.

(d) Commission records that have been requested three or more times will be made available on the Commission's website, *https://www.prc.gov.*

### § 3006.104 Chief Freedom of Information Act Officer.

The Commission designates the General Counsel of the Commission as the Chief FOIA Officer. The Chief FOIA Officer shall be responsible for the administration of and reporting on the Commission's Freedom of Information Act program. The Chief FOIA Officer (and any individual(s) designated by the Chief FOIA Officer to communicate with FOIA requesters) may be contacted via email at *FOIA@prc.gov* or telephone at 202–789–6800.

### § 3006.105 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations or the individual's designee as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via email at *PRC-PAGR@prc.gov* or telephone at 202–789–6800.

### § 3006.106 Commission procedure when served a subpoena.

If an officer or employee of the Commission is served with a subpoena duces tecum, material that is not part of the public files and records of the Commission shall be produced only as authorized by the General Counsel. Service of such a subpoena shall immediately be reported to the General Counsel with a statement of all relevant facts. The General Counsel will

[1] Notice of Proposed Rulemaking to Amend Rules Regarding the Freedom of Information Act (FOIA), April 18, 2024 (Order No. 7052). *See also* 89 FR 31670 (May 23, 2024).

[2] Public Representative Comments on Notice of Proposed Rulemaking to Amend Rules Regarding The Freedom of Information Act, May 23, 2024.

thereupon enter such order or give such instructions as it deems advisable.

## Subpart B—Procedures for Freedom of Information Act Requests

### § 3006.200 Procedures for submitting requests.

(a) *Electronic submission requirements.* A request will receive the quickest possible response if it is submitted electronically. An electronic request may be submitted via the Commission's online FOIA request form that is accessible through the Commission's website (*https://www.prc.gov*), emailing *FOIA@prc.gov,* or the web portal at *https://www.foia.gov/.* Each electronic request must:

(1) Reasonably describe the records sought;

(2) Identify the request category under § 3006.301; and

(3) Include the requester's name, daytime telephone number, and a valid email or mailing address to receive records and written communications from the Commission regarding the request.

(b) *Hard copy submission requirements.* A requester may also submit a request for records via hard copy. Each hard copy request must:

(1) Be in writing;

(2) Be clearly identified as ''Freedom of Information Act Request'' both in the text of the request and on the envelope;

(3) Be submitted to the Commission's office (901 New York Avenue NW, Suite 200, Washington, DC 20268–0001);

(4) Reasonably describe the records sought; and

(5) Include the requester's name, daytime telephone number, and a valid email or mailing address to receive records and written communications from the Commission regarding the request.

(c) *Content of request.* Each request must describe the records sought in sufficient detail to enable Commission personnel to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought that might assist the Commission in responding to the request, such as the type of record (*e.g.,* contract, report, memorandum, etc.); the title or docket number of a specific document or report; the topic or subject matter; the name of the office and/or employees most likely to possess the record; the date or general timeframe of the record's creation; and any details related to the purpose of the record. Requests for email records should specify the likely senders and recipients, keywords, and a range of dates. Before submitting requests, a requester may contact the Chief FOIA Officer (or the individual's designee) or the FOIA Public Liaison to discuss the records sought and to receive assistance in describing the records. The request may also specify the requester's preferred method of communication (telephone, email, or mailing address) and the preferred form or format (including electronic formats) of the requested records.

(d) *Improper requests.* A request that does not reasonably describe the records sought or does not comply with the published rules regarding the procedures to be followed for submitting a request will be deemed to be an improper FOIA request. If the Commission does not receive the additional information needed that reasonably describes the records to enable their location by the Commission with a reasonable amount of effort, then the Commission will administratively close the file.

(1) If after receiving a request, the Commission determines that it is improper, the Chief FOIA Officer or the individual's designee will provide one written notification to the requester using the contact information included in the request. The notification will inform the requester of all the following:

(i) The reason(s) why the request is improper;

(ii) The additional information needed from the requester that would reasonably describe the records to enable their location by the Commission with a reasonable amount of effort;

(iii) The Commission will not be able to comply with the request unless the Commission receives such additional information in writing within the specified timeframe and if the Commission does not receive a written response containing the additional information needed within the specified timeframe, then it will presume that the requester is no longer interested in the records and will administratively close the file on the request;

(iv) The preferred method for the requester to provide the additional information is by emailing *FOIA@prc.gov;*

(v) The requester may also provide the additional information by mailing or by hand delivery during regular business hours (which are from 8 a.m. to 4:30 p.m. Eastern Time, except for Saturdays, Sundays, and Federal holidays) to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001); and

(vi) The contact information for the Chief FOIA Officer (or the individual's designee) and the FOIA Public Liaison, each of whom is available to assist the requester in reasonably describing the records sought.

(2) If the requester provides the additional information needed that reasonably describes the records to enable their location by the Commission with a reasonable amount of effort by the timeframe specified in the notification, then the Commission will confirm receipt of the information and process the request.

(3) After administrative closure, if the Commission receives the additional information needed that reasonably describes the records to enable their location by the Commission with a reasonable amount of effort, then the Commission will notify the requester that the request will be processed as a new request.

(e) *Expedited processing.* At any time, a requester that has satisfied all applicable requirements of paragraphs (a) through (c) of this section may seek expedited processing of a request or an administrative appeal. To seek expedited processing, the requester must:

(1) Include ''Expedited Freedom of Information Act Request'' or ''Expedited Freedom of Information Act Appeal'' in the body of the submission;

(2) For any hard copy submission, include ''Expedited Freedom of Information Act Request'' or ''Expedited Freedom of Information Act Appeal'' on the envelope;

(3) Demonstrate a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v); and

(4) Certify the statement of compelling need to be true and correct to the best of the requester's knowledge and belief. The Commission has discretion to waive the certification requirement.

### § 3006.201 Timing of responses to requests.

(a) *In general.* Requests will ordinarily be responded to according to their order of receipt.

(b) *Multitrack processing.* (1) Unless expedited processing has been granted, the Commission places each request in simple or complex tracks based on the amount of work and time involved in processing the request. Factors considered in assigning a request into the complex track may include one or more of the following:

(i) The request involves voluminous documents;

(ii) The complexity of the material;

(iii) The request involves record searches at multiple facilities or locations;

(iv) The request requires consultation among the Commission or other agencies; or

(v) The number of open requests submitted by the same requester.

(2) Within each track, the Commission processes requests in the order in which they are received. When appropriate, the Chief FOIA Officer or the individual's designee will notify the requester of placing a request in the ''Complex'' track and provide the requester with an opportunity to limit the scope of the request. If the requester limits the scope of the request, it may result in faster processing.

(c) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve the following:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) Within 10 calendar days of the receipt of a request for expedited processing, the Chief FOIA Officer or the individual's designee will notify the requester of the decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, the Chief FOIA Officer or the individual's designee will inform the requester of the denial in writing, the right to appeal the denial to the Commission in writing, and the procedures for appealing the denial. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing.

(3) Where a compelling need is not shown in an expedited request as specified in § 3006.200(e), the Commission may grant the request for expedited processing at its discretion.

(d) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of ''unusual circumstances'', as defined in 5 U.S.C. 552(a)(6)(B)(iii), and the Commission extends the time limit on that basis, the Commission shall, before the expiration of the 20 business day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. If an extension will exceed 10 business days, the Commission will:

(1) Provide the requester with an opportunity to modify the request or arrange an alternative timeframe for processing; and

(2) Make its FOIA Public Liaison available to the requester and apprise the requester of their right to seek dispute resolution services from the Office of Government Information Services.

(e) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the Commission may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a single requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Multiple requests that involve unrelated matters shall not be aggregated.

**§ 3006.202 Responses to requests.**

(a) *In general.* To the extent practicable and unless the request indicates a different preferred method of communication, the Commission will communicate with the requester electronically (such as via email). In determining which records are responsive to a request, the Commission will include only records in its possession and control on the date that it begins its search. If any other date is used, the Commission shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to the request.

(b) *Acknowledgments of requests.* The Commission shall acknowledge the request and assign it an individualized tracking number if it will take longer than 10 days (excluding Saturdays, Sundays, and legal holidays) to process. The acknowledgment must include a brief description of the records sought to allow requesters to keep track of their requests more easily.

(c) *Grants of requests.* Once the Commission makes a determination to grant a request in full or in part, the Chief FOIA Officer or the individual's designee shall notify the requester in writing. The Commission also shall inform the requester of any fees charged and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The Commission must inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(d) *Adverse determinations of requests.* If the Commission makes an adverse determination denying a request in any respect, then the Chief FOIA Officer or the individual's designee shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(e) *Content of denials.* The denial shall be signed by the Chief FOIA Officer or the individual's designee and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the Commission in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that the denial may be appealed under § 3006.203, and a description of the requirements; and

(5) A statement notifying the requester of the assistance available from the Commission's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) If the Commission identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the Commission must confer with the Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion.

(2) Upon invoking an exclusion, the Commission must maintain an

administrative record of the process of invocation and approval of exclusion by OIP.

**§ 3006.203 Appeals.**

(a) *Discretionary review.* The Commission (on its own initiative) may review any decision of the Chief FOIA Officer or the individual's designee within 90 calendar days.

(b) *Requirements for making an appeal.* A requester may appeal an adverse decision on their FOIA request rendered by the Commission by submitting a hard copy to the Commission's office (901 New York Avenue NW, Suite 200, Washington, DC 20268–0001) or by emailing *FOIA@prc.gov.* The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the Commission's response. To facilitate handling, the requester must mark both the appeal letter and envelope or the subject line of the electronic transmission ''Freedom of Information Act Appeal.'' The appeal must include, as applicable:

(1) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(2) The FOIA tracking number assigned to the request;

(3) A description of the action (or failure to act) which is being challenged;

(4) If challenging specific redactions made to responsive records, a statement identifying the specific redactions being challenged;

(5) A statement of the relief sought; and

(6) A statement of the reasons why the requester believes the action or failure to act is erroneous.

(c) *Adjudication of appeals.* (1) The decision of the Commission constitutes the final decision on the issue being appealed. The Commission will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 days (excluding Saturdays, Sundays, and legal holidays) from the time of the receipt by the Commission. The 20-business day response period may be extended by the Commission for a period not to exceed an additional 10 business days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the ''unusual circumstances'', as defined in 5 U.S.C. 552(a)(6)(B)(iii). The aggregate number of additional business days used, however, may not exceed 10 business days.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Commission must take appropriate action to ensure compliance with applicable classification rules.

(d) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds the adverse determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the adverse determination is remanded or modified on appeal, the requester will be notified in writing and the Chief FOIA Officer or the individual's designee will further process the request in accordance with that appellate decision and respond directly to the requester. If not prohibited by or under law, the Commission may direct the disclosure of a record even though its disclosure is not required by law or regulation.

(e) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Commission agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(f) *When an appeal is required.* Before seeking judicial review of an adverse determination rendered by the Commission on a FOIA request, a requester generally must first submit a timely administrative appeal.

**§ 3006.204 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.**

(a) *Coverage.* FOIA applies to all Commission records and provides the public with access to government records.

(b) *Requesting records subject to the Privacy Act.* A request by an individual for the individual's own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3005 of this chapter. However, if there is any record that the Commission need not release under the Privacy Act, the Commission will also consider the request under FOIA, and will release the record if FOIA requires it.

(c) *Requesting another individual's record.* Request for records of individuals which may not be granted under the Privacy Act shall be considered under FOIA.

(1) If the Commission makes a disclosure in response to a request and the disclosure is permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), the Commission will rely on the Privacy Act to govern the disclosure.

(2) In some circumstances, the Privacy Act may prohibit the Commission's ability to release records which may be released under FOIA.

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. Except when the Postal Service submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A), in all other instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in part 3011, subpart B of this chapter.

(1) A request made pursuant to FOIA for Postal Service records shall be referred to the Postal Service; and

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

(e) *Requesting a record submitted by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records submitted by a person other than the Postal Service shall adhere to the applicable procedures of § 3006.205. If such a FOIA request is not referred to a different Federal agency pursuant to § 3006.205(b), the Commission shall consider it in light of all applicable exemptions and in accordance with the following procedures:

(i) If such materials are designated as non-public, the Commission shall follow the procedures appearing in § 3006.206(b) through (d) in determining the FOIA request; or

(ii) In all other instances, the Commission shall determine the FOIA request after notifying the person of the FOIA request and providing the person with an opportunity to respond within 7 days of the date of the notice under the following circumstances:

(A) The records sought contain confidential commercial information that may be protected from disclosure under 5 U.S.C. 552(b)(4); and

(B) The Commission determines that it may be required to disclose the records, provided that at least one of the following applies:

(*1*) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under 5 U.S.C. 552(b)(4); or

(*2*) The Commission has a reason to believe that the requested information may be protected from disclosure under 5 U.S.C. 552(b)(4), but has not yet determined whether the information is protected from disclosure.

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

**§ 3006.205 Consultations, referrals, and coordinations.**

(a) *Consultations.* If records originated with the Commission but contain within them information of significance to another Federal agency or office, the Commission will typically consult with that other entity prior to making a release determination.

(b) *Referrals.* In addition to referring all requests made pursuant to FOIA for Postal Service records to the Postal Service as specified by § 3006.204(d)(1), if the Commission believes that a different Federal agency is best able to determine whether to disclose the record, the Commission will typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever the Commission refers any part of the responsibility for responding to a request to another agency, the Commission will notify the requester of the referral, including the name of the agency and that agency's FOIA contact information.

(c) *Coordinations.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Commission locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Commission will coordinate with the originating agency to seek its views on disclosure of the record. The Commission then will notify the requester of the release determination for the record that is the subject of the coordination.

(d) *Classified information.* On receipt of any request involving classified information, the Commission will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the Commission must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Commission must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Commission will be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* The Commission may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

**§ 3006.206 Submission of non-public materials by a person other than the Postal Service.**

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in part 3011, subpart B of this chapter, except when the submitter submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

(b) *Notice of request.* Except as provided in § 3006.204(d), if a FOIA request seeks materials designated as non-public materials, the Commission will provide the submitter with notice of the request. The Commission may also provide notice when it has reason to believe that materials submitted by a person other than the Postal Service are possibly exempt from disclosure and may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for non-public treatment pursuant to § 3011.201 of this chapter, to the disclosure of the information.

(d) *Notice of decision.* If, after considering the submitter's objections to disclosure the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before 3 days after publication of the Commission's decision.

## Subpart C—Fees for Freedom of Information Act Requests

**§ 3006.300 Definitions applicable to this subpart.**

(a) *Commercial use* means a request from or on behalf of a person seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(b) *Direct costs* means the expenditures the Commission incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee(s) performing work (the basic pay rate of such employee(s) plus 16 percent to cover benefits).

(c) *Duplication* means copying the documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(e) *Noncommercial scientific institution* means an institution, not operated on a commercial basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(f) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase or by subscription or by free distribution to the general public. These examples are not all inclusive and may include alternate media to disseminate news. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity (*e.g.,* by a publication contract or prior publication record), whether or not the journalist is actually employed by the entity.

(g) *Review* means examining documents located in response to a request to determine whether any portion is exempt from disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(h) *Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

### § 3006.301 Request category.

(a) *Fees.* The level of fee charged depends on the request category.

(1) *Commercial use.* A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(2) *Educational and noncommercial scientific institutions.* A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(3) *News media.* A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(4) *Other requesters.* A request from any other person will be charged the full direct cost of searching for, reviewing, and duplicating records responsive to the request, except that the first 100 pages of duplication and the first 2 hours of search/review will be furnished without charge.

(b) *Privacy Act.* A request by an individual for the individual's own records in a system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3005 of this chapter.

### § 3006.302 General provisions.

(a) The Commission may charge search fees even if no records are found or if the records found are exempt from disclosure.

(b) Except in the case of commercial use requesters, the first 100 pages of duplication and the first 2 hours of search time are provided without charge.

(1) A page for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy.

(2) Search time for these purposes refers to manual searching; if the search is performed by computer, the 2 hours provided without charge will be equal to 2 hours' salary of the person performing the search.

(c) No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for 2 hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(d) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3006.202 and 3006.203, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3006.201(d), and the Commission completes its response within the extension of time provided under that section; or

(2) The Commission extends the time limit for its response due to unusual circumstances and more than 5,000 pages are necessary to respond to the request and the Commission has discussed with the requester how they could effectively limit the scope of the request or made at least three good faith attempts to do so; or

(3) A court has determined that exceptional circumstances exist and excused the Commission from responding by court order.

(f) The Commission may, however, charge fees for review, and in some cases duplication, for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, so long as the partial grant is made within the applicable time limits.

### § 3006.303 Fee schedule.

(a) Fees will be calculated as follows:

(1) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(2) *Computer search.* At the direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request runs and employee salary apportionable to the search.

(3) *Review (commercial use).* At the salary rate (basic pay plus 16 percent) of

the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(4) *Duplication.* At 10 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer the direct cost of production, including employee time, will be charged.

(5) *Additional services.* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actually incurred cost.

(b) In addition to the fee waiver provisions of § 3006.302(d), fees may be waived at the discretion of the Commission.

**§ 3006.304 Procedure for assessing and collecting fees.**

(a) Advance payment may be required if the requester failed to pay previous bills in a timely fashion or when the fees are likely to exceed $250.

(1) Where the requester has previously failed to pay within 30 days of the billing date, the Commission may require the requester to pay an advance payment of the estimated fee together with either the past due fees (plus applicable interest) or proof that the past fees were paid.

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3006.201) begin only after such payment has been received.

(b) Interest at the rate published by the Secretary of the Treasury as prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

By the Commission.

**Jennie L. Jbara,**

*Primary Certifying Official.*

[FR Doc. 2024–17498 Filed 8–8–24; 8:45 am]

**BILLING CODE 7710–FW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

**[EPA–R08–OAR–2024–0194; FRL–11993–01–R8]**

## Announcement of the Delegation of Partial Administrative Authority for the Southern Ute Indian Reservation to the Southern Ute Indian Tribe for Implementation of the Clean Air Act Federal Minor New Source Review Program in Indian Country and the Indian Country Minor Source Oil and Gas Federal Implementation Plan

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

**ACTION:** Final rule; notice of delegation of authority; technical amendment.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking action to announce that on June 11, 2024, EPA Region 8 and the Southern Ute Indian Tribe (SUIT) entered into an Agreement for Delegation of Partial Administrative Authority to assist the EPA in administering the following two federal Clean Air Act (CAA) programs within the SUIT Reservation: the Federal Minor New Source Review Program in Indian country (EPA Indian country MNSR Program) and the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Oil and Natural Gas Processing Segments of the Oil and Natural Gas Sector (EPA Indian country Minor Source Oil and Gas FIP). Notice of this partial delegation is being added to the Code of Federal Regulations (CFR). The EPA is taking this action pursuant to the CAA.

**DATES:** The delegation was effective on June 11, 2024. The amendments to the CFR made by this rulemaking are effective on September 9, 2024.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2024–0194. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kyle Olson, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6002, email address: *olson.kyle@epa.gov.* Additional information may also be obtained from the SUIT by contacting Danny Powers, Southern Ute Indian Tribe Air Quality Division Head, P.O. Box 737 MS#84, Ignacio, Colorado 81137.

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

The purpose of this action is to announce, pursuant to 40 CFR 49.161 and 40 CFR 49.103, that on June 11, 2024, EPA Region 8 delegated partial administrative authority to the SUIT, limited to the area of the SUIT Reservation, to assist the EPA in administering the following two federal CAA programs: (1) the EPA Indian country MNSR Program, and (2) the EPA Indian country Minor Source Oil and Gas FIP.

### I. Authority To Delegate

Pursuant to 40 CFR 49.161, the EPA may partially delegate to a Tribe the authority to assist the EPA in administering the EPA Indian country MNSR Program. Pursuant to 40 CFR 49.103, the EPA may delegate to a Tribe the authority to assist the EPA in administering the EPA Indian country Minor Source Oil and Gas FIP. To obtain delegation, a Tribe must submit a request to the relevant EPA Regional Administrator that meets the requirements of 40 CFR 49.161(b)(1)(i) through (iv) and 40 CFR 49.103(b)(1) through (3). EPA Region 8 determined that the SUIT's request for delegation satisfied those requirements.

### II. Partial Delegation of Administrative Authority

On June 11th, 2024, EPA entered into an ''Agreement for Delegation of Partial Administrative Authority of Certain Federal Clean Air Act Indian Country Programs to the Southern Ute Indian Tribe by the United States Environmental Protection Agency.'' The Delegation Agreement provides authority for the SUIT to assist EPA in administering the following rules that are part of the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP, with the exception of enforcement of those rules. For the EPA Indian country MNSR Program: 40 CFR 49.151 (Program Overview, including serving

as the reviewing authority, receiving, processing, and issuing or denying permits); 40 CFR 49.154 (Permit application requirements); 40 CFR 49.155 (Permit requirements); 40 CFR 49.156 (General permits and permits by rule); 40 CFR 49.157 (Public participation requirements); 49.158 (Synthetic minor source permits); 40 CFR 49.159 (Final permit issuance and administrative and judicial review); 49.160 (Registration program for minor sources in Indian country); 40 CFR 49.162 (Air quality permit by rule for new or modified true minor source auto body repair and miscellaneous surface coating operations in Indian country); 40 CFR 49.163 (Air quality permit by rule for new or modified true minor source petroleum dry cleaning facilities in Indian country); and 40 CFR 49.164 (Air quality permit by rule for new or modified true minor source gasoline dispensing facilities in Indian country). For the EPA Indian country Minor Source Oil and Gas FIP: 40 CFR 49.104 (Requirements regarding threatened or endangered species and historic properties) and 40 CFR 49.105 (Requirements, including conducting inspections for compliance with the requirements of this provision).

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely informing the public of partial delegation of administrative authority to the SUIT and making a technical amendment to the CFR by adding a note announcing the partial delegation, as directed by 40 CFR 49.161 and 40 CFR 49.103. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since this action does not create any new regulatory requirements, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

## III. How can I get copies of this document and other related information?

*Docket:* EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2024–0194. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). For further information on the EPA Docket Center services and the current status, see *https://www.epa.gov/dockets.*

*Electronic access:* You may access this **Federal Register** document electronically from *https://www.federalregister.gov/documents/current.* The delegation agreement and other docket materials are available electronically in EDOCKET, EPA's electronic public docket and comment system, found at *https://www.regulations.gov.*

## IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review*

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. The PRA applies to federally-mandated collection of information directed to 10 or more people, but the information collection required under the delegation agreement applies only to the SUIT.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action merely makes a technical amendment to the CFR and gives notice of a partial delegation of administrative authority. This action does not alter regulatory requirements that apply to 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. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The SUIT voluntarily requested the partial delegation addressed in this action, and this action fulfills a requirement to publish a document announcing the partial delegation of authority to the SUIT to implement certain federal CAA programs and to identify the partial delegation in the CFR.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 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 definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it fulfills a requirement to publish a notice announcing the partial delegation of authority to the SUIT to implement certain federal CAA programs and to identify the partial delegation in the CFR. This action does not alter or create new health or safety-based federal standards.

### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards, in that it does not alter or create any new technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All*

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. The minor sources on the SUIT Reservation subject to the two CAA programs partially delegated to the SUIT were not previously under a regular compliance monitoring schedule under the CAA, potentially resulting in instances of noncompliance from uncontrolled emissions. Any uncontrolled emissions could have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns in the SUIT Reservation.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. This delegation levels the playing field, by ensuring that minor sources on the SUIT Reservation are inspected for compliance with CAA regulations similarly to those sources off the SUIT Reservation. This should reduce any noncompliance and unpermitted air pollution emissions that may exist on the SUIT Reservation, and therefore reduce any disproportionate and adverse effects associated with those emissions that could affect communities with environmental justice concerns in the SUIT Reservation.

The EPA identified and addressed environmental justice concerns by responding to the Tribe's identification of a potential gap in regulatory oversight of minor source air emissions, and the Tribe's willingness to assist the EPA in administering the two CAA minor source programs.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II. of this preamble, including the basis for that finding.

## V. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 8, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

## List of Subjects in 40 CFR Part 49

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

Dated: August 4, 2024.

**KC Becker,**

*Regional Administrator, Region 8.*

For the reasons set forth in the preamble, EPA is amending 40 CFR part 49 as follows:

## PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

## Subpart C—General Federal Implementation Plan Provisions

■ 2. Section 49.103 is amended by adding a note to the end of the section to read as follows:

**§ 49.103 Delegation of authority of administration to Indian tribes.**

* * * * *

**Note to § 49.103:**

EPA entered into an Agreement for Delegation of Partial Administrative Authority with the Southern Ute Indian Tribe on June 11, 2024 to assist the EPA in administering (1) the Federal Minor New Source Review Program in Indian country, 40 CFR part 49, subpart C, §§ 49.151 through 49.164, and (2) the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Oil and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 40 CFR part 49, subpart C, §§ 49.101 through 49.105.

■ 3. Section 49.161 is amended by adding a note to the end of the section to read as follows:

**§ 49.161 Administration and delegation of the minor NSR program in Indian country.**

* * * * *

**Note to § 49.161:**

EPA entered into an Agreement for Delegation of Partial Administrative Authority with the Southern Ute Indian Tribe on June 11, 2024 to assist the EPA in administering (1) the Federal Minor New Source Review Program in Indian country, 40 CFR part 49, subpart C, §§ 49.151 through 49.164, and (2) the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Oil and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 40 CFR part 49, subpart C, §§ 49.101 through 49.105.

[FR Doc. 2024–17625 Filed 8–8–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R02–OAR–2022–0631; FRL–10786–02–R2]**

## Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; New Jersey; 2015 Ozone Infrastructure

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is partially approving and partially disapproving certain elements of a State Implementation Plan (SIP) submission from New Jersey regarding the infrastructure requirements of the Clean Air Act (CAA) for the 2015 8-hour Ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA. Except as noted, this SIP revision satisfies the infrastructure requirements of the CAA

for the 2015 ozone NAAQS. The disapproval portion of this action does not begin a new Federal Implementation Plan (FIP) clock, because the FIPs are already in place. EPA proposed to approve this action on Friday, April 12, 2024 and received no adverse comments.

**DATES:** This final rule is effective on September 9, 2024.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2022–0631. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ysabel Banon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3382, or by email at *banon.ysabel@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. What is the background for this action?

Under sections 110(a)(1) and (2) of the Clean Air Act (CAA), each State is required to submit a SIP that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS or standard. CAA sections 110(a)(1) and (2) require each State to make a new SIP submission within three years after the EPA promulgates a new or revised NAAQS for approval into the existing federally approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS.

On April 12, 2024 (89 FR 25841), the EPA proposed to approve most elements of a submission from the New Jersey Department of Environmental Protection (NJDEP) submitted on May 13, 2019, as fully meeting the infrastructure requirements for the 2015 8-hour ozone NAAQS (89 FR 25841) for the following section 110(a)(2) elements and sub-elements: (A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M) of the CAA. EPA is proposing to disapprove the portion of the submission that relates to prevention of significant deterioration (PSD). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here.

## II. What comments were received in response to the EPA's proposed action?

In response to the EPA's April 12, 2024, proposed rulemaking on New Jersey's SIP revisions, the EPA received three comments during the 30-day public comment period that ended on May 13, 2024. The specific comments may be viewed under Docket ID Number EPA–R02–OAR–2022–0631 on the *https://regulations.gov* website.

*Comments 1 & 2*

Two public comments were submitted that support the EPA's action.

*Response 1 & 2*

The EPA acknowledges the commenters' support of the EPA's proposed rule.

*Comment 3*

A third comment asked about the establishment of infrastructure requirements for cannabis dispensaries. Specifically, the commenter believes that these requirements should be imposed on dispensaries and their owners rather than on taxpayers.

*Response 3*

After reviewing the comment, EPA has determined that the comment is outside the scope of our proposed action or fails to identify any material issue necessitating a response. The comment does not raise issues germane or relevant to the EPA's proposed action. The comment lacks the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110. Moreover, the comment does not address a specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed, and therefore is not adverse to this action. For this reason, the EPA will not provide a specific response to the comment.

## III. What action is the EPA taking?

The EPA is approving NJDEP's SIP revision submitted on May 13, 2019, for the 2015 ozone NAAQS for the following section 110(a)(2) elements and sub-elements: (A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

New Jersey has elected to comply with the Federal PSD requirements by accepting delegation of the Federal rules and has been successfully implementing this program for many years. However, EPA does not recognize a delegated PSD program as satisfying the Infrastructure SIP requirements. Therefore, as discussed in the proposed approval, 89 FR 2584, EPA is disapproving New Jersey's submittal for the 2015 8-hour ozone NAAQS section 110(a)(2) sub-elements: (C), prong 3 of (D)(i)(II), and (J), as they relate to the State's lack of a State adopted PSD program, as well as (D)(ii), which relates to interstate and international pollution abatement and PSD. However, these disapprovals will not trigger any sanctions or additional Federal Implementation Plan obligation since a PSD Federal Implementation Plan is already in place.

## IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/lawsregulations/laws-and-executive-orders.*

*A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review*

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by State law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by State law.

*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 does not impose additional requirements beyond those imposed by State law. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction and will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by State law.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review State choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action is approving in part, and disapproving in part a State implementation plan as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

The State evaluated environmental justice considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA reviewed and considered the air agency's evaluation of environmental justice considerations of this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, 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).

*L. Petitions for Judicial Review*

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 October 8, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Lisa Garcia,**

*Regional Administrador, Region 2.*

For the reasons set forth in the preamble, EPA is amending 40 CFR part 52 as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

### Subpart FF—New Jersey

■ 2. In § 52.1570 paragraph (e), the table is amended by adding the entry for ''NJ Infrastructure SIP for the 2015 ozone NAAQS'' at the end of the table to read as follows:

**§ 52.1570 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| SIP element | Applicable geographic or nonattainment area | New Jersey submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * * * |
| NJ Infrastructure SIP for the 2015 ozone NAAQS. | Statewide ..... | 05/13/2019 ..... | 8/9/2024, [insert **Federal Register** citation]. | • Full approval.<br>• This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M). |

■ 3. Section 52.1586 is amended by revising paragraphs (c)(1) and (2) to read as follows:

**§ 52.1586 Section 110(a)(2) Infrastructure requirements.**

* * * * *

(c) * * *

(1) *Approval.* New Jersey SIP revision submitted on May 13, 2019 to address CAA infrastructure requirements of 110(a)(2) for the 2015 8-hour ozone NAAQS is approved for (A), (B), (C)(enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G),(H), (J)(consultation and public notification only),(K), (L), and (M).

(2) *Disapproval.* New Jersey SIP revision submitted on May 13, 2019, to address the CAA infrastructure requirements of 110(a)(2) for the 2015 8-hour ozone NAAQS, is disapproved for (C)(Preconstruction PSD program only), (D)(i)(I) (prongs 1 and 2), (D)(i)(II) prong 3, (D)(ii), and (J)(PSD program only). PSD program requirements are being addressed by § 52.1603 which has been delegated to New Jersey to implement.

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[FR Doc. 2024–17335 Filed 8–8–24; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 5, 25, and 97

**[IB Docket Nos. 18–313, 22–271; FCC 20–54, FCC 22–74, FCC 24–6; FR ID 235363]**

## Space Innovation; Mitigation of Orbital Debris in the New Space Age

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the new information collection as a result of changes adopted in a Report and Order titled ''Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Report and Order*) and a Second Report and Order titled ''Space Innovation; Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Second Report and Order*), and affirmed and further clarified in an Order on Reconsideration titled ''Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Reconsideration Order*). This document announces the effective date of rules adopted in those orders that contained new or modified information collection requirements that required review and approval by OMB and that had not already been announced as effective. This document also summarizes and makes effective the rules adopted in the *Orbital Debris Second Report and Order,* which required space stations ending their mission in, or passing through, the low-Earth orbit region below 2000 km altitude and planning disposal through uncontrolled atmospheric re-entry to complete disposal as soon as practicable following end of mission, and no later than five years after the end of the mission.

**DATES:**

*Effective date:* The amendments to 47 CFR 25.114(d)(14), 25.121(f), 25.122(c) and (d), and 25.123(b) published at 85 FR 52422 on August 25, 2020, and the amendments to 47 CFR 5.64(b)(7)(iv)(A), 25.114(d)(14)(vii)(D)(*1*), 25.283(b), (d), and (e), and 97.207(g)(1)(vii)(D)(*1*) in this final rule are effective September 9, 2024.

*Compliance date:* Compliance with the amendments to 47 CFR 5.64(b)(7)(iv)(A), 25.114(d)(14)(vii)(D)(*1*), and 97.207(g)(1)(vii)(D)(*1*) is not required until September 29, 2024.

**FOR FURTHER INFORMATION CONTACT:** Scott Mackoul, Space Bureau, at (202) 418–7498 or *Scott.Mackoul@fcc.gov*. For information regarding the Paperwork Reduction Act (PRA) information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This document announces that, on July 2, 2024, OMB approved the information collection requirements in 47 CFR 25.114(d)(14), 25.121(f), 25.122(c) and (d), and 25.123(b). These rules were modified in the *Orbital Debris Report and Order* (FCC 20–54, IB Docket No. 18–313) (85 FR 52422, August 25, 2020) and the *Orbital Debris Second Report and Order* (FCC 22–74, IB Docket Nos. 18–313 and 22–271), and affirmed and clarified in the *Orbital Debris Reconsideration Order* (FCC 24–6, IB Docket No. 18–313) (89 FR 13276, February 22, 2024). This document also provides a summary of the *Orbital Debris Second Report and Order,* the full text of which is available at *https://www.fcc.gov/document/fcc-adopts-new-5-year-rule-deorbiting-satellites-0*.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, *Cathy.Williams@fcc.gov,* regarding OMB Control Number 3060–1327. Please include the applicable OMB Control Number(s) in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov*.

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

*Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in the *Orbital Debris*

*Second Report and Order*. The FRFA is summarized below and provided in appendix B to the *Orbital Debris Second Report and Order,* the full text of which is available at *https://www.fcc.gov/document/fcc-adopts-new-5-year-rule-deorbiting-satellites-0*.

*Congressional Review Act.* The Commission sent a copy of the *Orbital Debris Second Report and Order* in a report sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

**Synopsis**

**I. OMB Control Number 3060–1327**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received final OMB approval on July 2, 2024, for the information collection requirements contained in the *Orbital Debris Report and Order,* the *Orbital Debris Second Report and Order,* and the *Orbital Debris Reconsideration Order*. This document announces the effective date of those rules. The other part 25 rule amendments adopted in the *Orbital Debris Report and Order* that did not require OMB approval became effective as identified in its **Federal Register** publication.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirements in these rules is 3060–1327.

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

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

*OMB Control Number:* 3060–1327.

*OMB Approval Date:* July 2, 2024.

*OMB Expiration Date:* July 31, 2027.

*Title:* Part 25 Rules Addressing the Mitigation of Orbital Debris.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents and Responses:* 28 respondents and 28 responses.

*Estimated Time per Response:* 4–15 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303, 307, 308, 309, and 310.

*Total Annual Burden:* 341 hours.

*Annual Cost Burden:* $53,900.

*Needs and Uses:* Notification of orbital debris mitigation plans as part of requests for Commission authorization will help preserve the United States' continued affordable access to space and the continued provision of experimental and amateur services. Notification of debris mitigation plans will allow the Commission and potentially affected third parties to evaluate operators' debris mitigation plans prior to the issuance of an FCC approval for communications activities. Notification may also aid in the wider dissemination of information concerning debris mitigation techniques and may provide a baseline of information that will aid in analyzing and refining those techniques. Without notification of orbital debris mitigation plans as part of applications for FCC authority, the Commission would be denied any opportunity to ascertain whether satellite operators are in fact considering and adopting reasonable debris mitigation practices, which could result in an increase in orbital debris and a decrease in the utility of space for communications and other uses.

**II. Summary of the Orbital Debris Second Report and Order**

*A. Introduction*

In the *Orbital Debris Second Report and Order,* the Commission adopts a first-ever rule requiring non-geostationary satellite operators to deorbit their satellites after the end of their operations to minimize the risk of collisions that would create debris. The Commission's action formalizes a longstanding orbital debris guideline, updates it to better reflect the realities of today's space activities, and uniformly applies it to space stations in low-Earth orbit (LEO).

Strong compliance with post-mission disposal guidelines is an effective tool that can help stabilize the orbital debris environment. Before the Commission adopted the *Orbital Debris Second Report and Order,* it was recommended that operators with objects in LEO ensure that their spacecraft are either removed from orbit immediately post-mission or left in an orbit that will decay and re-enter Earth's atmosphere within no more than 25 years to mitigate the creation of more orbital debris. However, the Commission believes it is no longer sustainable to leave satellites in LEO to deorbit over decades. Accordingly, as part of its continued efforts to mitigate the generation of orbital debris, the Commission shortens the 25-year benchmark for post-mission disposal of space stations in LEO to five years. The regulations the Commission adopts are designed to ensure that its actions concerning radio communications, including licensing U.S. spacecraft and granting access to the U.S. market for non-U.S. spacecraft, promote the sustainable use of outer space without creating undue regulatory obstacles to new satellite ventures. The action by the Commission furthers the public interest in preserving viable options for future satellites and systems and the many services that those systems provide to the public.

*B. Background*

There are multiple existing guidelines concerning orbital debris, none of which are legally binding. One of these is the longstanding guideline for deorbiting satellites within 25 years. It has been adopted by the space agencies of other nations, the Inter-Agency Space Debris Coordination Committee (IADC), and incorporated into a National Aeronautics and Space Administration (NASA) Standard and the U.S. Government Orbital Debris Mitigation Standard Practices (ODMSP). Both the NASA Standard and ODMSP specify a maximum 25-year post-mission orbital lifetime, with the 2019 revised ODMSP stating that for spacecraft disposed of by atmospheric reentry, the spacecraft shall be ''left in an orbit in which, using conservative projections for solar activity, atmospheric drag will limit the lifetime to as short as practicable but no more than 25 years.''

The Commission adopted comprehensive rules on orbital debris in 2004, pursuant to its authority to determine whether the public interest would be served by the authorization of satellite communications systems. The 2004 rules generally consisted of disclosure requirements that yielded information critical to the Commission's overall determination of whether the public interest would be served by approving the proposed operations. Applicants were required to include a statement that they have assessed and limited the amount of debris released in a planned manner during normal operations, and have assessed and limited the probability of the satellite becoming a source of debris by collisions with small debris. Applicants also were required to state that they have assessed and limited the probability of accidental explosions during and after completion of mission

operations. The rules also required a statement that the satellite applicant has assessed and limited the probability of the satellite becoming a source of debris by collisions with large debris or other operational satellites. Finally, applicants were required to include a statement detailing the post-mission disposal plans for the satellite as it enters its end-of-life stage, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers.

Although not specifically codified in the Commission's 2004 rules, the Commission has consistently applied the 25-year benchmark in licensing decisions for non-geostationary orbit (NGSO) systems. On November 15, 2018, recognizing that there had been a variety of technical and policy updates to orbital debris mitigation standards, policy, and guidance documents since 2004, the Commission adopted a notice of proposed rulemaking (84 FR 4742, February 19, 2019) seeking comment on a comprehensive update to its orbital debris rules to better reflect the significant increase in satellites and types of operations in orbit. As part of that effort, the Commission sought comment on the 25-year benchmark and whether it was still a relevant guideline or whether a shorter deorbit deadline was appropriate for new systems.

In 2020, the Commission comprehensively updating the 2004 rules when it adopted the *Orbital Debris Report and Order*. At the same time, the Commission adopted a further notice of proposed rulemaking (*Orbital Debris FNPRM*) (85 FR 52455, August 25, 2020) seeking comment on the probability of accidental explosions, collision risk for multi-satellite systems, maneuverability requirements, casualty risk, indemnification, and performance bonds tied to post-mission disposal. In the *Orbital Debris Report and Order,* the Commission maintained its existing rule requiring a statement detailing post-mission disposal plans for the space station at end of life and adopted a new requirement that applicants planning disposal by atmospheric re-entry specify the planned time period for post-mission disposal as part of the description of disposal plans for the space station. In the *Orbital Debris FNPRM,* the Commission sought further comment on whether the 25-year benchmark for completion of NGSO post-mission disposal by atmospheric re-entry remains a relevant benchmark as applied to commercial or other non-Federal systems.

Specifically, in the *Orbital Debris FNPRM,* the Commission noted broad support in the record for shortening the 25-year benchmark and sought comment on alternative post-mission disposal lifetimes. The Commission sought comment on how to apply the ODMSP guidance that the post-mission lifetime be ''as short as practicable but no more than 25 years,'' noting that incorporating only the 25-year metric into its rules may not incentivize commercial and other non-Federal operators to limit the post-mission orbital lifetime to ''as short as practicable.'' The Commission further asked whether a maximum 25-year limit on post-mission orbital lifetime would provide any incentive to operators to shorten the post-mission time in orbit or whether there is another preferable approach, such as a requirement for spacecraft to utilize propulsion, and if there were any potential scenarios in which spacecraft with maneuverability would remain in orbit for significant amounts of time following the conclusion of the mission. The Commission also asked for input on whether these scenarios would be sufficiently unlikely to warrant a case-by-case approach or if a bright-line rule would be more appropriate in these circumstances. The Commission presented a number of potential frameworks, including a safe-harbor provision, wherein operators would be encouraged to dispose of their spacecraft ''as soon as practicable'' but no more than five years following the end of the mission, and allow applicants to provide additional demonstrations in support of longer post-mission lifetimes for the Commission to consider. The Commission sought comment on this proposal and asked whether five years would be sufficient for such a safe harbor provision or if there were any alternative timeframes that should be considered.

*C. Discussion*

1. Promoting Space Safety Through Post-Mission Disposal Requirements

In response to the *Orbital Debris FNPRM,* the Commission received additional support in the record for reducing the 25-year benchmark, with many commenters echoing prior concerns that the 25-year benchmark is outdated and may no longer serve the public interest. Commenters noted that, while the 25-year benchmark may be an effective standard to limit the rate of debris growth in LEO, it fails to account for the growth of the commercial space industry and does not consider the disruption to satellite operations due to the increased need for collision avoidance maneuvers. Many commenters assert that shortening the 25-year benchmark would not only address the threat of long-term debris generation, but would also address issues like the mounting number of conjunctions, collision avoidance maneuvers, fuel costs and other operational expenditures, time concerns, and other considerations faced by operators as LEO becomes more populated. The Consortium for Execution of Rendezvous and Servicing Operations (CONFERS) also contends that the increased need for collision avoidance maneuvers due to the congestion in LEO impacts the general public as well because it increases the likelihood of service disruptions.

Some commenters argue that the 25-year benchmark remains relevant to sufficiently mitigate orbital debris generation, asserting that many organizations have studied and confirmed the effectiveness of this standard in reducing the rate of orbital debris generation in LEO. Most commenters who supported retaining that benchmark cite a report published by NASA's Orbital Debris Program Office, which stated that reducing the 25-year rule to a five-year rule would lead to a 10% debris reduction over 200 years, which NASA described as ''not a statistically significant benefit.'' However, other commenters note that the NASA analysis does not fully account for the risks of leaving defunct satellites in lower orbits for periods up to 25 years. According to one commenter, ''the 200-year simulation used in this assertion aggregates cataloged debris from all of LEO'' and ''ignores debris generated below []800 km because debris at these altitudes washes out in decades.'' That commenter further asserts that events below 850 km are not considered in NASA's analysis because they do not accumulate over the 200-year period, but these events may still significantly increase lethal, non-trackable collision risk and collision avoidance burdens for commercially-relevant altitudes. ''Lethal non-trackable'' objects, or LNTs, are space objects that are 10 cm or smaller that are too small to be cataloged but still possess enough kinetic energy to disable a satellite upon impact. LNTs in LEO are primarily caused by the several hundred explosions of satellites and spent launch vehicle upper stages, but a few collision events have contributed to the LNT population as well LNTs account for 97–98% of mission-terminating risk in LEO and cannot be mitigated by space traffic management (STM) or space situational awareness (SSA) alone, even as SSA and STM capabilities continue to improve and

these space objects become increasingly visible to operators.

This commenter also argues that the 25-year benchmark encourages new satellites to be deployed below 650 km as such an altitude is ''naturally compliant'' with the 25-year benchmark and encourages massive, nonfunctioning hardware to be moved below 650 km from missions above 650 km, resting on the assumption that 25 years is not a long time. However, for typical LEO satellites, 25 years represents five generations of spacecraft, performing 135,000 uncontrolled orbits, and transiting 800 active spacecraft and more as the population of LEO satellites grows. As Astroscale has observed, operators formulating designs and plans to adhere to the maximum 25-year requirement has ultimately contributed to the increased congestion around and below the 600–650 km altitude range and the associated increase in conjunctions and risk in LEO operations.

The Commission finds these arguments persuasive and agrees with commenters that the threat of long-term debris generation is not the only relevant risk factor to consider in weighing shortening the benchmark, and any analysis concerning post-mission disposal lifetimes should account for the effects on the orbital environment raised by the commenters, such as the collision risks posed by LNT generation and increased collision avoidance burdens on operators. Accordingly, the Commission concludes that shortening the 25-year benchmark for all missions is warranted and in the public interest.

In the *Orbital Debris FNPRM,* the Commission considered whether specifying a post-mission orbital lifetime requirement would be necessary in light of potentially adopting a maneuverability requirement for spacecraft operating above 400 km. Although the *Orbital Debris Second Report and Order* does not adopt rules relating to maneuverability, given the risks associated with the increasing congestion in the orbital environment and the strong support in the record for shortening permissible post-mission orbital lifetime, the Commission believes it is appropriate to adopt a rule reducing the post-mission disposal orbital lifetime while it continues to assess potential maneuverability requirements, additional measures with respect to large constellations, and other possible approaches to mitigation of debris risks.

Accordingly, the Commission adopts a rule requiring space stations ending their mission in, or passing through, the LEO region below 2,000 km altitude and planning disposal through uncontrolled atmospheric re-entry to complete disposal as soon as practicable following end of mission, and no later than five years after the end of the mission. For purposes of administering this rule, ''end of mission'' will be defined to be the time at which the individual spacecraft is no longer capable of conducting collision avoidance maneuvers. For spacecraft without collision avoidance capabilities, ''end of mission'' will be defined as the point in which the individual spacecraft has completed its primary mission, *e.g.,* communications services, handling customer message traffic, remote-sensing, etc. Consistent with other requirements in part 25 of Commission's rules, this requirement will also apply to entities seeking to access the U.S. market using a non-U.S.-licensed satellite or satellite system. This requirement will also apply to small satellites licensed under the streamlined processes outlined in 47 CFR 25.122. Additionally, the requirements adopted in this final rule will also apply to any entities applying for satellites licensed under part 5 of the Commission's rules, as well as amateur satellites authorized under part 97.

While the record indicates support for shortening the 25-year benchmark to five years in general, many commenters express that five years may still be too long for large constellations, given the greater risks for generating orbital debris that these systems may pose over extended periods of time. Large constellations could impose specific risks to the orbital environment that may be mitigated by a shorter post-mission orbital lifetime, among other factors; therefore the Commission will continue to assess whether a shorter post-mission disposal requirement, such as one year, would be appropriate for large constellations in light of the potential risks to the orbital environment posed by those systems. In the interim, the Commission will continue evaluating large constellations consistent with the revised rules, including conditioning authorizations as appropriate to address collision risk and post-mission disposal matters on a case-by-case basis.

Commenters also indicated that any updated rule should be performance-based as to how the requirements are met in order to maintain flexibility and better accommodate different technologies and mission profiles. In this spirit, the Commission declines to prescribe a specific method of post-mission disposal at this time. In adopting this five-year benchmark for LEO missions, the Commission also acknowledges the possibility that satellite failures may give rise to non-compliance. The Commission in the *Orbital Debris Second Report and Order* declines to provide a blanket exception for satellite failures that was suggested by some commenters, as appropriate with the spirit of a performance-based objective. However, in the event of a failure or anomaly giving rise to non-compliance, parties are permitted to seek waivers of such requirements for good cause shown under the Commission's existing rules. In evaluating such a request for the waiver, the Commission will take into account all the facts and circumstances surrounding any potential satellite failure or anomaly that has occurred, including the assessed cause of the failure or anomaly, matters beyond the operator's control, and any steps taken by the operator to avoid non-compliance. Such waivers will not be liberally granted.

2. Grandfathering Existing Operations

The Commission is aware that adopting a rule shortening the 25-year benchmark may impose a burden and increase costs for existing operators. In light of the potential financial and mission-planning impact of this new requirement, a transition period sufficient to permit operators to adjust their mission timelines and operations is in the public interest and supported by the record.

Accordingly, satellites already in orbit are exempt from the new requirement. For satellites already authorized by the Commission that have not yet been launched, the Commission will provide a grandfathering period of two years, beginning on September 29, 2022, in order to allow operators to incorporate the five-year post-mission disposal requirement into their mission objectives. The Commission believes a two-year period strikes a reasonable balance that will advance the goals of the reduced post-mission orbital lifetime while providing time for any necessary adjustments by operators in order to continue existing services and adjust planned operations. New licensees and existing applicants with authorized satellites to be launched after September 29, 2024, must comply with the five-year post-mission disposal requirement, though in individual cases the Commission will consider waivers requesting additional time for systems with existing authorizations that extend beyond the two-year period. For pending applications, the Commission will continue to process them consistent with the current rules. For any

applications granted involving space stations that would exceed the five-year limit, those space stations would need to be launched prior to September 30, 2024.

In some cases, already-authorized systems may require approval of a modification to update their license or grant to reflect alterations in system characteristics in order to achieve compliance. Accordingly, any licensee or grantee with a license or market access grant requiring modification should file an application for a modification with respect to any satellites to be launched after September 29, 2024, including any replacement satellites, no later than March 29, 2024, to provide the Commission with sufficient time to process the modification requests before the conclusion of the two-year grandfathering period.

3. Additional Flexibility for Academic and Research Missions

The Commission observes that there may be circumstances that warrant a waiver of the five-year post-mission disposal requirement. The Commission acknowledges the public interest benefits of scientific research missions and recognize the possibility that there may be specific scientific objectives that are not achievable at lower altitudes that would comply with the five-year post-mission disposal requirement. While it does not adopt a blanket waiver for these types of missions, the Commission will consider such missions as a special category for purposes of analyzing waiver requests.

In determining whether research and scientific missions warrant a waiver of the five-year post-mission disposal requirement, some factors that the Commission may consider include the level of government funding, coordination, and oversight of the mission, the need to conduct research at altitudes in which a five-year post-mission disposal requirement may be unduly burdensome, the predictability of mission trajectory and associated burdens on other operators, unique spacecraft characteristics, and whether the mission involves any unusual risks to the space environment.

Applicants requesting waiver of the five-year post-mission disposal requirement should consider submitting certain information to facilitate the Commission's analysis as to whether a waiver is warranted, including a statement describing the unique mission and research objectives that could not be achieved at a lower altitude, as well as a document of anticipated findings and a description of any plans for publishing or producing a report of such findings. Operators may provide a survey of outstanding research and missions indicating that the proposed operations would satisfy a unique area of research, including any findings and actions of other government agencies and educational institutions that support the importance of the mission. The Commission notes that a general statement that the mission is for the general education and practical experience of future space-oriented professionals, while laudable, is in itself unlikely to make a mission sufficiently unique to warrant a waiver. If the only purpose of the mission is to provide students with hands-on participation in space activities, this may not justify consideration for a waiver of the post-mission disposal rule adopted in the *Orbital Debris Second Report and Order*. However, operators seeking a waiver of the five-year post-mission disposal rule may submit, for the Commission's consideration, a statement demonstrating that the educational purposes of the mission would not be served should students participate in a mission with a post-mission disposal lifetime of fewer than five years. In addition, there should be a direct nexus between the orbital altitude at which the research is to be conducted and the need for a waiver, unrelated to whether there is a particular ''rideshare'' launch available to the altitude range sought.

The Commission is also sensitive to the needs of government-supported missions. Operators seeking a waiver consistent with this guidance should also consider providing a statement identifying specific facts demonstrating that their proposed mission supports and serves a government purpose. Demonstrations should include, if applicable, participation in government research programs, the level of government oversight, how any government funds were used for the development and operation of the proposed mission, as well as government support for launch operations, including ridesharing agreements through NASA. The Commission will consider statements demonstrating that the proposed mission is at least 50% funded by the U.S. Government, excluding funding for launch operations, as government-supported, in order to facilitate equitable analysis of this demonstration.

4. Costs-Benefits

The rules adopted in the *Orbital Debris Second Report and Order* may impose additional costs on the industry, including in some instances fuel and other costs for more rapid decommissioning needed to accommodate the shortened post-mission disposal timeframe, and opportunity costs associated with certain entities altering their mission plans to comply with the rule. However, these rules are intended to incrementally slow the growth of orbital debris, particularly in LEO, with its increasing numbers of satellites. While it is difficult to quantify the economic value of the orbital debris mitigation measures adopted in the *Orbital Debris Second Report and Order,* the Commission finds that the benefits of the rules in terms of reducing the probability of costly collisions and commensurate reduction in service outages, as well as reducing the frequency of collision avoidance maneuvers, outweigh any costs resulting from the rules.

*D. Final Regulatory Flexibility Analysis*

As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Orbital Debris FNPRM*. The Commission sought written public comment on the proposals in the *Orbital Debris FNPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. The FRFA in the *Orbital Debris Second Report and Order* conforms to the RFA.

Need for, and Objectives of, the Final Rule

The *Orbital Debris Second Report and Order* requires space stations ending their mission in or passing through the low-Earth orbit region below 2000 km altitude and planning disposal through uncontrolled atmospheric re-entry following the completion of the mission, to complete as soon as practicable following end of mission, and no later than five years after the end of the mission. Adoption of this requirement is a significant step in updating the Commission's rules on orbital debris mitigation. Updates to the Commission's rules on orbital debris mitigation are informed by the Commission's experience gained in the licensing process and address updates in mitigation guidelines and practices as well as market developments. Adoption of this requirement will ensure that applicants for a Commission space station license or authorization, or grant of market access, will not contribute to orbital congestion longer than necessary. This action will help ensure that Commission decisions are consistent with the public interest in

space remaining viable for future satellites and systems and the many services those systems provide to the public.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed that specifically addressed the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

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 rules adopted herein. 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. The Commission describes and estimates the number of small entities that may be affected by the adoption of the final rules.

*Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

*All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The *Orbital Debris Second Report and Order* amends rules that are applicable to space station operators requesting a license or authorization from the Commission, or entities requesting that the Commission grant a request for U.S. market access. Specifically, the revised rules now require space stations ending their mission in or passing through the low-Earth orbit region below 2000 km altitude and planning disposal through uncontrolled atmospheric re-entry following the completion of the mission, to complete disposal as soon as practicable following end of mission, and no later than five years after the end of the mission.

Applicants requesting authorization from the Commission must already comply with existing operational requirements, including those related to orbital debris mitigation and post-mission disposal. Operators must prepare and provide a disclosure as part of their application detailing their orbital debris mitigation plan. There may be fuel and other costs for more rapid decommissioning needed to accommodate the shortened post-mission disposal timeframe and opportunity costs associated with certain entities altering their mission plans to comply with the rule. However, this requirement will slow the growth of collision avoidance maneuvers, saving fuel costs. Faster deorbiting may also foster technological progress as firms are able to implement newer socially-valuable technologies over a shortened time horizon that might not have been implemented under the 25-year guidelines. Further, launch services will likely evolve to provide initial deployments compatible with the five-year post-mission disposal benchmark, thereby avoiding or reducing impacts on ''rideshare'' customers.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 any part thereof, for such small entities.

The *Orbital Debris Second Report and Order* requires all space stations ending their mission in or passing through the low-Earth orbit region below 2000 km altitude and planning disposal through uncontrolled atmospheric re-entry following the completion of the mission, to complete disposal as soon as practicable following end of mission, and no later than five years after the end of the mission. The Commission has elected to provide a two-year

grandfathering period to provide additional time for small entities to comply with this requirement. The *Orbital Debris Second Report and Order* also codifies a post-mission disposal lifetime requirement of five years or less, thus providing a clear and objective benchmark for small entities to comply with. Additionally, the Commission has opted to adopt this new requirement as a performance-based rule, instead of prescribing specific design standards or requirements.

**List of Subjects**

*47 CFR Parts 5 and 97*

Radio, Reporting and recordkeeping requirements, Satellites.

*47 CFR Part 25*

Administrative practice and procedure, Earth stations, Satellites.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 5, 25, and 97 as follows:

## PART 5—EXPERIMENTAL RADIO SERVICE

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

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 336.

■ 2. Amend § 5.64 by revising paragraph (b)(7)(iv)(A) to read as follows:

**§ 5.64 Special provisions for satellite systems.**

* * * * *

(b) * * *

(7) * * *

(iv) * * *

(A) The statement must include a demonstration that the probability of success of the chosen disposal method will be 0.9 or greater for any individual space station. For space station systems consisting of multiple space stations, the demonstration should include additional information regarding efforts to achieve a higher probability of success, with a goal, for large systems, of a probability of success for any individual space station of 0.99 or better. For space stations under paragraph (b)(7)(ii) of this section that will be terminating operations in or passing through the low-Earth orbit region below 2000 km altitude, successful disposal is defined, for the purposes of this paragraph (b)(7)(iv)(A), as atmospheric re-entry of the spacecraft as soon as practicable, but no later than five years following completion of the mission. For space stations under paragraph (b)(7)(iii) of this section, successful disposal will be assessed on a case-by-case basis.

* * * * *

## PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Amend § 25.114 by revising paragraph (d)(14)(vii)(D)(*1*) to read as follows:

**§ 25.114 Applications for space station authorizations.**

* * * * *

(d) * * *

(14) * * *

(vii) * * *

(D) * * *

(*1*) The statement must include a demonstration that the probability of success of the chosen disposal method will be 0.9 or greater for any individual space station. For space station systems consisting of multiple space stations, the demonstration should include additional information regarding efforts to achieve a higher probability of success, with a goal, for large systems, of a probability of success for any individual space station of 0.99 or better. For space stations under paragraph (d)(14)(vii)(B) of this section ending their mission in or passing through the low-Earth orbit region below 2000 km altitude, successful disposal is defined, for the purposes of this paragraph (d)(14)(vii)(D)(*1*), as atmospheric re-entry of the spacecraft as soon as practicable, but no later than five years following completion of the mission. For all other space stations under paragraphs (d)(14)(vii)(B) and (C) of this section, successful disposal will be assessed on a case-by-case basis.

* * * * *

■ 5. Amend § 25.283 by adding headings to paragraphs (b) and (d) and adding paragraph (e) to read as follows:

**§ 25.283 End-of-life disposal.**

* * * * *

(b) *Geostationary orbit space station end of life operations.* * * *

* * * * *

(d) *Applicability of minimum perigee for geostationary orbit space stations.* * * *

(e) *Low-Earth orbit space stations.* For space stations ending their mission in or passing through the low-Earth orbit region below 2000 km altitude and planning disposal through uncontrolled atmospheric re-entry, disposal must be completed as soon as practicable following end of mission, and no later than five years after the end of the mission. For purposes of this paragraph (e), *end of mission* is defined as the time at which the individual spacecraft is no longer capable of conducting collision avoidance maneuvers. For spacecraft without collision avoidance capabilities, *end of mission* is defined as the point in which the individual spacecraft has completed its primary mission.

## PART 97—AMATEUR RADIO SERVICE

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

**Authority:** 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 7. Amend § 97.207 by revising paragraph (g)(1)(vii)(D)(*1*) to read as follows:

**§ 97.207 Space station.**

* * * * *

(g) * * *

(1) * * *

(vii) * * *

(D) * * *

(*1*) The statement must include a demonstration that the probability of success of the chosen disposal method will be 0.9 or greater for any individual space station. For space station systems consisting of multiple space stations, the demonstration should include additional information regarding efforts to achieve a higher probability of success, with a goal, for large systems, of a probability of success for any individual space station of 0.99 or better. For space stations under paragraph (g)(1)(vii)(B) of this section that will be terminating operations in or passing through the low-Earth orbit region below 2000 km altitude, successful disposal, for the purposes of this paragraph (g)(1)(vii)(D)(*1*), is defined as atmospheric re-entry of the spacecraft as soon as practicable, but no later than five years following completion of the mission. For space stations under paragraph (g)(1)(vii)(C) of this section, successful disposal will be assessed on a case-by-case basis.

* * * * *

[FR Doc. 2024–17093 Filed 8–8–24; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 8

**[PS Docket No. 23–239; FCC 24–26; FR ID 236839]**

### Cybersecurity Labeling for Internet of Things

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of compliance date.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with rules establishing a voluntary cybersecurity labeling program for wireless consumer Internet of Things, or IoT, products in the Report and Order and Further Notice of Proposed Rulemaking (*IoT Order*). This document is consistent with the *IoT Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

**DATES:** The compliance date for 47 CFR 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, and 8.222, added on July 30, 2024, at 89 FR 61242, and effective August 29, 2024, is September 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Zoe Li, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2490, or by email to *Zoe.Li@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This document announces that OMB approved the information collection requirements in §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, and 8.222 on July 30, 2024.

The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, regarding OMB Control Number 3060–1328. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 30, 2024, for the information collection requirements contained in §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, and 8.222. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

*OMB Control Number:* 3060–1328.

*OMB Approval Date:* July 30, 2024.

*OMB Expiration Date:* July 31, 2027.

*Title:* Participation Information Collection for the IoT Labeling Program.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities, not-for-profit institutions.

*Number of Respondents and Responses:* 312 respondents; 3,130 responses.

*Estimated Time per Response:* 14 hours.

*Frequency of Response:* One-time; On occasion; Recordkeeping and Annual reporting requirements.

*Obligation to Respond:* Voluntary. Statutory authority for this collection is contained in sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. 278g–3a to 278g–3e.

*Total Annual Burden:* 42,700 hours.

*Total Annual Cost:* No cost.

*Needs and Uses:* The collection will advance the public interest and safety because it is the basis for the Commission's IoT Labeling Program, which will provide consumers with an easy-to-understand and quickly recognizable FCC IoT Label that includes the U.S. government certification mark (referred to as the Cyber Trust Mark) that provides assurances regarding the baseline cybersecurity of an IoT product, together with a QR code that directs consumers to a registry with specific information about the product. This collection will help consumers make better purchasing decisions, raise consumer confidence with regard to the cybersecurity of the IoT products they buy to use in their homes and their lives, and encourage manufacturers of IoT products to develop products with security-by-design principles in mind. In addition, consumers who purchase an IoT product that bears the FCC IoT Label can be assured that their product meets the minimum cybersecurity standards of the IoT Labeling Program, which in turn will strengthen the chain of connected IoT products in their own homes and as part of a larger national IoT ecosystem. In addition, the Order estimates that the program will save consumers at least $60 million annually from reduced time spent researching cybersecurity features of potential purchases.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2024–17482 Filed 8–8–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 24–769; MB Docket No. 24–111; RM–11980; FR ID 237550]**

### Radio Broadcasting Services; Canadian, Texas

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by substituting Channel 285C1 for vacant Channel 235C1 at Canadian, Texas to accommodate the grant of the hybrid modification application for Station KPQP that modifies the station's license to specify operation on Channel 235C3 in lieu of Channel 291C3 at Panhandle, Texas. A staff engineering analysis determines that Channel 285C1 can be allotted to Canadian, Texas, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 6.1 km (3.8 miles) north of the community. The reference coordinates are 35–57–35 NL and 100–24–24 WL.

**DATES:** Effective September 19, 2024.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 24–111, adopted August 2, 2024 and released August 5, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/*. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs*. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

**Final Rules**

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

## PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. In § 73.202(b), amend the Table of FM Allotments under Texas, by revising in alphabetical order an entry for ''Canadian'' to read as follows:

**§ 73.202 Table of Allotments.**

* * * * *

(b) *Table of FM Allotments.*

TABLE 1 TO PARAGRAPH (b)

| U.S. States | Channel No. |
|---|---|
| **Texas** | |
| * * * * * | |
| Canadian | 285C1 |
| * * * * * | |

* * * * *

[FR Doc. 2024–17757 Filed 8–8–24; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R4–ES–2021–0097; FXES1111090FEDR–245–FF09E21000]**

**RIN 1018–BF42**

## Endangered and Threatened Wildlife and Plants; Threatened Species Status for Pearl River Map Turtle With Section 4(d) Rule; and Threatened Species Status for Alabama Map Turtle, Barbour's Map Turtle, Escambia Map Turtle, and Pascagoula Map Turtle Due to Similarity of Appearance With Section 4(d) Rule; Correction

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** The U.S. Fish and Wildlife Service is correcting a final rule that appeared in the **Federal Register** on July 12, 2024. The rule added five species of freshwater turtles to the List of Endangered and Threatened Wildlife. The preamble included literature citation errors, and the regulatory text included paragraph designation errors. This document corrects those errors.

**DATES:** Effective August 12, 2024.

**FOR FURTHER INFORMATION CONTACT:** James Austin, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213; telephone 601–321–1129. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2024–15176 appearing on page 57206 in the **Federal Register** of July 12, 2024, the following corrections are made:

**Preamble Corrections**

1. On page 57211, near the top of the first column, in the response to Comment 16, ''Pearson et al. 2020'' is corrected to read, ''Pearson et al. 2020b''.

2. On page 57217, at the bottom of the second column and again at the top of the third column, ''Buhlman 2014'' is corrected to read, ''Buhlmann 2014''.

3. On page 57221, in the third column, below the table, ''Pearson et al. 2020'' is corrected to read, ''Pearson et al. 2020a''.

4. On page 57223, at the bottom of the third column, ''Pearson et al. 2020'' is corrected to read, ''Pearson et al. 2020a''.

**Regulatory Correction**

**§ 17.42 [Corrected]**

■ 5. On page 57236, in the second column, in § 17.42, the second instance of paragraph (m)(2)(ii) and paragraph (m)(2)(iii) are redesignated as paragraphs (m)(2)(iii) and (iv), respectively.

**Madonna Baucum,**

*Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.*

[FR Doc. 2024–17458 Filed 8–8–24; 8:45 am]

**BILLING CODE 4333–15–P**

# Proposed Rules

Federal Register
Vol. 89, No. 154
Friday, August 9, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50, 52, and 73

**[NRC–2017–0227]**

**RIN 3150–AK19**

## Alternative Physical Security Requirements for Advanced Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule and guidance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide certain alternative, risk-informed, performance-based physical security requirements for advanced reactors that would result in greater regulatory stability, predictability, and clarity in the licensing process and reduce the need for exemptions. The term ''advanced reactors,'' as used in this rulemaking, refers to nuclear power reactors that are light-water small modular reactors or non-light-water reactors. Concurrently, the NRC is issuing for public comment a draft regulatory guide, DG–5072, ''Guidance for Alternative Physical Security Requirements for Small Modular Reactors and Non-Light-Water Reactors.'' The NRC also developed DG–5071, ''Target Set Identification and Development for Nuclear Power Reactors,'' which is withheld from public disclosure and can be made available to those members of the public with a need to know.

**DATES:** Submit comments by October 23, 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 (unless this document describes a different method for submitting comments on a specific subject); 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–2017–0227. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email Comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax Comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail Comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand Deliver Comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. eastern time, Federal workdays; telephone: 301–415–1677.

You can read a plain language description of this proposed rule at *https://www.regulations.gov/docket/NRC-2017-0227.* 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:**

*Technical information:* Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3561, email: *Dennis.Andrukat@nrc.gov;* and Beth Reed, Office of Nuclear Reactor Regulation, telephone: 301–415–2130, email: *Elizabeth.Reed@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

*Guidance information:* Lou Cubellis, Office of Nuclear Security and Incident Response, telephone: 301–287–3670, email: *Louis.Cubellis@nrc.gov;* or Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067, email: *Stanley.Gardocki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please do not include any potentially classified or sensitive information in your email.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2017–0227 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–2017–0227.
- *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, 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 of this document.

• NRC's PDR: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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, 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–2017–0227 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

*A. Existing Physical Security Framework for Nuclear Power Reactors*

The NRC has established physical security requirements for the protection of production and utilization facilities licensed under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' or 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC requires these licensees to design, implement, and maintain a physical protection program that provides high assurance [1] that operation of the facility is not inimical to the common defense and security and does not constitute an unreasonable risk to the public health and safety. To satisfy this performance objective, a licensee's physical protection program must protect against the design-basis threat (DBT) of radiological sabotage as set forth in § 73.1 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Purpose and scope.'' The physical security requirements that a licensee must implement to protect against the DBT of radiological sabotage are primarily set forth in 10 CFR part 73, ''Physical Protection of Plants and Materials.'' The Commission-approved DBT describes the type, composition, and capabilities of an adversary that a licensee can reasonably be expected to defend against. Development of the DBT is based on threat assessments of the tactics, techniques, and procedures used by international and domestic terrorist groups and organizations.

The physical security requirements for the protection of nuclear power reactors against the DBT of radiological sabotage can be found in § 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.'' These requirements contain a mixture of performance-based and prescriptive security requirements that provide applicants and licensees with the flexibility to determine how to meet the established performance objective.

The focus of this proposed rule is on the physical security requirements related to protection against radiological sabotage for advanced reactors. The term ''advanced reactors,'' as used in this document, refers to nuclear power reactors that are non-light-water reactors (non-LWRs) or small modular reactors (SMRs) as SMR is defined in § 171.5, ''Definitions.''

The current physical protection program for power reactors is designed to protect the plant features needed to provide fundamental safety functions, such as maintaining reactor core cooling to prevent significant core damage from the DBT of radiological sabotage. The loss of plant features providing these safety functions can lead to damage of a reactor core or spent nuclear fuel sabotage, with a potential subsequent release of radioactive materials. When compared to operating large LWRs, many of the advanced reactor designs have smaller power outputs and a correspondingly smaller inventory of fission products available for potential release. In comparison to large LWRs, some advanced reactor designs may include attributes that could result in smaller and slower releases of fission products following the loss of certain safety functions. Accordingly, some designs may warrant different methods for meeting the NRC's physical security requirements, commensurate with the potential radiological consequences resulting from radiological sabotage.

*B. Emerging Interest in Advanced Reactor Technology*

Concurrent with large LWR deployment and design evolution, nuclear power reactor vendors have developed several different reactor designs that are either light-water SMRs with passive safety features or reactors that do not use light water as a coolant. This latter category is commonly referred to as non-LWR technology. Advanced reactor designs using non-LWR technology include liquid metal-cooled reactors, gas-cooled reactors, and molten-salt-cooled reactors. These advanced reactor designs could have rated thermal power outputs that range from low to very high and may apply modular construction concepts.

As advanced reactor designs evolved in the 1980s and early 1990s, the NRC considered the need for a revised regulatory regime specifically for these emerging technologies. The NRC issued its ''Policy Statement on the Regulation of Advanced Nuclear Power Plants'' on July 8, 1986 (51 FR 24643), to provide the Commission's policy regarding the review of, and desired characteristics associated with, advanced reactors. In this policy statement, the NRC identified attributes that developers should consider in advanced designs, including safety features that are highly reliable, the use of the defense-in-depth philosophy of maintaining multiple barriers against radiation release, and, as compared to large LWRs, less-complex heat removal systems, longer time constants before reaching safety system challenges, and reduced potential for severe accidents and their consequences.

On October 14, 2008, the NRC issued a revised ''Policy Statement on the Regulation of Advanced Reactors'' (73 FR 60612), describing attributes that should be considered in advanced designs to establish the acceptability or licensability of such designs, including designs that include considerations for

[1] The Commission stated in staff requirements memorandum (SRM) ''SRM–SECY–16–0073—Options and Recommendations for the Force-On-Force Inspection Program in Response to SRM–SECY–14–0088,'' dated October 5, 2016, that ''the concept of 'high assurance' of adequate protection found in the NRC security regulations is equivalent to 'reasonable assurance' when it comes to determining what level of regulation is appropriate.'' The Commission re-iterated this point in ''SRM–SECY–18–0076—Options and Recommendation for Physical Security for Advanced Reactors,'' dated November 19, 2018.

safety and security requirements together in the design process such that security issues (*e.g.,* newly identified threats of terrorist attacks) can be effectively resolved through facility design and engineered security features, and formulation of mitigation measures, with reduced reliance on human actions. The Commission also observed that it will be in the interest of the public as well as the design vendors and the prospective license applicants to address security issues early in the design stage to achieve a more robust and effective security posture for future nuclear power reactors.

Later, in SECY–10–0034, ''Potential Policy, Licensing, and Key Technical Issues for Small Modular Nuclear Reactor Designs,'' dated March 28, 2010, the NRC identified potential issues for SMRs based on the preliminary design information supplied in pre-application interactions and discussions with SMR designers and the U.S. Department of Energy (DOE). The NRC noted that establishing physical security requirements and guidance for SMRs and non-LWRs was a key policy issue of high importance.

In SECY–11–0184, ''Security Regulatory Framework for Certifying, Approving, and Licensing Small Modular Nuclear Reactors (M110329),'' dated December 29, 2011, the NRC staff reported that the current security regulatory framework is adequate for SMRs, including related elements of the nuclear fuel cycle. In the case of non-LWRs, the staff's assessment of the suitability of the current security regulatory framework was based on the limited information that was available at the time on reactor and fuel designs and operations of these technologies. Based on this information, the staff stated that it was not aware of any area in which the existing security regulatory framework would not apply to non-LWRs and that the staff would continue to assess the suitability and adequacy of the security and material control and accountability requirements for proposed non-LWR technologies in order to identify any regulatory gaps and potential technical or policy issues pertaining to certifying, approving, or licensing non-LWR technologies.

The staff also indicated in SECY–11–0184 that the alternative measures provision in § 73.55(r), ''Alternative measures,'' allows SMR and non-LWR designers and potential applicants to propose alternative methods or approaches that provide a level of protection that is at least equal to that which would otherwise be provided by the specific security requirement in § 73.55 for which an alternative measure is being proposed. These alternative methods or approaches may include increased reliance on engineered systems that reduce the need to rely on operational requirements and staffing to meet regulatory requirements.

Since the issuance of SECY–11–0184, discussions with external stakeholders and within the NRC have turned to whether some type of generic regulatory action would be preferable to the case-by-case approach described in SECY–11–0184. Reactor designers and other stakeholders have raised concerns that the current prescriptive physical security requirements could impose unnecessary regulatory burden for SMRs and non-LWRs that is not commensurate with the risks posed by some of these designs. In response, the NRC assessed potential regulatory changes that would modify existing physical security requirements to make them commensurate with the risks associated with advanced reactor designs. In proposing revisions to physical security requirements for advanced reactors, the NRC considered the inherent features of many advanced reactor designs, such as lower fission product inventories and longer thermal time constants, as well as safety and security features that could be incorporated into facility designs. As discussed previously, these types of attributes and design features have been mentioned in the Commission's Policy Statement to reduce reliance on human actions in responding to attempted acts of radiological sabotage. Initial interactions with the public related to a possible rulemaking involved meetings on the Nuclear Energy Institute (NEI) white paper, ''Proposed Physical Security Requirements for Advanced Reactor Technologies,'' dated December 14, 2016. The NEI white paper suggested consequence-oriented criteria for determining when an advanced reactor design would be a candidate for alternative physical security requirements. The NRC subsequently prepared a draft white paper on potential changes to the physical security requirements for advanced reactors in November 2017.

### *C. Rulemaking Activity*

On August 1, 2018, the staff submitted SECY–18–0076, ''Options and Recommendation for Physical Security for Advanced Reactors,'' presenting alternatives and a recommendation to the Commission on possible changes to the regulations and guidance related to physical security for advanced reactors. The staff evaluated the advantages and disadvantages of each alternative and recommended a limited-scope rulemaking to further assess and, if appropriate, develop a limited set of alternative security requirements that licensees of certain advanced reactor designs could implement. The staff also recommended developing necessary guidance to address performance criteria used to determine an advanced reactor applicant's eligibility for using one or more of the alternative physical security requirements. In SRM–SECY–18–0076, dated November 19, 2018, the Commission approved the staff's recommendation to initiate a limited-scope rulemaking and to interact with stakeholders to identify specific requirements within existing regulations that would play a diminished role in providing physical security for advanced reactors while at the same time contributing significantly to capital and/or operating costs. The Commission also directed the staff to use exemptions until the final rule is implemented.

In response to SRM–SECY–18–0076, on July 16, 2019, the NRC published a **Federal Register** notice of the issuance of the regulatory basis for this rulemaking, ''Regulatory Basis for the Physical Security of Advanced Reactors,'' for a 30-day public comment period. The regulatory basis summarized the current physical security framework for protecting large LWRs against radiological sabotage, described regulatory issues that have motivated the NRC to pursue rulemaking, evaluated various alternatives to address physical security for advanced reactors, and identified the background documents related to these issues. In the **Federal Register** notice that issued the regulatory basis, the NRC requested feedback from the public on specific questions related to the eligibility criterion (referred to as ''performance criteria'' in the regulatory basis), offsite licensee response approach, and cumulative effects of regulation (CER).

Non-Concurrence Process (NCP)

On April 28, 2022, during the NRC's internal review of this proposed rule, a staff member from the NRC's Office of Nuclear Security and Incident Response submitted a formal non-concurrence. This NCP, identified as NCP–2022–003, was reviewed and closed without requiring changes to the proposed rule.

### *D. Public Comments on Regulatory Basis*

The public comment period closed on August 15, 2019, and the NRC received nine comment letters from six commenters, including three members of the public, one non-governmental organization, one potential NRC

applicant, and one industry group. The letters provided various points of view; suggestions for clarifications, additions, and deletions; and comments outside the scope of this rulemaking. In general, the industry group commenter and the potential NRC applicant expressed support for the concept of alternative physical security requirements for advanced reactors, while the public and non-governmental organization commenters did not support the potential alternatives discussed in the regulatory basis document.

The public comment documents are available as indicated in the ''Availability of Documents'' section of this document. As stated in the **Federal Register** notice that issued the regulatory basis, the NRC is not providing formal written responses to the comments received on the regulatory basis.

As a result of SRM–SECY–18–0076, and in consideration of the public comments received on the regulatory basis, the NRC is proposing this limited-scope rule to provide a clear set of alternative performance-based physical security requirements for advanced reactors licensed under 10 CFR part 50 or 10 CFR part 52. This proposed rule would reduce the need for advanced reactor applicants and licensees to request alternative measures or exemptions from current physical security requirements. This proposed rule also would provide benefits for advanced reactor applicants by establishing greater regulatory stability, predictability, and clarity in the licensing process while maintaining a level of security commensurate with the risk associated with these facilities.

### *E. Public Interactions During Proposed Rule Development*

The NRC engaged with stakeholders throughout the development of the proposed rule by holding public meetings, issuing draft versions of preliminary proposed rule language, and requesting public feedback. These interactions included discussions on the draft regulatory guidance. The following table shows the public interactions conducted during the proposed rule development.

| Interaction | Date | Topic |
|---|---|---|
| NEI White Paper | December 14, 2016 | NEI white paper, ''Proposed Physical Security Requirements for Advanced Reactor Technologies''. |
| Public Meeting | December 13, 2017 | NRC draft white paper, November 2017. |
| Public Meeting | August 8, 2019 | NRC's request for additional potential alternatives. |
| Public Meeting | December 12, 2019 | NRC's initial proposed rule approach and path forward. |
| Stakeholder Letter | January 10, 2020 | NEI letter regarding additional input for the rule. |
| Public Meeting | February 20, 2020 | Periodic Advanced Reactor Stakeholder meeting; NRC's proposed rule approach, guidance development, and screening of public comments. |
| Draft Guidance | April 10, 2020 | NEI 20–05, Draft A submission. |
| Preliminary Proposed Rule Language. | April 13, 2020 | Initial release of preliminary proposed rule language that incorporated public comments. |
| Draft Guidance | April 13, 2020 | NEI 20–05, Draft B submission. |
| Public Meeting | April 22, 2020 | Initial preliminary proposed rule language and draft guidance. |
| Preliminary Proposed Rule Language. | September 14, 2020 | Release of revised preliminary proposed rule language. |
| Draft Guidance | September 17, 2020 | NRC letter to NEI regarding May 2020 comments. |
| Draft Guidance | March 2, 2021 | NRC comments on NEI 20–05, Draft B. |
| Public Meeting | April 21, 2021 | Eligibility criteria, unmitigated terminology, and NRC's review of NEI 20–05, Draft B. |
| Public Meeting | May 14, 2021 | Eligibility criteria. |
| Draft Guidance | May 14, 2021 | NEI 20–05, Draft D submission. |
| Public Meeting | August 17, 2021 | Eligibility criteria, target set terminology, and guidance. |
| Public Meeting | September 16, 2021 | Three eligibility criteria. |
| Public Meeting | September 29, 2021 | Target set process, three eligibility criteria, consequence analysis. |
| Public Meeting | October 19, 2021 | Single eligibility criterion and revised target set process. |
| Draft Guidance | November 24, 2021 | NRC letter ceasing review of NEI 20–05. |
| Preliminary Proposed Rule Language. | December 14, 2021 | Release of revised preliminary proposed rule language. |
| Public Meeting | January 20, 2022 | Revised preliminary proposed rule language and key guidance elements. |

## III. Discussion

### *A. Scope*

This proposed rule would establish certain risk-informed and performance-based alternative physical security requirements that eligible advanced reactor applicants and licensees could elect to implement. The physical security requirements under § 73.55 for which alternative security requirements have not been developed would remain in effect and applicable to SMR and non-LWR power reactors.

This proposed rule does not include alternatives for large LWRs, fuel cycle facilities, or non-power production and utilization facilities. Large LWRs were not included in the scope of this proposed rule because a physical security regulatory framework and provisions for requesting alternative measures already exist for those reactors under § 73.55(r). Additionally, licensees for existing large LWRs have not requested changes to the existing physical protection program to adopt the proposed consequence-based alternatives. The current fleet of operating nuclear power reactors, consisting entirely of large LWRs, would continue to be regulated by the current established framework for physical security in § 73.55 and appendices B and C to 10 CFR part 73.

Fuel cycle facilities and non-power production and utilization facilities are not subject to 10 CFR 73.55 and therefore were not included in the scope of this proposed rule.

### *B. Objective*

In accordance with the rulemaking plan approved by the Commission in

SRM–SECY–18–0076, this limited-scope proposed rule would retain the current overall security framework in § 73.55 to protect against radiological sabotage. This proposed rule would create specific voluntary, risk-informed, and performance-based alternative physical security requirements for SMR and non-LWR power reactors licensed under 10 CFR part 50 or 10 CFR part 52. These alternative physical security requirements would (1) enhance regulatory effectiveness by providing greater stability, predictability, and clarity in the licensing process for implementing physical security for advanced reactors; (2) reduce requests for exemptions from certain physical security requirements; (3) consider technological advancements in reactor designs and their associated design features impacting the possible loss of safety functions from malicious acts and any resulting consequences; and (4) provide alternatives for meeting certain physical security requirements under § 73.55 commensurate with the potentially lower risks posed by advanced reactors.

The current fleet of large LWRs protects against the DBT of radiological sabotage by preventing significant core damage and spent fuel sabotage. However, this requirement may not be appropriate for all SMRs or non-LWRs. Accordingly, this proposed rule would add a new technology-inclusive requirement for advanced reactors to protect against the DBT of radiological sabotage. This new provision would require that an advanced reactor licensee's physical protection program be designed to prevent a significant release of radionuclides from any source. The proposed rule would establish certain alternative physical security requirements available to those advanced reactor applicants and licensees who can meet this performance standard and the proposed eligibility criterion. The proposed eligibility criterion would be based on demonstrating that the consequences of a postulated radiological release are below prescribed dose reference values.

*C. Licensing*

There are differences between non-LWR and SMR designs, and large LWR designs. These include potentially smaller reactor core sizes, lower power densities, lower probability of severe accidents, slower accident progression, different source term characteristics, and smaller offsite consequences of accidents. These differences have led DOE, designers, potential operators, and the NRC to examine the physical security requirements necessary to safely operate such advanced reactors.

The NRC anticipates that some advanced reactor vendors and applicants may design their facilities and site protective strategy to account for reliance on passive features, active engineered systems, and automation to achieve security functions with less reliance on human actions. Based on these design features, advanced reactor applicants may seek alternative measures for achieving security functions that differ substantially from the approach at the existing fleet of large LWRs. Without this proposed rule, applicants for or holders of advanced reactor licenses likely would request alternative measures or exemptions from certain physical security requirements. This is because the current regulatory framework does not establish alternative requirements for varying types and sizes of advanced reactors and an eligibility criterion authorizing these applicants to use alternative requirements.

This proposed rule would establish voluntary alternatives to certain prescriptive physical security requirements under § 73.55 for advanced reactor licensees. These alternative physical security requirements would continue to provide high assurance of adequate protection in the event of a security-initiated event. Although the exemption process could also result in relief from requirements that may not be necessary for a specific applicant or licensee, regulating by exemption generally provides less opportunity for public engagement and can lead to less regulatory certainty and increased costs for the NRC and the applicant or licensee. Proceeding by rulemaking rather than exemptions therefore supports the NRC's principles of good regulation, including openness, clarity, and reliability.

*D. New or Modified Requirements in 10 CFR Part 73*

10 CFR 73.55(a)(5)—Watts Bar, Unit 2—Remove and Reserve

Although not specific to the scope of this rulemaking, the NRC is proposing to remove the requirements under paragraph (a)(5) of § 73.55 that relate to the Tennessee Valley Authority's Watts Bar Nuclear Plant, Unit 2 as a construction permit holder. This paragraph is no longer necessary as the Tennessee Valley Authority now has an operating license for this facility and no longer holds a construction permit.

10 CFR 73.55(b)(3)—General Requirements Revised To Address Advanced Reactors

Currently, nuclear power reactors licensed under 10 CFR part 50 and 10 CFR part 52 must protect against the DBT of radiological sabotage. The existing fleet of large LWRs meets this objective by preventing significant core damage and spent fuel sabotage. This proposed rule would not change this requirement for large LWRs.

The NRC anticipates that many of the non-LWR designs will not have reactor cores similar to those of the existing fleet of LWRs. Therefore, the objective of preventing significant core damage may not be appropriate for these types of advanced reactors, although they would still need to protect against the DBT of radiological sabotage. Accordingly, this proposed rule would add a new technology-inclusive requirement to the introductory text of paragraph (b)(3) of § 73.55 to require that a non-LWR advanced reactor licensee's physical protection program be designed to prevent a significant release of radionuclides from any source.

Although SMRs are defined as LWRs for the purpose of this rule and may therefore have reactor cores similar to those of the existing fleet of LWRs, the NRC is proposing to apply this technology-inclusive requirement of preventing a significant release of radionuclides from any source to SMRs as well as to non-LWRs. While there would likely be differences between non-LWR and SMR designs, both types of designs could potentially result in smaller and slower releases of fission products following the loss of certain safety functions when compared to large LWRs.

In this context, the phrase ''a significant release of radionuclides from any source'' would encompass a postulated security-initiated event that would cause a release to the environment exceeding that analyzed in the design basis accident licensing basis. This would ensure that a licensee's physical protection program considers and protects against significant release from all areas with high radiological inventories, including reactor cores and spent fuel pools common to LWRs, as well as other physical locations with radiological inventories in non-LWR designs that need to be protected from a DBT adversary (*e.g.,* waste processing and storage systems).

10 CFR 73.55(s)—Alternative Physical Security Requirements

The proposed rule would establish new § 73.55(s) to contain the alternative physical security requirements, found in § 73.55(s)(2). These alternative physical security requirements could be used by advanced reactor applicants and licensees who meet the proposed general requirements in § 73.55(s)(1).

10 CFR 73.55(s)(1)—General Requirements

Proposed § 73.55(s)(1)(i) would establish that an applicant for or holder of a license for an advanced reactor under 10 CFR part 50 or 10 CFR part 52 may elect one or more of the alternative physical security requirements specified in proposed § 73.55(s)(2).

Proposed § 73.55(s)(1)(ii) would establish that, to be eligible to use the alternative physical security requirements in § 73.55(s)(2), the applicant or licensee must demonstrate that the consequences of a postulated radiological release that results from a postulated security-initiated event do not exceed the offsite dose reference values defined in §§ 50.34, ''Contents of applications; technical information,'' and 52.79, ''Contents of applications; technical information in final safety analysis report.''

Proposed § 73.55(s)(1)(iii) would establish that the applicant or licensee must identify the specific alternative physical security requirement(s) it intends to implement as part of its physical protection program and demonstrate how the requirements set forth in § 73.55 are met when the selected alternatives are used. The applicant or licensee would be free to choose any combination of the proposed physical security alternatives under proposed § 73.55(s)(2). The applicant or licensee would not be required to elect all of the alternatives, nor would it be restricted to only invoking a single alternative.

Proposed § 73.55(s)(1)(iv) would require that an applicant or licensee perform a technical analysis to evaluate the potential offsite radiological consequences from a postulated security-initiated event to demonstrate eligibility to use the alternative physical security requirements. The technical analysis would not need to be submitted to the NRC for review and approval but would be subject to audit or inspection. This proposed provision also would require the licensee to maintain the analysis until the submittal of the licensee's certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel required by § 50.82(a)(1) or § 52.110(a).

10 CFR 73.55(s)(2)—Specific Alternative Physical Security Requirements

This proposed rule would provide new physical security requirements, in proposed § 73.55(s)(2), that are voluntary alternatives to selected existing requirements in § 73.55 for an applicant or licensee satisfying the provisions of proposed § 73.55(s)(1). The proposed requirements in § 73.55(s)(2) would include alternatives for armed responders, interdiction and neutralization, physical barriers, onsite secondary alarm stations, and vital areas that would provide flexibility in how applicants and licensees would design their physical protection program to meet the requirements of proposed § 73.55(b)(3) for protecting against the DBT of radiological sabotage. These proposed alternative physical security requirements are intended to provide greater regulatory stability, predictability, and clarity in the licensing process, reduce the need for applicant or licensee requests for exemptions or alternatives to current physical security requirements, and reduce resources that would otherwise be required to review specific exemptions in accordance with the provisions of § 73.5, ''Specific exemptions,'' or alternative measures under the provisions of § 73.55(r), ''Alternative measures.''

§ 73.55(s)(2)(i)—Alternative Requirement for Armed Responders

The proposed physical security alternative in § 73.55(s)(2)(i) would permit a licensee to be relieved from the current requirement for the minimum number of armed responders in § 73.55(k)(5)(ii). Under this proposal, a licensee would be permitted to design a physical protection program that potentially could have fewer than ten onsite armed responders, including no onsite armed responders, if appropriate. This alternative would give an advanced reactor licensee the flexibility to determine and use the number of onsite armed responders necessary to meet the requirements of proposed § 73.55(b)(3). The number of onsite armed responders may be reduced to zero if the licensee also implements the alternative requirements under proposed § 73.55(s)(2)(ii) that would allow the licensee to rely on law enforcement or other offsite armed responders to fulfill the interdiction and neutralization functions to protect against the DBT of radiological sabotage. Licensees would use existing methods, such as those currently used by operating reactor licensees, for determining the necessary number of onsite armed responders.

For an applicant or licensee that designs its physical protection system to rely on onsite armed responders to perform interdiction and neutralization to achieve the performance objective and requirements of § 73.55(b), ''General performance objective and requirements,'' the proposed physical security alternative only provides relief from the prescriptive requirement for the minimum number of armed responders; all other existing requirements associated with onsite armed personnel would continue to apply.

§ 73.55(s)(2)(ii)—Alternative Requirements for Interdiction and Neutralization

The proposed physical security alternative in § 73.55(s)(2)(ii) would permit a licensee, if appropriate, to rely on law enforcement or other offsite armed responders, rather than using onsite licensee security personnel, to fulfill the interdiction and neutralization functions required by § 73.55(b)(3)(i). Use of this alternative would be available only if a licensee were to have no onsite armed responders.

The current requirement in § 73.55(b)(3)(i) states that the physical security program must ensure that the capabilities to detect, assess, interdict, and neutralize threats, up to and including the DBT of radiological sabotage, are maintained at all times. An advanced reactor applicant or licensee that demonstrates it meets proposed § 73.55(s)(1) without relying on an onsite armed response force may use this alternate approach for meeting the requirements for the interdiction and neutralization capabilities required by § 73.55(b)(3)(i). Such an applicant or licensee may, under proposed § 73.55(s)(2)(ii), rely on law enforcement responders (local, State or Federal) or other offsite armed responders (*e.g.,* licensee proprietary or contract security personnel who are positioned offsite), rather than using onsite armed responders to fulfill the interdiction and neutralization capabilities required in § 73.55(b)(3)(i).

The proposed rule would not relieve a licensee from the responsibility to interdict and neutralize threats up to and including the DBT of radiological sabotage; rather, it would provide a licensee with an alternative method of fulfilling these responsibilities. Applicants and licensees relying on law enforcement responders to carry out the interdiction and neutralization capabilities would be relieved from the

majority of the training and qualification requirements in appendix B, ''General Criteria for Security Personnel,'' to 10 CFR part 73, except for the performance evaluation program requirements in section VI.C.3. The proposed rule would not create any NRC regulatory jurisdiction over, or requirements for, law enforcement responders.

Associated requirements for security response personnel in current § 73.55(k)(3) through (7); § 73.55(k)(8)(ii); 10 CFR part 73, appendix B, section VI (except for section VI.C.3); and 10 CFR part 73, appendix C, section II.B.3.c.(iv) would not be applicable where a licensee's design of its physical protection system would require no armed responders onsite and the licensee would rely on law enforcement to fulfill the interdiction and neutralization functions required by § 73.55(b)(3)(i). For example, a licensee approved to implement the proposed alternative in § 73.55(s)(2)(ii) would be relieved from the requirement in § 73.55(k)(8)(ii) to initiate response actions to interdict and neutralize threats when relying on law enforcement to initiate the response actions to interdict and neutralize threats in accordance with the requirements of part 73, appendix C, section II, the safeguards contingency plan, and the licensee's response strategy. The licensee would continue to be required to detect and assess the threat and then communicate threat information to law enforcement.

The proposed requirements in § 73.55(s)(2)(ii)(A)(*1*) through (*5*) would establish specific requirements to ensure that the use of law enforcement or other offsite armed responders to fulfill the interdiction and neutralization functions would still enable the licensee to protect against the DBT of radiological sabotage. Consistent with the existing regulatory framework in § 73.55, the requirement in proposed § 73.55(s)(2)(ii)(A)(*1*) would reiterate a licensee's responsibility to detect, assess, interdict, and neutralize threats up to and including the DBT of radiological sabotage. As discussed below, allowing a licensee to rely on law enforcement responders to fulfill the interdiction and neutralization capability does not relieve the licensee of this responsibility and therefore remains consistent with the existing regulatory framework.

Proposed § 73.55(s)(2)(ii)(A)(*2*) would establish that a licensee must provide adequate delay for threats up to and including the DBT of radiological sabotage to enable law enforcement or other armed responders located offsite sufficient time to respond to the site and to interdict and neutralize those threats. In other words, the cumulative delay time would need to be equal to or greater than the security bounding time for a specific SMR or non-LWR site. The proposed calculation methodology for security bounding time for SMR and non-LWR sites is contained in appendix C to DG–5072.

The proposed requirement in § 73.55(s)(2)(ii)(A)(*3*) would require a licensee to provide necessary information about the site and make available periodic training to law enforcement or other offsite armed responders to support site-specific preparedness to fulfill the interdiction and neutralization functions in safeguards contingency events at the licensee's site (*i.e.,* within the owner controlled area, the protected area(s), vital areas, and other site facilities). Neither the NRC nor licensees can compel law enforcement to participate in the periodic training; however, the proposed requirements would ensure that licensees make the necessary information and training available to law enforcement.

The proposed requirement in § 73.55(s)(2)(ii)(A)(*4*) would establish a requirement for a licensee relying on law enforcement or other offsite armed responders to fulfill the interdiction and neutralization functions to describe in its security contingency plan the role that law enforcement or the other offsite armed responders will play in the licensee's protective strategy. This would require a licensee to identify and plan for the role of law enforcement or other offsite armed responders in a safeguards contingency event. In accordance with the requirements of § 73.55(c)(5), a licensee shall establish, maintain, and implement a safeguards contingency plan that describes how the criteria set forth in appendix C, section II, to 10 CFR part 73 will be implemented. In applying this alternative, the licensee would address the role that law enforcement or other offsite armed responders would fulfill as a substitute for what would otherwise be the duty and responsibility of onsite armed responders associated with implementing contingency responses to safeguards events.

The proposed requirement of § 73.55(s)(2)(ii)(A)(*5*) would establish that a licensee must identify criteria and measures to compensate for the degradation or absence of law enforcement or other offsite armed responders and propose suitable compensatory measures that meet the requirements of § 73.55(o)(2) and (3) to address this degradation. Unlike armed responders and armed security officers for currently operating power reactors, who are required by current regulations to be available at the site for response, a licensee that would rely upon law enforcement or other offsite armed responders must consider the potential that offsite response may be impeded by events outside of or independent from the safeguards event at the site. While the existing requirement in § 73.55(o), ''Compensatory measures,'' is specific to security systems and equipment performing required functions, the addition of the proposed alternative in § 73.55(s)(2)(ii) creates the new potential for degradation or unavailability of the personnel relied on to perform security functions such as interdiction and neutralization. The proposed requirement would rely on the requirements in § 73.55(o)(2) and (3) for establishing suitable compensatory measures to address degradation or loss of interdiction and neutralization functions.

A licensee would be relieved from the requirements in § 73.55(k)(3) through (7), § 73.55(k)(8)(ii), 10 CFR part 73, appendix B, section VI (except for section VI.C.3.), and 10 CFR part 73, appendix C, section II.B.3.c.(iv) with respect to law enforcement responders, when the licensee relies on the law enforcement responders to fulfill the interdiction and neutralization functions required by § 73.55(b)(3)(i). When an applicant or licensee relies on other offsite armed responders for interdiction and neutralization, the applicant or licensee would be relieved from the location-related requirements in § 73.55(k)(5)(iii) and 10 CFR part 73, appendix C, section II.B.3.c.(iv), because the armed responders would be housed outside a facility's protected area. One requirement from which a licensee would not be relieved would be the performance evaluation program requirements related to armed response personnel in 10 CFR part 73, appendix B, section VI.C.3. A licensee would be required to satisfy these performance evaluation program requirements for all armed response personnel, including law enforcement. The performance evaluation program requirements would continue to apply because implementation of the performance evaluation program provides assurance of the effectiveness of the requirements proposed in § 73.55(s)(2)(ii)(A)(*1*) through (*4*) when a licensee relies on law enforcement or other offsite armed responders to perform the contingency response and interdiction and neutralization functions that protect the site against the DBT of radiological

sabotage. The implementation of a performance evaluation program would provide assurance that any vulnerabilities or weaknesses resulting from the reliance on law enforcement or other offsite responses to safeguards contingencies would be identified and corrected and that a licensee would maintain an adequate response as is required to meet the requirements of § 73.55(b)(3).

§ 73.55(s)(2)(iii)—Alternative Requirements for Physical Barriers

The proposed alternative in § 73.55(s)(2)(iii) would permit a licensee to apply means other than physical barriers as defined in § 73.2, ''Definitions,'' in the design of its physical protection system to achieve the intended delay functions and access denial and meet the performance objective and requirements of § 73.55(b) to protect against the DBT of radiological sabotage. A licensee would be permitted to consider other methods that include the use of engineered systems or human actions, or both, where reliable and available, to achieve delay functions necessary to facilitate security responses after the successful detection and assessment of threats up to and including the DBT of radiological sabotage. For example, a licensee could potentially use engineered systems designed to disperse material that physically impedes or physiologically interferes with the adversary, such as obscurants and irritants, to achieve the delay function rather than relying on physical barriers as defined in § 73.2. The alternative methods would permit consideration of active engineered security systems performing interdiction and neutralization functions, which may delay the DBT adversary (*e.g.,* increasing task time, increase travel time, interrupt adversary action, etc.), as well as serving other functions. A licensee may consider physical spatial distances, terrain, and other natural features that increase adversary task times, after successful detection and assessment, in order to achieve delay functions in its design of a physical protection system. The proposed alternative also would permit a licensee to consider methods other than physical barriers for physical access controls in implementing the access authorization program, including restricting access to vital areas.

§ 73.55(s)(2)(iv)—Alternative Requirements for Onsite Secondary Alarm Stations

The proposed alternative in § 73.55(s)(2)(iv) would permit a licensee to locate a secondary alarm station offsite, where the capabilities of receiving and monitoring signals for intrusion detection; receiving and monitoring video image signals to assess intrusion; communicating with onsite security to assist with implementing a security response; providing command and control of the security response; and summoning offsite local, State, and Federal law enforcement assistance are redundant and equivalent to that of the onsite central alarm station. This could include, for example, having a co-located alarm station offsite that provides secondary alarm station functions for multiple reactor sites, using a commercial security service certified by an independent testing organization, or other approaches that provide the functions required of a secondary alarm station.

The proposed alternative would require that an offsite secondary alarm station be able to perform the same functions as the onsite central alarm station, but a licensee would be relieved from the requirements in § 73.55(i)(4)(iii) to construct, locate, and protect the secondary alarm station to the same standards as the central alarm station. For example, an SMR or non-LWR licensee would not need to locate the secondary alarm station inside a protected area, ensure that the interior of the secondary alarm station is not visible from the perimeter of the protected area, or construct the secondary alarm station to be bullet resistant. A licensee would be permitted to install equipment in the secondary alarm station that is different than the central alarm station, as long as the secondary alarm station can perform the equivalent and redundant functions of the central alarm station.

§ 73.55(s)(2)(v)—Alternative Requirements for Vital Areas

The proposed alternative in § 73.55(s)(2)(v) would permit relief from the requirements to designate the secondary alarm station as a vital area and locate the secondary power supply systems for the offsite secondary alarm station in a vital area. The primary purpose of designating areas as vital is to control access in order to protect vital equipment or operations important to safety or security. This is accomplished by limiting the number of site personnel that are authorized unescorted access to these areas and requiring security measures such as locks, alarms, and periodic armed security checks to control physical access and detect unauthorized access. These control measures, along with other controls implemented in accordance with a licensee's insider mitigation program, protect against the DBT insider threat. Locating the secondary alarm station offsite and separate from the central alarm station minimizes the risk of the insider threat to affect or disrupt alarm station functions. This reflects the assumption that not every individual who is authorized unescorted access to an onsite alarm station would have authorized unescorted access or physical access to a secondary alarm station that would be located offsite. In addition, a secondary alarm station does not include activities that involve special nuclear material that would pose a risk of significant release of radionuclides from any source. Thus, a secondary alarm station would not be an element of a target set that an adversary would likely seek to destroy.

*E. Conforming Changes—10 CFR 73.55(b)(9)(i), (e)(10)(i), and (k)(1) and Appendix B to 10 CFR Part 73*

This proposed rule would establish that, for SMRs and non-LWRs, the physical protection program must be designed to protect against a significant release of radionuclides from any source and would therefore be designed to protect against radiological sabotage as defined in § 73.2.

The NRC proposes to amend current requirements under § 73.55(b)(9)(i), (e)(10)(i), and (k)(1) and section VI.A.1 of appendix B to 10 CFR part 73 to provide conforming requirements for SMRs and non-LWRs. The current requirement under § 73.55(b)(3) of designing the physical protection program to prevent significant core damage (*e.g.,* non-localized fuel melting or core destruction) and spent fuel sabotage was established as the means of protecting against radiological sabotage for LWRs. However, the term ''core damage'' may not be universally applicable to all advanced reactor designs, such as those that are based on non-LWR technology. For example, in some technologies, such as molten salt reactor technologies, the nuclear fuel may be in a liquid form. Also, for some advanced reactor designs, core damage may not result in a release of radionuclides that would constitute an unreasonable risk to public health and safety. The proposed conforming requirements for SMRs and non-LWRs under § 73.55(b)(9)(i), (e)(10)(i), and (k)(1) and section VI.A.1 of appendix B to 10 CFR part 73 continue to apply the definition of radiological sabotage under § 73.2, and establish the new requirement for the design of the physical protection program to protect against significant release of radionuclides from any source.

*F. Contents of Application*

The NRC is proposing to amend the requirements for the content of applications for operating licenses under § 50.34 and for combined licenses under § 52.79. The current regulations under § 50.34(c), ''Physical security plan,'' and § 52.79(a) require license applicants to include in their applications a physical security plan that describes how the applicant will meet the applicable requirements of 10 CFR part 73. Therefore, an applicant's election of a proposed alternative under § 73.55(s) would be described in the physical security plan included in the license application. The NRC is proposing to add paragraph § 50.34(c)(4) and § 52.79(a)(35)(iii) to require each applicant electing to apply an alternative in § 73.55(s)(2) to provide a description of the technical analysis required by § 73.55(s)(1)(iv). The technical analysis itself does not have to be submitted to the NRC for review and approval. Eligible licensees that would elect to use one of the proposed alternative requirements under § 73.55(s) would need to amend their security plans in accordance with the requirements in § 50.54(p).

*G. Change Control*

The NRC is proposing to amend the requirements for controlling changes to the physical security plan in § 50.54(p) by adding new paragraph (p)(5). Proposed § 50.54(p)(5) would apply to all licensees who use the alternative physical security requirements of § 73.55(s). This proposal would require that the applicable requirements proposed under § 73.55(s)(1)(ii) continue to be met if a licensee makes a change to plant features or becomes aware of a change to offsite support resources described in the site-specific analysis required by proposed § 73.55(s)(1)(iv). In such cases, the licensee would need to consider the effect of the change on the analysis. The licensee would also need to amend the information in the physical security plan prepared under § 50.34(c) or § 52.79(a) to describe how the change continues to meet the requirements in proposed § 73.55(s)(1)(ii), as applicable.

*H. Regulatory Requirements for Documentation and Technical Analysis*

Proposed § 73.55(s)(1)(iii) would require the identification and documentation of the alternative security requirements being implemented as part of the physical protection program and demonstration of how the requirements set forth in § 73.55 are met when one or more of the selected alternatives are used.

Proposed § 73.55(s)(1)(iv) would require a technical analysis be performed to demonstrate eligibility to use the alternative physical security requirements. This technical analysis can use information from both the safety analysis and the target set identification process to support a finding of eligibility. This technical analysis would be separate from the documentation in a licensee's physical security plan describing how the licensee plans to implement any alternative physical security requirements as part of its physical protection program. Under proposed § 73.55(s)(1)(iv), the licensee would be required to maintain the technical analysis until the certifications required by § 50.82(a)(1) or § 52.110(a) have been submitted. Proposed § 50.34(c)(4) and § 52.79(a)(35)(iii) would require each applicant electing to apply an alternative in § 73.55(s)(2) to provide a description of the technical analysis required by § 73.55(s)(1)(iv). However, the technical analysis itself does not have to be submitted to the NRC for review and approval but would be subject to audit or inspection.

**IV. Specific Requests for Comment**

The NRC is seeking advice and recommendations from the public on the proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

(1) Some advanced reactors may have designs that are significantly different from the current operating large LWRs. These large LWRs must meet the requirement found in § 73.55(b)(3) for preventing ''significant core damage and spent fuel sabotage.'' The NRC is proposing that advanced reactors meet a new technology-inclusive requirement that would prevent a ''significant release of radionuclides from any source.''

(a) If non-LWRs and SMRs should use a different requirement, then what other suitable requirement besides preventing ''a significant release of radionuclides from any source'' could be applicable to SMRs and non-LWRs? Please provide the basis for your response.

(b) The NRC also considered using a more specific technology-inclusive requirement, such as the dose reference values currently found in §§ 50.34(a)(1)(ii)(D) and 52.79(a)(1)(vi). How could the NRC implement the use of such a dose-based requirement (*e.g.,* offsite dose reference values) in the context of evaluating physical security for a site? If there should be alternative value(s) (such as a different dose-based or safety-based value(s)), what would be a suitable alternative value(s)? Please provide the basis for your response.

(2) The NRC is not proposing a hybrid approach that would allow a licensee to rely on a combination of onsite armed responders and law enforcement or other offsite armed responders to implement the licensee's protective strategy. Why should or shouldn't the NRC establish requirements and supporting guidance to allow for such a hybrid approach? What changes are necessary to the proposed rule and supporting guidance to address potential hybrid approaches? Please provide the basis for your response.

(3) The NRC recognizes that allowing licensees to rely entirely or partially on law enforcement, rather than onsite armed responders, to interdict and neutralize threats up to and including the DBT of radiological sabotage, is a novel approach to meeting the performance objectives in § 73.55(b). Has the NRC adequately addressed the uncertainties associated with the proposed requirements at 10 CFR 73.55(s)(2)(ii)? Please provide the basis for your response.

(4) Some advanced reactors may have design characteristics or engineered safety features that would contribute to the ability of a designer to show that the criteria in proposed § 73.55(s)(1) are met. However, the NRC is not currently proposing to add any submittal requirements in this regard for standard design certification applications under subpart B to 10 CFR part 52. What would be the potential benefits and challenges if the NRC were to add optional submittal requirements on such design characteristics or engineered safety features to § 52.47, ''Contents of applications; technical information,'' similar to those for emergency plans for early site permit applicants in § 52.17(b)(2) and (3)? To what extent should the NRC consider security matters resolved under § 52.63(a)(5) for a standard design certification when the information that would be required to show that the criteria in proposed § 73.55(s)(1) are met is provided by a design certification applicant and reviewed by the NRC as part of the certification process?

**V. Section-by-Section Analysis**

The following paragraphs describe the specific changes within this rulemaking.

*§ 50.34 Contents of Applications; Technical Information*

This proposed rule would add a new paragraph (c)(4) to add a submission requirement that licensees of SMRs and non-LWRs electing to use one or more

alternative security requirements in § 73.55(s)(2) must provide a description of the technical analysis required under § 73.55(s)(1) when submitting the application documentation required under § 50.34.

*§ 50.54 Conditions of Licenses*

This proposed rule would add a new paragraph (p)(5) to add change control requirements that licensees of SMRs and non-LWRs must follow when there is a change that impacts the documentation required under § 73.55(s).

*§ 52.79 Contents of Applications; Technical Information in Final Safety Analysis Report*

This proposed rule would add a new paragraph (a)(35)(iii) to add a submission requirement that licensees of SMRs and non-LWRs electing to use one or more alternative security requirements in § 73.55(s)(2) must provide a description of the technical analysis required under § 73.55(s)(1) when submitting the application documentation required under § 52.79.

*§ 73.55 Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage*

This proposed rule would remove and reserve paragraph (a)(5) as it is no longer relevant since Tennessee Valley Authority now has an operating license for Watts Bar Unit 2 and no longer holds a construction permit.

This proposed rule also would revise paragraph (b)(3) introductory text, revise paragraph (b)(9)(i) introductory text, add paragraphs (b)(9)(i)(A) and (B), and revise paragraphs (e)(10)(i)(A) and (k)(1) to add requirements for SMRs and non-LWRs and to distinguish between SMRs and other LWRs.

This proposed rule also would add new paragraph (s) containing the alternative physical security requirements for SMRs and non-LWRs. Proposed paragraph (s) would include both the general and specific requirements that must be met by those licensees who elect to apply the alternatives to physical security requirements.

*Appendix B to 10 CFR Part 73—General Criteria for Security Personnel*

This proposed rule would revise paragraph VI.A.1 to add requirements for SMRs and non-LWRs and to distinguish between SMRs and other LWRs.

**VI. Regulatory Flexibility Certification**

The Regulatory Flexibility Act of 1980 (RFA), as amended at 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

In accordance with the Small Business Administration's (SBA's) regulation at 13 CFR 121.903(c), the NRC has developed its own size standards for performing an RFA analysis and has verified with the SBA Office of Advocacy that its size standards are appropriate for NRC analyses. The NRC size standards at 10 CFR 2.810, ''NRC size standards,'' are used to determine whether an applicant or licensee qualifies as a small entity in the NRC's regulatory programs. Section 2.810 defines the following types of small entities:

A small business is a for-profit concern and is a—(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $8.0 million or less over its last 5 completed fiscal years; or (2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $8.0 million or less.

A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

A small educational institution is one that is—(1) Supported by a qualifying small governmental jurisdiction; or (2) Not State or publicly supported and has 500 or fewer employees.

*Number of Small Entities Affected*

The NRC is currently not aware of any known small entities as defined in § 2.810 that are planning to apply for an advanced nuclear reactor construction permit or operating license under 10 CFR part 50 or an early site permit or combined license under 10 CFR part 52, and would be impacted by this proposed rule. Based on this finding, the NRC has preliminarily determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

*Economic Impact on Small Entities*

Depending on how the ownership and/or operating responsibilities for such an enterprise were structured, applicants for an advanced nuclear reactor rated 8 megawatts electric (MWe) or less could conceivably meet the definition of small entities as defined by § 2.810. Owners that operate power reactors rated greater than 8 MWe could generate sufficient electricity revenue that exceeds the gross annual receipts limit of $8 million, assuming a 90 percent capacity factor and the June 2021 U.S. Department of Energy's Energy Information Administration U.S. average price of electricity to the ultimate customer for all sectors of 11.3 cents per kilowatt-hour.

Although the NRC is not aware of any small entities that would be affected by the proposed rule, there is a possibility that future applications for an advanced nuclear reactor permit or license could be submitted by small entities who plan to own and operate an advanced nuclear reactor rated 8 MWe or less. Advanced nuclear reactors that are rated 8 MWe or less would most likely be used to support electrical demand for military bases or small remote towns, or would provide process heat for a variety of industrial applications (*e.g.,* desalination, oil refining, hydrogen production), so they would not directly compete with larger advanced nuclear reactors that would typically produce electricity for the grid. As a result of these differing purposes, the NRC would expect that small and large entities would not be in direct competition with each other.

Therefore, the NRC preliminarily concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*Request for Comments*

The NRC is seeking comments on both its initial RFA analysis and on its preliminary conclusion that this proposed rule would not have a significant economic impact on a substantial number of small entities because of the likelihood that most expected applicants would not qualify as a small entity. Additionally, the NRC is seeking comments on its preliminary conclusion that if a small entity were to submit an advanced nuclear reactor application, the small entity would not incur a significant economic impact as it would most likely not be in competition with a large entity.

Any small entity that could be subject to this regulation that determines, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates—

1. The applicant's size and how the proposed regulation would impose a

significant economic burden on the applicant as compared to the economic burden on a larger applicant;

2. How the proposed regulations could be modified to take into account the applicant's differing needs or capabilities;

3. The benefits that would accrue or the detriments that would be avoided if the proposed regulations were modified as suggested by the applicant;

4. How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

5. How the proposed regulation, as modified, would still adequately demonstrate compliance with the NRC's obligations under the Atomic Energy Act of 1954, as amended.

## VII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The conclusion from the analysis is that this proposed rule and associated guidance would result in net averted costs to the industry and the NRC of $80,000 using a 7-percent discount rate and $130,000 using a 3-percent discount rate due to reductions in exemption requests. The NRC requests public comment on the draft regulatory analysis, which is available as indicated in the ''Availability of Documents'' section of this document. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

## VIII. Backfitting and Issue Finality

This proposed rule would contain new alternative requirements for advanced reactor applicants and licensees. Because these alternative requirements would not be imposed upon current applicants and licensees and would not prohibit any applicant or licensee from following existing requirements, the proposed requirements would not constitute backfitting under 10 CFR 50.109, ''Backfitting,'' or affect the issue finality of any approval issued under 10 CFR part 52.

As described in the ''Availability of Guidance'' section of this document, the NRC has prepared two draft regulatory guides (DG–5072 and DG–5071) that, if finalized, would provide guidance on methods acceptable to the NRC for complying with this proposed rule. Issuance of these DGs in final form would not constitute backfitting under § 50.109 and would not affect the issue finality of any approval issued under 10 CFR part 52. As discussed in the ''Implementation'' section of the DGs, the NRC staff does not intend to use the proposed guidance in these draft regulatory guides to support NRC staff actions in a manner that would constitute backfitting or affect the issue finality of an approval under 10 CFR part 52. If, in the future, the NRC seeks to impose positions stated in the DGs in a manner that would constitute backfitting or forward fitting or affect the issue finality of an approval under 10 CFR part 52, the NRC would need to make the showing as required in § 50.109 for backfitting or Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' for forward fitting, or address the regulatory criteria in the applicable issue finality provision, as applicable, that would allow the NRC to impose the position.

## IX. Cumulative Effects of Regulation

The NRC is following its CER process by engaging with external stakeholders throughout this proposed rule and related regulatory activities. Public involvement has included: (1) the publication of the regulatory basis for public comment (84 FR 33861; July 16, 2019); (2) numerous public meetings to examine potential performance-based alternatives and eligibility requirements for physical security for advanced reactors; and (3) the publication of numerous versions of preliminary proposed rule language. The NRC is considering holding additional public meetings during the remainder of the rulemaking process.

In parallel with this proposed rule, the NRC is issuing two draft implementing guidance documents for comment to support informed external stakeholder feedback. Section XIII, ''Availability of Guidance,'' of this document describes how the public can access the draft implementing guidance.

In addition to the questions in the ''Specific Requests for Comments'' section of this document, the NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, does the proposed rule's effective date provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and the facility? Please explain your answer.

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (*e.g.,* orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements? Please explain your answer.

4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports this proposed rule. The draft regulatory analysis is available as indicated under the ''Availability of Documents'' section of this document.

## X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## XI. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A, ''National Environmental Policy Act—Regulations Implementing Section 102(2),'' of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and an environmental impact statement is not required. This environmental assessment focuses on those aspects of the proposed alternative physical security requirements for advanced reactors rulemaking where there is a potential for the revised requirements to affect the environment. The NRC has concluded that there would be no significant environmental impacts associated with implementation of the alternative security requirements for advanced reactors rule requirements for the following reasons:

(1) The proposed alternative requirements for physical security would provide an equivalent level of security as that for existing requirements; therefore, the environmental impacts would be the same because the resulting risk is similar.

(2) The proposed revision to the power reactor security requirements would not result in changes to the design basis requirements for the protection of structures, systems, and components (SSCs) in potential licensee facilities that function to limit the release of radiological effluents during and following postulated accidents. All the SSCs associated with limiting the releases of offsite radiological effluents would therefore continue to be able to perform their functions, and as a result, there would be no significant radiological effluent impact such that there would be no significant release of radionuclides from any source.

(3) The standards and requirements applicable to radiological releases and effluents would not be affected by the limited-scope security rulemaking and would continue to apply to the SSCs affected by the limited-scope security rulemaking.

The principal effect of this action is to revise the governing regulations pertaining to power reactor security, create alternative security requirements applicable to a certain class of licensees, and add additional requirements consistent with the rulemaking objective and requirements discussed earlier. None of the proposed revisions would affect current occupational exposure requirements; consequently, the NRC has concluded that this action would have no impact on occupational exposure.

For the reasons discussed above, the action would not significantly increase the probability or consequences of accidents, nor result in changes being made in the types of any effluents that may be released offsite, and there would be no significant increase in occupational or public radiation exposure.

With regard to potential non-radiological impacts, implementation of the rule requirements would not have a significant impact on the environment. The proposed requirements would not affect any historic sites and would not affect non-radiological plant effluents. Therefore, there would be no significant non-radiological environmental impact associated with this proposed rule. Accordingly, the NRC finds that there would be no significant environmental impact associated with this rulemaking action.

The determination of this environmental assessment is that there would be no significant effect on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption. The environmental assessment is available as indicated under the ''Availability of Documents'' section.

The NRC has sent a copy of the environmental assessment and this proposed rule to all State Liaison Officers and has requested comments.

## XII. Paperwork Reduction Act

This proposed rule contains new or amended collections of information contained in parts 50, 52, and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information have been submitted to the Office of Management and Budget for review and approval. Existing collections of information were approved by the Office of Management and Budget, approval numbers 3150–0002 (part 73), 3150–0011 (part 50), and 3150–0151 (part 52).

*Type of submission, new or revision:* Revision.

*The title of the information collection:* Alternative Physical Security Requirements for Advanced Reactors.

*The form number if applicable:* Not Applicable.

*How often the collection is required or requested:* On occasion.

*Who will be required or asked to respond:* Future power reactor licensees or license applicants for advanced reactors to be licensed under 10 CFR part 50 or part 52.

*An estimate of the number of annual responses:* 6.66 (0.33 for part 50, 3 for part 52, and 3.33 for part 73).

*The estimated number of annual respondents:* 3.33 (0.33 for part 50, 3 for part 52, and 3.33 for part 73).

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 9,437 (110 for part 50, 1002 for part 52, and 8,325 for part 73).

*Abstract:* The proposed rule would result in changes in reporting, recordkeeping, and third-party disclosure requirements relative to existing rules by providing certain alternative, risk-informed, performance-based physical security requirements for advanced reactors. Part 50 and part 52 advanced reactor applicants electing to apply an alternative would need to provide a description of the technical analysis required by proposed § 73.55(s)(1)(iv) relating to eligibility to use the alternatives. These part 50 and part 52 advanced reactor applicants or licensees would also be required to maintain a record of the technical analysis related to eligibility until the certifications of cessation of operations required by §§ 50.82(a)(1) or 52.110(a) have been docketed by the NRC. In addition, advanced reactor licensees relying on law enforcement or other offsite armed responders would need to provide information about the facilities and make available periodic training to these responders. Finally, the proposed rule would require part 50 and part 52 advanced reactor licensees, who make changes to or are aware of changes to plant features or offsite support resources described in the technical analysis, to prepare a report that considers the effect of changes and describes how the licensee will continue to meet the requirements in proposed § 73.55(s)(1)(ii) that the consequences of a postulated radiological release that results from a postulated security-initiated event does not exceed the offsite dose reference values. These new and amended information collections would be required to ensure the NRC has the necessary information to review whether an applicant or licensee has demonstrated they have met the proposed requirement to be eligible to use any of the proposed alternatives. The collected information would also be used by the NRC to review and determine whether the applicant or licensee has met the requirements for each elected alternative.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection(s) contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility? Please explain your response.

2. Is the estimate of the burden of the proposed information collection accurate? Please explain your response.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? Please explain your response.

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession Nos.

ML22131A161, ML22131A167, ML21334A009, and ML21334A003 or may be viewed free of charge by contacting the NRC's Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.resource@nrc.gov*. You may obtain information and comment submissions related to the OMB clearance package by searching on *https://www.regulations.gov* under Docket ID NRC–2017–0227.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2017–0227.
- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by email to *Infocollects.Resource@nrc.gov* or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0011, –0151, –0002), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503.

Submit comments by September 9, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

## XIII. Availability of Guidance

The NRC is issuing for public comment draft guidance for the implementation of the proposed requirements in this rulemaking: DG–5072, ''Guidance for Alternative Physical Security Requirements for Small Modular Reactors and Non-Light-Water Reactors.'' DG–5072 is available at *https://www.regulations.gov* by searching on Docket ID NRC–2017–0227.

DG–5071, ''Target Set Identification and Development for Nuclear Power Reactors,'' contains Official Use Only—Security Related Information (OUO–SRI) and is withheld from public disclosure. This DG may be made available to those affected stakeholders who have established a need-to-know. For access to DG–5071, contact the individuals listed for guidance information in the **FOR FURTHER INFORMATION CONTACT** section of this document.

*DG–5072, ''Guidance for Alternative Physical Security Requirements for Small Modular Reactors and Non-Light-Water Reactors''*

This draft regulatory guide describes an approach that the NRC staff considers acceptable to develop the radiological consequence analysis required to demonstrate eligibility for the use of any alternative physical security requirement listed under § 73.55(s)(2). This analysis is performed by the applicant or licensee to determine radiation doses at the exclusion area boundary and the outer boundary of the low population zone from postulated radiological releases as a result of a postulated security-initiated event. This draft regulatory guide includes a description of an acceptable approach for demonstrating the ability to meet the requirements set forth in § 73.55 with the identified alternative physical security requirements incorporated into the security plans. This draft regulatory guide also provides a description of acceptable implementation guidance for each physical security alternative listed under § 73.55(s)(2), including guidance for licensees to provide information and conduct training and exercises with offsite law enforcement.

*DG–5071, ''Target Set Identification and Development for Nuclear Power Reactors''*

This draft regulatory guide describes an approach that the NRC staff considers acceptable for applicant or licensee analysis, development, documentation, and evaluation of target set elements and target sets. This includes operator actions and mitigative measures that may be credited to prevent: (1) the target set's high-level objective, (2) significant core damage or (3) loss of spent fuel coolant and exposure of spent fuel for large LWRs, and to prevent significant release of radionuclides from any source for SMRs and non-LWRs.

## XIV. Public Meeting

The NRC may conduct a public meeting on the proposed rule for the purpose of describing the proposed rule and implementation guidance to the public and answering questions from the public on the proposed rule and implementation guidance.

The NRC will publish a notice of the public meeting's location, time, and agenda on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

## XV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Document | ADAMS Accession No/**Federal Register** Citation |
|---|---|
| SRM–SECY–18–0076, ''Options and Recommendations for Physical Security for Advanced Reactors,'' November 19, 2018. | ML18324A478. |
| SECY–22–0072, ''Proposed Rulemaking: Alternative Physical Security Requirements for Advanced Reactors (RIN 3150–AK19),'' August 2, 2022. | ML21334A004. |
| SRM–SECY–22–0072, ''Staff Requirements—Proposed Rulemaking: Alternative Physical Security Requirements for Advanced Reactors (RIN 3150–AK19),'' June 18, 2024. | ML24170A753 (Package). |
| Draft Environmental Assessment for the Proposed Rule—Advanced Reactor Security Requirements, Docket No. NRC–2017–0227, July 2024. | ML24178A374. |
| Draft Regulatory Analysis for the Proposed Rule: Alternative Physical Security Requirements for Advanced Reactors, July 2024. | ML24178A372. |
| OMB Clearance Package | ML21334A009, ML22131A161, ML22131A167. |
| DG–5072, ''Guidance for Alternative Physical Security Requirements for Small Modular Reactors and Non-Light-Water Reactors,'' July 2024. | ML20041E037. |
| NCP–2002–003 Non-concurrence on the Proposed Rule, April 28, 2022 | ML22161A919. |
| Policy Statement on the Regulation of Advanced Reactors, July 8, 1986 | 51 FR 24643. |

| Document | ADAMS Accession No/**Federal Register** Citation |
|---|---|
| Policy Statement on the Regulation of Advanced Reactors, October 14, 2008 | 73 FR 60612. |
| SECY–10–0034, ''Potential Policy, Licensing, and Key Technical Issues for Small Modular Nuclear Reactor Designs,'' March 28, 2010. | ML093290268. |
| SECY–11–0184, ''Security Regulatory Framework for Certifying, Approving, and Licensing Small Modular Nuclear Reactors (M110329),'' December 29, 2011. | ML112991113. |
| NEI White Paper, ''Proposed Physical Security Requirements for Advanced Reactor Technologies,'' December 14, 2016. | ML17026A474. |
| NRC ''Draft White Paper on Potential Changes to Physical Security Requirements for Small Modular and Advanced Reactors,'' November 2017. | ML17333A524. |
| Regulatory Basis for the Physical Security of Advanced Reactors, July 16, 2019 | 84 FR 33861. |
| Regulatory Basis Public Comment Submission from Jordan Lewis, August 14, 2019 | ML19228A144. |
| Regulatory Basis Public Comment Submission from Pia Jensen, August 14, 2019 | ML19228A150. |
| Regulatory Basis Public Comment Submission from Alan Medsker, August 14, 2019 | ML19228A159. |
| Regulatory Basis Public Comment Submission from Pia Jensen, August 15, 2019 | ML19228A166. |
| Regulatory Basis Public Comment Submission from Pia Jensen, August 15, 2019 | ML19228A171. |
| Regulatory Basis Public Comment Submission from Phillip Hammond (NuScale Power, LLC), August 15, 2019. | ML19228A180. |
| Regulatory Basis Public Comment Submission from Michael D. Tschiltz (Nuclear Energy Institute), August 15, 2019. | ML19228A184. |
| Regulatory Basis Public Comment Submission from Edwin Lyman (Union of Concerned Scientists), August 15, 2019. | ML19228A186. |
| Regulatory Basis Public Comment Submission from Pia Jensen, August 15, 2019 | ML19228A192. |
| Preliminary Proposed Rule Language, April 13, 2020 | ML20072F620. |
| Revised Preliminary Proposed Rule Language, September 14, 2020 | 85 FR 56548. |
| Revised Preliminary Proposed Rule Language, December 14, 2021 | ML21336A004. |
| December 13, 2017, Public Meeting Summary | ML17354B266. |
| August 8, 2019, Public Meeting Summary | ML19221B611. |
| December 12, 2019, Public Meeting Notice | ML19344D035; *https://www.nrc.gov/pmns/mtg?do=details&Code=20191290.* |
| NEI Additional Input for the Rulemaking for Physical Security for Advanced Reactors, January 10, 2020 | ML20029E959 (Package). |
| February 20, 2020, Periodic Advanced Reactor Stakeholder Meeting Notice | ML20054A703 *https://www.nrc.gov/pmns/mtg?do=details&Code=20200135.* |
| April 22, 2020, Public Meeting Notice | ML20112F411 *https://www.nrc.gov/pmns/mtg?do=details&Code=20200250.* |
| April 21, 2021, Public Meeting Summary | ML21183A004. |
| May 14, 2021, Public Meeting Notice | ML21124A174 *https://www.nrc.gov/pmns/mtg?do=details&Code=20210600.* |
| August 17, 2021, Public Meeting Notice | ML21218A150 *https://www.nrc.gov/pmns/mtg?do=details&Code=20211046.* |
| September 16, 2021, Public Meeting Notice | ML21246A143 *https://www.nrc.gov/pmns/mtg?do=details&Code=20211155.* |
| September 29, 2021, Public Meeting Notice | ML21260A177 *https://www.nrc.gov/pmns/mtg?do=details&Code=20211158.* |
| October 19, 2021, Public Meeting Notice | ML21279A152 *https://www.nrc.gov/pmns/mtg?do=details&Code=20211310.* |
| January 20, 2022, Public Meeting Summary | ML22024A063. |
| NEI 20–05, ''Methodological Approach and Considerations for a Security Assessment to Demonstrate Compliance with the Performance Criteria of 10 CFR 73.55(TBD),'' Draft A, April 10, 2020. | ML20104A306 (Package). |
| NEI 20–05, ''Methodological Approach and Considerations for a Technical Analysis to Demonstrate Compliance with the Performance Criteria of 10 CFR 73.55(a)(7),'' Draft B, April 13, 2020. | ML20107D894. |
| NEI 20–05, ''Methodological Approach and Considerations for a Technical Analysis to Demonstrate Compliance with the Eligibility Criteria of 10 CFR 73.55(a)(7),'' Draft D, May 14, 2021. | ML21137A057. |
| NRC Letter to NEI regarding May 2020 comments, September 17, 2020 | ML20212L397. |
| NRC Comments on NEI 20–05, Draft B, March 2, 2021 | ML21049A029 (Package). |
| NRC Letter to NEI ceasing NRC review of draft NEI 20–05, November 24, 2021 | ML21307A120. |
| Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' September 20, 2019. | ML18093B087 *https://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-8.html.* |

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2017–0227.

**List of Subjects**

*10 CFR Part 50*

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

*10 CFR Part 52*

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Inspection, Issue finality, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

*10 CFR Part 73*

Criminal penalties, Exports, Hazardous materials transportation, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR parts 50, 52, and 73 as follows:

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. Amend § 50.34 by adding paragraph (c)(4) to read as follows:

**§ 50.34 Contents of applications; technical information.**

* * * * *

(c) * * *

(4) Each applicant electing to apply an alternative in § 73.55(s)(2) of this chapter must provide a description of the technical analysis required by § 73.55(s)(1)(iv) of this chapter.

* * * * *

■ 3. Amend § 50.54 by adding paragraph (p)(5) to read as follows:

**§ 50.54 Conditions of licenses.**

* * * * *

(p) * * *

(5) A licensee that meets § 73.55(s)(1) of this chapter and makes changes to or becomes aware of a change to plant features or offsite support resources described in the technical analysis prepared under § 73.55(s)(1)(iv) of this chapter must consider the effect of the change(s) on the analysis. The licensee must amend the information in the application prepared under § 50.34(c)(4) or § 52.79(a)(35)(iii) of this chapter to describe how the licensee continues to meet the requirements in § 73.55(s)(1)(ii) of this chapter.

* * * * *

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 4. The authority citation for part 52 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 5. Amend § 52.79 by adding paragraph (a)(35)(iii) to read as follows:

**§ 52.79 Contents of applications; technical information in final safety analysis report.**

(a) * * *

(35) * * *

(iii) Each applicant electing to apply an alternative in § 73.55(s)(2) of this chapter must provide a description of the technical analysis required by § 73.55(s)(1)(iv) of this chapter.

* * * * *

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

**Authority:** Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 161A, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2201a, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 7. Amend § 73.55 by:
■ a. Removing and reserving paragraph (a)(5);
■ b. Revising paragraph (b)(3) introductory text;
■ c. Revising paragraph (b)(9)(i) introductory text;
■ d. Adding paragraphs (b)(9)(i)(A) and (B);
■ e. Revising paragraphs (e)(10)(i)(A) and (k)(1); and
■ f. Adding paragraph (s).

The revisions and additions read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

* * * * *

(b) * * *

(3) A licensee holding an operating license under the provisions of part 50 of this chapter or a combined license under the provisions of part 52 of this chapter for a light-water reactor, other than a small modular reactor, as defined in § 171.5 of this chapter, must design the physical protection program to prevent significant core damage and spent fuel sabotage. A licensee holding an operating license under the provisions of part 50 of this chapter or a combined license under the provisions of part 52 of this chapter for a small modular reactor licensee or a non-light-water reactor licensee, must design the physical protection program to prevent a significant release of radionuclides from any source. Specifically, the program must:

* * * * *

(9) * * *

(i) The insider mitigation program must monitor the initial and continuing trustworthiness and reliability of individuals granted or retaining unescorted access authorization to a protected or vital area, and implement defense-in-depth methodologies to minimize the potential for an insider to adversely affect, either directly or indirectly, the licensee's capability to prevent the following:

(A) For light-water reactors, other than small modular reactors, as defined in § 171.5 of this chapter, significant core damage and spent fuel sabotage.

(B) For small modular reactors, as defined in § 171.5 of this chapter, or for non-light-water reactors, a significant release of radionuclides from any source.

* * * * *

(e) * * *

(10) * * *

(i) * * *

(A) Design, construct, install, and maintain a vehicle barrier system, to include passive and active barriers, at a stand-off distance adequate to protect personnel, equipment, and systems necessary to prevent:

(*1*) For light-water reactors, other than small modular reactors, as defined in § 171.5 of this chapter, significant core damage and spent fuel sabotage due to the effects of the design basis threat of radiological sabotage land vehicle bomb assault.

(*2*) For small modular reactors, as defined in § 171.5 of this chapter, or for non-light-water reactors, a significant release of radionuclides from any source due to the effects of the design basis threat of radiological sabotage land vehicle bomb assault.

* * * * *

(k) * * *

(1) The licensee shall establish and maintain, at all times, properly trained, qualified and equipped personnel required to interdict and neutralize threats up to and including the design basis threat of radiological sabotage as defined in § 73.1, to prevent:

(i) For light-water reactors, other than small modular reactors, as defined in § 171.5 of this chapter, significant core damage and spent fuel sabotage.

(ii) For small modular reactors, as defined in § 171.5 of this chapter, or for non-light-water reactors, a significant release of radionuclides from any source.

* * * * *

(s) *Alternative physical security requirements.*

(1) *General requirements.*

(i) *Applicability.* The requirements of this section apply to an applicant for or holder of a license under part 50 of this chapter or part 52 of this chapter for a small modular reactor, as defined in § 171.5 of this chapter, or a non-light-water reactor.

(ii) *Eligibility.* The applicant or licensee must demonstrate that the consequences of a postulated radiological release that could result from a postulated security-initiated event do not exceed the offsite dose reference values defined in §§ 50.34(a)(1)(D) and 52.79(a)(1)(vi) of this chapter.

(iii) *Identification and documentation.* The applicant or licensee must identify the specific alternative physical security requirement(s) it intends to implement as part of its physical protection program and demonstrate how the requirements set forth in this section are met when the selected alternative(s) is used.

(iv) *Analysis.* The applicant or licensee electing to meet one or more of the alternative security requirements in paragraph (s)(2) of this section must perform a technical analysis demonstrating how it meets the criteria in paragraph (s)(1)(ii) of this section. The licensee must maintain the analysis until submittal of the licensee's certifications required by § 50.82(a)(1) of this chapter or § 52.110(a) of this chapter.

(2) *Specific alternative physical security requirements.*

(i) *Alternative requirement for armed responders.* A licensee that meets paragraph (s)(1) of this section is relieved from the requirement for the minimum number of armed responders in paragraph (k)(5)(ii) of this section.

(ii) *Alternative requirements for interdiction and neutralization.* A licensee that meets paragraph (s)(1) of this section and has no armed response personnel onsite whose primary duty is to respond to, interdict, and neutralize acts of radiological sabotage:

(A) May rely on law enforcement or other offsite armed responders to fulfill the interdiction and neutralization functions required by paragraph (b)(3)(i) of this section.

*(1)* The licensee must maintain the capability to detect, assess, interdict, and neutralize threats as required by paragraph (b)(3)(i) of this section.

*(2)* The licensee must provide adequate delay for threats up to and including the DBT of radiological sabotage to enable law enforcement or other offsite armed responders to fulfill the interdiction and neutralization functions.

*(3)* The licensee must provide necessary information about the facility and make available periodic training to law enforcement or other offsite armed responders who will fulfill the interdiction and neutralization functions for threats up to and including the DBT of radiological sabotage.

*(4)* The licensee must fully describe in the safeguards contingency plan the role that law enforcement or other offsite armed responders will play in the licensee's protective strategy when relied upon to fulfill the interdiction and neutralization capabilities required by paragraph (b)(3)(i) of this section. The description must provide sufficient detail to enable the NRC to determine that the licensee's physical protection program provides high assurance of adequate protection against threats up to and including the DBT of radiological sabotage.

*(5)* The licensee must identify criteria and measures to compensate for the degradation or absence of law enforcement or other offsite armed responders and propose suitable compensatory measures that meet the requirements of paragraphs (o)(2) and (3) of this section to address this degradation.

(B) Is relieved from applying:

*(1)* The requirements in paragraphs (k)(3) through (7) of this section and the requirement in paragraph (k)(8)(ii) of this section to law enforcement responders.

*(2)* The training and qualification requirements related to armed response personnel in section VI of appendix B to this part for law enforcement responders, except for the performance evaluation program requirements related to armed response personnel in section VI.C.3 of appendix B to this part, which the licensee shall continue to satisfy for all armed response personnel, including law enforcement.

*(3)* The location-related requirements in paragraph (k)(5)(iii) of this section and in section II.B.3.c.(iv) of appendix C to this part related to armed responders.

(iii) *Alternative requirements for physical barriers.* A licensee that meets paragraph (s)(1) of this section may utilize means other than physical barriers and barrier systems to satisfy the physical protection program design requirements of paragraph (e) of this section. Acceptable means can be any method(s) that accomplishes the delay and access control functions necessary to allow the licensee to implement its physical protection program.

(iv) *Alternative requirements for onsite secondary alarm stations.* A licensee that meets paragraph (s)(1) of this section:

(A) May have one alarm station located offsite notwithstanding the requirement in paragraph (i)(2) of this section to have at least two alarm stations located onsite. The central alarm station must remain onsite.

(B) Is relieved from the requirement in paragraph (i)(4)(iii) of this section to construct, locate, and protect the offsite secondary alarm station to the standards for the central alarm station. The licensee is not relieved from the requirement in paragraph (i)(4)(iii) of this section that both alarm stations shall be equipped and redundant, such that all functions needed to satisfy the requirements of paragraph (i)(4) of this section can be performed in both alarm stations.

(v) *Alternative requirements for vital areas.* A licensee that meets paragraph (s)(1) of this section:

(A) Is relieved from the requirement in paragraph (e)(9)(v)(D) of this section

to designate an offsite secondary alarm station as a vital area.

(B) Is relieved from the requirement in paragraph (e)(9)(vi) of this section to locate the secondary power supply systems for an offsite secondary alarm station in a vital area.

■ 8. Amend appendix B to 10 CFR part 73 by revising paragraph VI.A.1 to read as follows:

**Appendix B to Part 73—General Criteria for Security Personnel**

* * * * *

VI. * * *

A. * * *

1. For light-water reactors, other than small modular reactors, as defined in § 171.5 of this chapter, the licensee shall ensure that all individuals who are assigned duties and responsibilities required to prevent significant core damage and spent fuel sabotage, implement the Commission-approved security plans, licensee response strategy, and implementing procedures, meet minimum training and qualification requirements to ensure each individual possesses the knowledge, skills, and abilities required to effectively perform the assigned duties and responsibilities. For small modular reactors, as defined in § 171.5 of this chapter, or for non-light-water reactors, the licensee shall ensure that all individuals who are assigned duties and responsibilities required to prevent a significant release of radionuclides from any source, implement the Commission-approved security plans, licensee response strategy, and implementing procedures, meet minimum training and qualification requirements to ensure each individual possesses the knowledge, skills, and abilities required to effectively perform the assigned duties and responsibilities.

* * * * *

Dated: August 5, 2024.

For the Nuclear Regulatory Commission.

**Carrie Safford,**

*Secretary of the Commission.*

[FR Doc. 2024–17598 Filed 8–8–24; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 21

**[Docket ID OCC–2024–0005]**

**RIN 1557–AF14**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 208

**[Docket No. R–1835]**

**RIN 7100–AG78**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 326

**RIN 3064–AF34**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 748

**[Docket ID NCUA–2024–0033]**

**RIN 3133–AF45**

## Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements

**AGENCY:** Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and National Credit Union Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, ''the Agencies'' or ''Agency'' when referencing the singular) are inviting comment on a proposed rule that would amend the requirements that each Agency has issued for its supervised banks (currently referred to as ''Bank Secrecy Act (BSA) compliance programs'') to establish, implement, and maintain effective, risk-based, and reasonably designed Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) programs. The amendments are intended to align with changes that are being concurrently proposed by the Financial Crimes Enforcement Network (FinCEN) as a result of the Anti-Money Laundering Act of 2020 (AML Act). The proposed rule incorporates a risk assessment process in the AML/CFT program rules that requires, among other things, consideration of the national AML/CFT Priorities published by FinCEN. The proposed rule also would add customer due diligence requirements to reflect prior amendments to FinCEN's rule and, concurrently with FinCEN, propose clarifying and other amendments to codify longstanding supervisory expectations and conform to AML Act changes.

**DATES:** Comments must be received on or before October 8, 2024.

**ADDRESSES:** Comments should be directed to:

*OCC:* Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2024–0005'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 8 a.m.–7 p.m. Eastern Time (ET) or email *regulations@erulemakinghelpdesk.com.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2024–0005'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, and phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your

comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov:*

Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2024–0005'' in the Search Box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 8 a.m.–7 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Board:* You may submit comments, identified by Docket No. R–1835 and RIN No. 7100–AG78, by any of the following methods:

• *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

*Instructions:* All public comments are available from the Board's website at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

*FDIC:* The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN 3064–AF34, by any of the following methods:

• *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications.* Follow instructions for submitting comments on the FDIC's website.

• *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF34), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

• *Email: comments@FDIC.gov.* Include the RIN 3064–AF34 on the subject line of the message.

*Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register publications.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

*NCUA:* You may submit comments, identified by RIN 3133–AF45, by any of the following methods (please send comments by one method only):

• *Federal eRulemaking Portal: https://www.regulations.gov.* The docket number for this proposed rule is NCUA–2024–0033. Follow the instructions for submitting comments. A plain language summary of the proposed rule is also available on the docket website.

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

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

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

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Eric Ellis, Director, BSA&AML Policy; Gregory Calpakis, BSA/AML Reform Program Manager & Information Security Officer; Jina Cheon, Special Counsel; Melissa Lisenbee, Counsel; Priscilla Benner, Counsel; Scott Burnett, Counsel; or Henry Barkhausen, Counsel, Chief Counsel's Office (202) 649–5490; or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

*Board:* Division of Supervision and Regulation, Suzanne Williams, Deputy Associate Director, (202) 452–3513, *suzanne.l.williams@frb.gov,* Koko Ives, Manager BSA/AML Policy, (202) 973–6163, *koko.ives@frb.gov,* Legal Division, Jason Gonzalez, Deputy Associate General Counsel, (202) 452–3275, *jason.a.gonzalez@frb.gov,* Bernard Kim, Special Counsel, (202) 452–3083, *bernard.g.kim@frb.gov.*

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**SUPPLEMENTARY INFORMATION:**

## I. Scope

The proposed rule would amend the BSA compliance program rule for banks [1] supervised by each of the Agencies in a way that aligns with the rule concurrently proposed by FinCEN.[2] As explained below, pursuant to the AML Act,[3] FinCEN is amending its BSA/AML program rules to incorporate the AML/CFT Priorities. Other changes proposed by FinCEN to the BSA/AML program rules are not required by the AML Act but are intended to clarify regulatory requirements. The Agencies have independent authority to prescribe regulations requiring banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of banks with the requirements of subchapter II of chapter 53 of title 31, under 12 U.S.C. 1818(s) and 1786(q), and are proposing to amend their rules concurrently with FinCEN. The intent of the Agencies is to have their program requirements for banks remain consistent with those imposed by FinCEN. Further, with consistent regulatory text, banks will not be subject to any additional burden or confusion from needing to comply with differing standards between FinCEN and the Agencies. The proposed changes are discussed in more detail below in the section-by-section analysis.

[1] The term ''bank'' is defined in regulations implementing the BSA, 31 CFR 1010.100(d), and includes each agent, agency, branch, or office within the United States of banks, savings associations, credit unions, and foreign banks. The proposed rule would remove language in 12 CFR 21.21, which contains the OCC's program rule requirements, applicable to state savings associations. This language was adopted as part of the transfer of authorities from the Office of Thrift Supervision. In 2020, the FDIC issued a final rule making 12 CFR part 326 applicable to state savings associations, meaning it is no longer necessary to cover state savings associations in 12 CFR 21.21.

[2] FinCEN is requesting comment on proposed amendments to its AML/CFT program rule for banks at the same time as this proposed rule from the Agencies.

[3] The AML Act is Division F of the of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388.

## II. Background

### *A. History of the BSA Compliance Program Rules for the Agencies*

The Money Laundering Control Act of 1986 (MLCA) [4] amended 12 U.S.C. 1818(s) and 1786(q) (sections 8(s) of the Federal Deposit Insurance Act and 206(q) of the Federal Credit Union Act, respectively) to require the Agencies to issue regulations requiring their supervised institutions to ''establish and maintain procedures reasonably designed to assure and monitor the compliance'' of their supervised institutions with the requirements of the BSA. Consistent with the MLCA, on January 27, 1987, all of the then-Federal bank regulatory agencies issued substantially similar regulations requiring their supervised institutions to develop procedures for BSA compliance.[5] The Agencies' respective BSA compliance program rules require banks to implement a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in the BSA and its implementing regulations.[6] These rules require the BSA compliance program to have four components, commonly known as: internal controls, independent testing, BSA officer, and training.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Annunzio-Wylie Act) [7] subsequently amended the BSA by authorizing the Treasury Secretary to issue regulations requiring financial institutions, as defined in the BSA, to maintain an AML program.[8] The ''minimum standards'' set forth in the statute were substantially similar to the standards previously set forth by the Agencies in their respective BSA compliance program rules, including the four components.[9] Before 2002, BSA compliance program rules for banks with a Federal functional regulator were administered exclusively by the Agencies under sections 8(s) and 206(q). The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) [10] further amended the BSA, by among other things, establishing FinCEN's statutory role as the regulator and administrator of the BSA [11] and mandating that financial institutions subject to the BSA maintain AML programs consistent with the minimum standards established by the Annunzio-Wylie Act.[12]

Because the statutory elements of AML programs under the BSA largely mirrored the Agencies' BSA compliance program rules, FinCEN, in 2002, issued a rule that deemed banks supervised by the Agencies to be in compliance with the BSA if they satisfied the requirements of the Agencies' BSA compliance program rules.[13]

Although in practice FinCEN's and the Agencies' compliance program rules operate together, since the USA PATRIOT Act, banks have been required to maintain compliance programs under separate legal authorities administered by (i) FinCEN under title 31 [14] and (ii) the Agencies under sections 8(s) and 206(q). Because the authority for each Agency's BSA compliance program rule derives from and is required by sections 8(s) and 206(q), each Agency prescribes regulations requiring the banks it supervises to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of the BSA.

In 2003, FinCEN, the Agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission jointly issued final rules on customer identification program (CIP) requirements, which were mandated by amendments to the BSA under the USA PATRIOT Act [15] requiring financial institutions to implement a CIP as part of their BSA compliance program. The CIP requirements became part of the separate program rules administered by FinCEN and each of the Agencies although the rules continued to function together by allowing banks to satisfy FinCEN's rule by complying with their Agency's rule.

In 2016, FinCEN amended its AML compliance program rules to incorporate customer due diligence

[4] Public Law 99–570, section 5318, 100 Stat. 3207, 3207–29 (1986).

[5] 52 FR 2858 (Jan. 27, 1987).

[6] 12 CFR 208.63(b), 211.5(m), and 211.24(j) (Fed. Rsrv.); 12 CFR 326.8(b) (FDIC); 12 CFR 748.2 (NCUA); 12 CFR 21.21(c) (OCC).

[7] Title XV of Public Law 102–550, 106 Stat. 3672 (1992).

[8] *Id.,* at section 1517.

[9] The minimum standards for an AML program set forth in the Annunzio-Wylie Act, codified at 31 U.S.C. 5318(h), include: ''(A) the development of internal policies, procedures, and controls, (B) the designation of a compliance officer, (C) an ongoing employee training program, and (D) an independent audit function to test programs.''

[10] Public Law 107–56, section 361, 115 Stat. 272, 329–32 (2001).

[11] 31 U.S.C. 310(b)(2)(I), as added by section 361 of the USA PATRIOT Act (Pub. L. 107–56).

[12] 31 U.S.C. 5318(h), as added by section 352 of the USA PATRIOT Act (Pub. L. 107–56) became effective on April 24, 2002.

[13] 67 FR 21110 (Apr. 29, 2002).

[14] 67 FR 21110 (Apr. 29, 2002) (formerly codified at 31 CFR 103.120(b) and now codified at 31 CFR 1020.210(a)(3)).

[15] 68 FR 25090 (May 9, 2003).

(CDD) requirements, including beneficial ownership information collection requirements, into its AML compliance program rule for certain financial institutions, including banks.[16] Although the Agencies did not promulgate CDD requirements at that time, the Agencies examine supervised banks for compliance with those requirements under the authority of sections 8(s) and 206(q).[17] With the exception of the CDD requirement, FinCEN's rule was substantially similar to the Agencies' rules, and banks must currently comply with both FinCEN's and the Agencies' compliance program rules.

*B. The Anti-Money Laundering Act of 2020*

On January 1, 2021, Congress enacted the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, of which the AML Act was a component.[18] Section 6101(b) of the AML Act made several changes to the BSA, including, but not limited to: (1) inserting CFT as a term in the statutory compliance program requirement; (2) requiring the Treasury Secretary to establish and make public the AML/CFT Priorities and to promulgate regulations, as appropriate; (3) providing that the duty to establish, maintain, and enforce an AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Treasury Secretary and the appropriate Federal functional regulator; and (4) requiring the Treasury Secretary and Federal functional regulators to take into account certain factors when prescribing the minimum AML/CFT standards and examining for compliance with those standards. Among these factors, section 6101 of the AML Act reinforced that AML/CFT programs are to be ''reasonably designed'' and ''risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower-risk customers and activities.''

## III. Proposed Regulation Changes

The proposed rule would make several changes to the Agencies' BSA compliance program rules. As mentioned earlier and described in more detail below, there are several reasons for these proposed changes. The primary reason for the changes is so that the Agencies' BSA compliance program rules will remain aligned with FinCEN's rule to avoid confusion and additional burden on banks. FinCEN is required by the AML Act to amend its program rules to incorporate the AML/CFT Priorities and is also taking the opportunity to clarify certain requirements. Although not required by the AML Act, the Agencies are revising their BSA regulations, among other reasons, to address how the AML/CFT Priorities will be incorporated into banks' BSA requirements.[19] Section IV describes the other proposed changes to the Agencies' AML/CFT program rules.

## IV. Section-by-Section Analysis

The section-by-section analysis describes the specific proposed changes to the AML/CFT program rules of the Agencies.

*(a) Purpose*

FinCEN and the Agencies are proposing a statement describing the purpose of an AML/CFT program requirement, which is to ensure that each bank implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X; focuses attention and resources in a manner consistent with the risk profile of the bank; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

The proposed statement of purpose is not intended to establish new obligations separate and apart from the specific requirements set out for banks or impose additional costs or burdens. Rather, this language is intended to summarize the overarching goals of banks' effective, risk-based, and reasonably designed AML/CFT programs.

*(b) Establishment and Contents of an AML/CFT Program*

(b)(1) General

The Agencies are proposing changes to their existing program requirement to align with changes proposed by FinCEN including those changes that reflect the statutory requirements in AML Act section 6101(b). Paragraph (b)(1) of the proposed rule introduces the general requirement that ''A [bank] must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program . . .'' Banks are currently required to maintain a ''reasonably designed'' BSA compliance program. The proposed rule would add the terms ''effective'' and ''risk-based'' to the existing program requirement. Implicit in the language that programs must be ''reasonably designed to assure and monitor compliance'' with the BSA and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X is the requirement that a bank's compliance program be effective. The addition of the term ''effective'' to describe the AML/CFT program requirement more directly reflects this purpose and would make clear that the Agencies evaluate the effectiveness of the implemented program and not only its design. As the addition of the term ''effective'' is a clarifying amendment, it would not be a substantive change for banks.[20] The addition of the term ''risk-based'' also reinforces the longstanding position of the Agencies that AML/CFT programs should be risk-based.[21]

Additionally, as previously discussed, the Agencies are adding the terminology ''AML/CFT'' to this rule, consistent with the AML Act. The inclusion of ''CFT'' in the program rules also does not

[16] 81 FR 29398 (May 11, 2016). FinCEN did not enact the regulation in response to any specific statutory change to the BSA. However, section 6403 of the Corporate Transparency Act (CTA) now requires FinCEN to revise the CDD rule to, among other things, bring it into conformance with the AML Act by January 1, 2025. The CTA is part of the AML Act and title LXIV of the NDAA.

[17] Press Release, Joint Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements (Aug. 13, 2020), *https://www.fdic.gov/news/press-releases/2020/pr20091a.pdf.*

[18] Public Law 116–283, section 6001, 134 Stat. 3388, 4547 (2021).

[19] *See* Interagency Statement on the Issuance of the Anti-Money Laundering/Countering the Financing of Terrorism National Priorities (June 30, 2021), *https://www.fincen.gov/sites/default/files/shared/Statement%20for%20Banks%20(June%2030%2C%202021).pdf.*

[20] 31 U.S.C. 5318(h)(2)(B)(iii).

[21] *See* Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 22, 2019), *https://www.fdic.gov/sites/default/files/2024-03/pr19065a.pdf.* The Joint Statement notes that ''To assure that BSA/AML compliance programs are reasonably designed to meet the requirements of the BSA, banks structure their compliance programs to be risk-based and to identify and report potential money laundering, terrorist financing, and other illicit financial activity.'' Further, ''a risk-based compliance program enables a bank to allocate compliance resources commensurate with its risk.''

establish new obligations or impose additional costs or burdens as the USA PATRIOT Act already requires financial institutions to account for risks related to terrorist financing.

(b)(2) AML/CFT Program

This subparagraph conforms to language proposed by FinCEN and is consistent with section 6101(b) of the AML Act. It describes the contents of an AML/CFT program as follows: ''An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the [bank's] risk profile that takes into account higher-risk and lower-risk customers and activities . . .'' followed by setting forth the minimum requirements for such a program. This statement reflects the longstanding industry practice and expectation of the Agencies that AML/CFT programs be risk-based. Implicit in the existing requirement that banks implement a program ''reasonably designed'' to ensure and monitor compliance with the BSA is the expectation that banks allocate their resources according to their money laundering and terrorist financing (ML/TF) risk. Moreover, as part of existing requirements under CDD and suspicious activity monitoring, banks already evaluate customers and activities according to risk.

The proposed rule also sets forth the following minimum requirements of an AML/CFT program: (i) a risk assessment process that serves as the basis for the bank's AML/CFT program; (ii) reasonable management and mitigation of risks through internal policies, procedures, and controls; (iii) a qualified AML/CFT officer; (iv) an ongoing employee training program; (v) independent, periodic testing conducted by qualified personnel of the bank or by a qualified outside party; and (vi) CDD. As explained in the subsections that follow, the ways in which banks approach the implementation of these components is crucial to whether the resulting AML/CFT program is effective, risk-based, and reasonably designed. Each of the components does not function in isolation; instead, each component complements the other components, and together they form the basis for an AML/CFT program that is effective, risk-based, and reasonably designed in its entirety.

(b)(2)(i) Risk Assessment Process Component

As noted previously, FinCEN is required by the AML Act to amend its program rules to incorporate the national AML/CFT Priorities. Consistent with FinCEN's proposal, the Agencies are proposing to require a risk assessment process as the means to incorporate the AML/CFT Priorities. The risk assessment process is now proposed as the first component required for an AML/CFT program. This proposed subparagraph would require banks to establish a risk assessment process that serves as the basis for the bank's AML/CFT program including implementation of the components as described in paragraphs (b)(2)(ii) through (vi). The Agencies have traditionally viewed a risk assessment as a critical tool of a reasonably designed BSA compliance program; a bank cannot implement a reasonably designed program to achieve compliance with the BSA unless it understands its risk profile.[22] As part of safe and sound operations, the Agencies have guided banks to use risk assessments to structure their risk-based compliance programs. The inclusion of a risk assessment process that serves as the basis of a risk-based AML/CFT program also is supported by several provisions of the AML Act, including section 6101(b), which states that AML/CFT programs should be risk-based.[23]

The objective of requiring the risk assessment process to serve as the basis for a bank's AML/CFT program would be to promote programs that are appropriately risk-based and tailored to the AML/CFT Priorities and the bank's risk profile. This approach would require banks to integrate the results of their risk assessment process into their risk-based internal policies, procedures, and controls. Consistent with section 6101(b) of the AML Act, this risk-based approach would also enable banks to focus attention and resources in a manner consistent with the bank's ML/TF risk profile that takes into account higher-risk and lower-risk customers and activities. The details of a bank's particular risk assessment process should be determined by each financial institution based on its applicable activities and risk profile. Most banks already design their BSA compliance programs based on their assessment of ML/TF risk.

A bank would retain flexibility in how it would document the results of its risk assessment process. As proposed, banks would not be required to establish a single, consolidated risk assessment document solely to comply with the proposed rule. Rather, various methods and approaches could be used to ensure that a bank is appropriately documenting its particular risks. Regardless of the process, the information obtained through the risk assessment process should be sufficient to enable the bank to establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

The proposed risk assessment process would conform to the changes in FinCEN's proposed AML/CFT program and standardize the risk assessment process by requiring banks under paragraph (b)(2)(i)(A) to identify, evaluate, and document their ML, TF, and other illicit finance activity risks, including consideration of: (1) the AML/CFT Priorities; (2) the ML/TF and other illicit finance activity risks of the bank based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and (3) reports filed pursuant to the BSA and 31 CFR chapter X.

(A) Factors for Consideration in the Risk Assessment Process

1. The AML/CFT Priorities

As previously noted, the proposed rule would require banks to adjust their risk assessment processes to include a consideration of the AML/CFT Priorities. The term ''AML/CFT Priorities'' refers to the most recent statement issued by FinCEN pursuant to 31 U.S.C. 5318(h)(4).[24] FinCEN issued the first set of AML/CFT Priorities on June 30, 2021.[25]

Section 6101 of the AML Act provides that the review and incorporation by a financial institution of the AML/CFT Priorities, as appropriate, into a

[22] Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 22, 2019), *https://www.fdic.gov/sites/default/files/2024-03/pr19065a.pdf.* The Joint Statement on Risk Focused BSA/AML Supervision, July 22, 2019, clarifies that these agencies' long-standing supervisory approach to examining for compliance with the BSA considers a financial institution's risk profile and notes that ''[a] risk-based [AML] compliance program enables a bank to allocate compliance resources commensurate with its risk.'' It further clarifies that a well-developed risk assessment process assists examiners in understanding a bank's risk profile and evaluating the adequacy of its AML program. The statement also explains that, as part of their risk-focused approach, examiners review a bank's risk management practices to evaluate whether a bank has developed and implemented a reasonable and effective process to identify, measure, monitor, and control risks.

[23] 31 U.S.C. 5318(h)(2)(B)(iv)(II).

[24] FinCEN is proposing to add a new definition of the term ''AML/CFT Priorities'' at 31 CFR 1010.100(nnn) to support the promulgation of regulations pursuant to 31 U.S.C. 5318(h)(4)(D).

[25] Press Release, FinCEN Issues First National AML/CFT Priorities and Accompanying Statements, Financial Crimes Enforcement Network (June 30, 2021), *https://www.fincen.gov/news/news-releases/fincen-issues-first-national-amlcft-priorities-and-accompanying-statements.* FinCEN is required to update the AML/CFT Priorities not less frequently than once every four years. 31 U.S.C. 5318(h)(4)(B).

financial institution's AML/CFT program must be included as a measure on which a financial institution is supervised and examined for compliance with the financial institution's obligations under the BSA and other AML/CFT laws and regulations.[26] The Agencies are implementing this statutory requirement by proposing amendments that would require banks to review and consider the AML/CFT Priorities as part of their risk assessment process. The inclusion of the AML/CFT Priorities is meant to ensure that banks understand their exposure to risks in areas that are of particular importance at a national level, which may help them develop more effective, risk-based, and reasonably designed AML/CFT programs. Financial institutions would only be required to incorporate the most up-to-date set of AML/CFT Priorities into their risk-based AML/CFT programs.

The Agencies expect that most banks will be able to leverage their existing risk assessment processes when considering their exposure to each of the AML/CFT Priorities. By adopting a risk-based approach to the integration of the AML/CFT Priorities, banks can tailor their AML/CFT programs to address current and emerging risks, react to changing circumstances, and maximize the benefits of their compliance efforts. Banks also would maintain flexibility over the manner in which the AML/CFT Priorities are integrated into their risk assessment processes and the method of assessing the risk related to each of the AML/CFT Priorities. The Agencies anticipate that some banks may ultimately determine that their business models and risk profiles have limited exposure to some of the threats addressed in the AML/CFT Priorities but instead reflect greater exposure to other ML/TF and illicit finance activity risks. Additionally, some banks may determine that their AML/CFT programs already sufficiently take into account the AML/CFT Priorities.

2. ML/TF and Other Illicit Finance Activity Risks

Banks are not expected to exclusively focus their risk assessment processes on the AML/CFT Priorities. Rather, the AML/CFT Priorities are among many factors that a bank should consider when assessing its institution-specific risks. Accordingly, the proposed risk assessment process would also require consideration of ML/TF and other illicit finance activity risks of the bank based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations. These factors are generally consistent with banks' current risk assessment practices and the Agencies' supervisory expectations. Regardless of the source of information, the risk assessment process contemplates steps to ensure the information on which they are relying to assess risks is reasonably current, complete, and accurate.

While most banks are generally familiar with these concepts, ''distribution channels'' may be a newer term for some banks. For purposes of this rule, ''distribution channels'' [27] refers to the method(s) and tool(s) through which a bank opens accounts and provides products or services, including, for example, through the use of remote or other non-face-to-face means. The term ''intermediaries'' may also be a newer term for some banks. Since banks have a variety of other relationships beyond customers, such as third parties, that may pose ML/TF risks to the U.S. financial system, the proposed rule would include the term ''intermediary'' so that banks would consider these other types of relationships in their risk assessment process. The Agencies consider ''intermediaries'' to broadly include other types of financial relationships beyond customer relationships that allow financial activities by, at, or through a bank or other type of financial institution. An intermediary can include, but not be limited to, a bank or financial institution's brokers, agents, and suppliers that facilitate the introduction or processing of financial transactions, financial products and services, and customer-related financial activities.

Other sources of information relevant to the risk assessment process may include information obtained from other financial institutions, such as emerging risks and typologies identified through section 314(b) information sharing or payment transactions that other financial institutions returned or flagged due to ML/TF risks. It also could include internal information that a bank maintains. Such internal information may include, for example, the locations from which its customers access the bank's products, services, and distribution channels, such as the customer internet protocol (IP) addresses or device logins and related geolocation information.

Additional sources of information relevant to the risk assessment process may include feedback from law enforcement about a report the bank has filed, subpoenas from law enforcement, or potential risks at the bank and information identified from responding to section 314(a) requests. Additionally, a bank may find that there are FinCEN advisories or guidance that are particularly relevant to the bank's business activities. In that case, it would be appropriate for the bank to consider the information contained in relevant advisories or guidance when evaluating its ML/TF risks.

3. Review of Reports Filed Pursuant to the Bank Secrecy Act and the Implementing Regulations Issued by the Department of the Treasury at 31 CFR Chapter X

As the risk assessment process would serve as the foundation for a risk-based AML/CFT program, the proposed rule would require that banks review and evaluate reports filed by the bank with FinCEN pursuant to the BSA and its implementing regulations, such as suspicious activity reports and currency transaction reports. These reports can assist banks in identifying known or detected threat patterns or trends to incorporate into their risk assessments and apply to their risk-based internal policies, procedures, and controls. Reports generated and filed by a bank, such as suspicious activity reports and currency transaction reports, help inform its understanding of current risk in all areas of its business activities and customer base and may signal areas of emerging risk as its products and services evolve and change.

(B) Frequency—Periodic Updates of Risk Assessment

The proposed rule would include a new requirement under paragraph (b)(2)(i)(B) that banks update their risk assessments using the process required under paragraph (b)(2)(i)(A) on a periodic basis, including, at a minimum, when there are material changes to the bank's ML/TF or other illicit finance activity risks. This proposed requirement generally would be consistent with current bank practice, which includes updating risk assessments (in whole or in part) to reflect changes in the bank's products, services, customers, and geographic locations and to remain an accurate reflection of the bank's ML/TF and other illicit financial activity risks. Periodic updates of the risk assessment assist

[26] 31 U.S.C. 5318(h)(4)(B).

[27] The term ''distribution channel'' is synonymous with the term ''delivery channel'' used in the Basel Committee on Banking Supervision's Guidelines ''Sound Management of Risks Related to Money Laundering and Financing of Terrorism'' (Feb. 2016), *https://www.bis.org/bcbs/publ/d353.pdf.*

banks in maintaining a risk-based AML/CFT program. For example, currently a bank may update its risk assessment when new products, services, and customer types are introduced or when the bank expands through mergers and acquisitions. It is also possible that a bank may not have material changes and that updated AML/CFT Priorities do not alter a bank's risk profile. As such, a risk assessment may not require updating. Although ''material'' is a term of art in accounting standards and practice, in the proposed rule, the Agencies do not intend to define the term by reference to financial materiality. For purposes of this rule, a material change would be one that significantly changes a bank's exposure to ML/TF risks, such as a significant change in business activities including products, services, distribution channels, customers, intermediaries, and geographic locations.

In connection with the proposed language concerning the frequency or timing of the risk assessment, an annual risk assessment process requirement would be in line with other annual requirements, such as independent testing or the requirement for audited financial statements pursuant to 12 CFR 363.2 and 715.4. Also, an annual risk assessment process would assist the bank in quickly adapting to any changes in its ML/TF and other illicit finance activity risk profile. However, an annual risk assessment process could cause a bank to expend resources unnecessarily if its ML/TF and other illicit finance activity risk profile remained unchanged. The Agencies could also require a review and update to the risk assessment process between examinations by the Agencies. This review and update would ensure that the risk assessment is current for a bank's ML/TF and other illicit finance activity risks at the time of the examination. However, as with requiring an annual review and update of the risk assessment, this timing may be more frequent than necessary for certain banks with a low ML/TF and other illicit finance risk activity profile. Alternatively, the Agencies could require a review and update of the risk assessment at least as frequently as the AML/CFT Priorities are updated. However, this timing may be too long for many banks that have ML/TF and other illicit finance activity risks that change or evolve rapidly. Another option would be a combination of these options, requiring updates if there are material risk changes but no less frequently than the AML/CFT Priorities are updated. Given the variety of complexities, risk profiles, and activities, some banks may decide to review and update their risk assessment more frequently, even continuously, while other banks may decide to employ a regularly scheduled point-in-time review. Finally, the frequency can remain unspecified as ''periodic,'' without specifying a time frame.

(b)(2)(ii) Internal Policies, Procedures, and Controls

The Agencies currently require BSA compliance programs to ''provide for a system of internal controls to assure ongoing compliance'' with the BSA. The proposed paragraph (b)(2)(ii) would amend the existing internal controls component to require that a bank ''[r]easonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the requirements of the Bank Secrecy Act, and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X.'' The Agencies would generally expect banks to implement the proposed rule in a similar manner to the current rule. The proposed change would clarify the importance of implementing internal policies, procedures, and controls that are tailored to the particular risk profile of the bank to effectively mitigate risk; the level of sophistication of a bank's internal policies, procedures, and controls should be commensurate with its size, structure, risks, and complexity. In this context, the results of the risk assessment process component are expected to inform the development, implementation, and changes of the ''internal policies, procedures, and controls'' component of a risk-based compliance program. The relationship and interaction between and among the components of an effective, risk-based, and reasonably designed AML/CFT program is critical because deficiencies in one program component may have a significant impact on the effectiveness of other program components, including on the effectiveness and reasonable design of the AML/CFT program.

In considering appropriate internal policies, procedures, and controls, banks would be expected to consider not only the appropriate level of resources but also the nature of those resources, which can include human, technological, and financial resources. Human resources can include considerations of the number, type, and qualifications of staff that directly and indirectly support an AML/CFT program and the functions and activities that they perform within the AML/CFT program. Technological resources can include considerations of the information systems, such as suspicious activity monitoring and reporting systems, and the general technology deployed for an AML/CFT program. Financial resources can include considerations of the budget and funding directed to an AML/CFT program. A bank that does not set the level and type of resources directed to customers and activities based on their risk would not be effectively managing ML/TF risks.

Finally, the proposed rule would encourage, but would not require, banks to consider, evaluate, and, as appropriate, implement innovative approaches to meet compliance obligations pursuant to the BSA, the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X, and this section. This provision should not be viewed as restricting or limiting the current ability of banks to consider or engage in responsible innovation consistent with the December 2018 joint statement issued by FinCEN and the Agencies that encouraged banks to take innovative approaches to combat ML/TF and other illicit finance threats.[28]

Based on supervisory experience, the Agencies' understanding is that most banks have already implemented internal policies, procedures, and controls to manage and mitigate ML/TF risks. As a result, the proposed paragraph (b)(2)(ii) is anticipated to impose minimal additional compliance burden.

(b)(2)(iii) Qualified Individual Responsible for AML/CFT Compliance

The AML Act did not change the existing BSA requirement that each bank designate a compliance officer as part of its BSA compliance program. The Agencies are proposing clarifying and technical changes to this subsection to codify existing regulatory expectations and to conform to changes concurrently proposed by FinCEN's rule. This change does not impose a new obligation on banks.

Paragraph (b)(2)(iii) of the proposed rule also adds the word ''qualified'' to the existing requirement but is not intended to change substantively the current requirements concerning a bank's BSA officer. Inherent in the statutory requirement that a bank

[28] *See* Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), *https://www.fincen.gov/sites/default/files/2018-12/JointStatementonInnovationStatement28Final%2011-30-18%29_508.pdf.*

designate a compliance officer as part of a program that is ''reasonably designed'' to achieve compliance with the BSA and its implementing regulations is the expectation that the designated individual is qualified, including the ability to coordinate and monitor compliance with the BSA and its implementing regulations.

Accordingly, for an AML/CFT program to be effective, reasonably designed, and risk based, the compliance officer must be qualified. Based on the experience of the Agencies in examining BSA compliance programs, it is important for the compliance officer's qualifications (*i.e.,* the requisite training, skills, expertise, and experience) to be commensurate with the bank's ML/TF and other illicit finance activity risks. For example, a compliance officer at a less-complex bank with a lower-risk profile would not necessarily need the same training, skills, expertise, and experience as a compliance officer at a more complex bank with a higher risk profile. Whether an individual is sufficiently qualified to be the compliance officer will depend, in part, on the bank's ML/TF risk profile, as informed by the results of the risk assessment process. Among other criteria, a qualified compliance officer would be competent and capable in order to adequately perform the duties of the position, including having sufficient knowledge and understanding of the bank's risk profile as informed by the risk assessment process, U.S. AML/CFT laws and regulations, and how those laws and regulations apply to the bank and its activities.

In addition, the compliance officer's position in the bank's organizational structure must enable the compliance officer to effectively implement the bank's AML/CFT program. The actual title of the individual responsible for day-to-day AML/CFT compliance is not important; however, the individual's authority, independence, and access to resources within the bank is critical. Based on the Agencies' experience in examining BSA compliance programs, it is important for compliance officers to have sufficient independence and authority and adequate resources to effectively implement the bank's AML/CFT program. Importantly, a compliance officer requires decision-making capability regarding the AML/CFT program and sufficient stature within the organization to ensure that the program meets the applicable requirements of the BSA. The access to resources may include, but is not limited to: adequate compliance funds and staffing with the skills and expertise appropriate to the bank's risk profile, size, and complexity; an organizational structure that supports compliance and effectiveness; and sufficient technology and systems to support the timely identification, measurement, monitoring, reporting, and management of the bank's ML/TF and other illicit finance activity risks. Similarly, an AML/CFT officer who has additional job duties or conflicting responsibilities that adversely impact the officer's ability to effectively coordinate and monitor day-to-day AML/CFT compliance generally would not fulfill this requirement.

(b)(2)(iv) Training

The BSA and the Agencies' current BSA compliance program rules have long required banks to have an ''ongoing employee training program.'' [29] The proposed paragraph (b)(2)(iv) would amend the existing training requirement in the Agencies' BSA compliance program rules to mirror 31 U.S.C. 5318(h)(1)(C) and clarify that banks must have an ''ongoing'' employee training program. The Agencies view this change as clarifying in nature; it does not substantively change this component. The proposed rule makes clear that AML/CFT programs must include an ongoing program in which AML/CFT training is provided to appropriate personnel.

As part of the relationship and interaction between and among program components, the Agencies generally would expect the contents of training to be responsive to the results of the risk assessment process and incorporate current developments and changes to AML/CFT regulatory requirements, such as internal policies, procedures, and controls; the AML/CFT Priorities; and the bank's products, services, distribution channels, customers, intermediaries, and geographic locations as well as any material changes to the bank's ML/TF risk profile. The frequency with which the training would occur, and the content of the training, would depend on the bank's ML/TF risk profile and the roles and responsibilities of the persons receiving the training. The frequency would also be informed by changes in the bank's risk assessment. Overall, the training should be sufficiently targeted to the relevant roles and responsibilities.

(b)(2)(v) Independent Testing

The AML Act did not change the BSA requirement that each bank must independently test its AML/CFT program.[30] Since the original adoption of the BSA compliance program rule, the Agencies have required that banks perform independent testing. However, the BSA compliance program rules neither specify how frequently banks must conduct independent testing nor address the types of parties to perform such testing. The proposed rule would modify the existing BSA compliance program rules to require each bank's program to include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the bank or by a qualified outside party. The Agencies consider these changes to be consistent with longstanding requirements for independent testing and not substantive. The Agencies do not anticipate the proposed rule would significantly impact the current compliance efforts of institutions.

The purpose of independent testing is to assess the bank's compliance with AML/CFT statutory and regulatory requirements, relative to its risk profile, and to assess the overall adequacy of the AML/CFT program. This evaluation helps to inform the bank's board of directors and senior management of weaknesses or areas in need of enhancement or stronger controls. Typically, this evaluation includes a conclusion about the bank's overall compliance with AML/CFT statutory and regulatory requirements and sufficient information for the reviewer (*e.g.,* board of directors, senior management, AML/CFT officer, outside auditor, or an examiner) to reach a conclusion about the overall adequacy of the bank's AML/CFT program. Under the proposed rule, independent testing could be conducted by qualified personnel of the bank, such as an internal audit department, or by a qualified outside party, such as outside auditors or consultants.

As a bank's ML/TF and other illicit finance activity risks change or evolve, periodic independent testing may also assist banks in making resource determinations and allocations, including information technology sources, systems, and processes used to support the AML/CFT program. The scope of independent testing should be risk-based, as informed by the risk assessment process, and will vary based on a bank's size, complexity, organizational structure, range of activities, quality of control functions, geographic diversity, and use of technology.

The Agencies would expect the frequency of the periodic independent testing to vary based on a bank's ML/TF and other illicit finance activity risk profile, changes to its risk profile, and overall risk management strategy, as informed by the bank's risk assessment

[29] Public Law 107–56, 115 Stat. 272, 322 (2001).

[30] 31 U.S.C. 5318(h)(1)(D).

process. More frequent independent testing may be appropriate when errors or deficiencies in some aspect of the AML/CFT program have been identified or to verify or validate mitigating or remedial actions. A bank may find it appropriate to conduct additional independent testing when there are material changes in the bank's risk profile, systems, compliance staff, or processes. Without periodic testing, a bank may not be able to confirm whether its risk assessment process is accurate or whether the other components—for example, internal policies, procedures, and controls—of an AML/CFT program are reasonably managing and mitigating the bank's risk. Specifying that independent testing is conducted on a periodic basis should assist banks in conducting independent tests as ML/TF and other illicit finance activity risks and the bank's risk profile evolve and change.

As with the risk assessment process, the Agencies are considering how often banks conduct independent testing and whether a comprehensive test is conducted each time or, instead, only certain parts of the program are tested based on changes in the bank's ML/TF and other illicit finance activity risk profile. An annual independent testing requirement would be in line with other annual requirements, such as the requirement for audited financial statements pursuant to 12 CFR 363.2 and 715.4. An annual independent test would assist the bank in quickly identifying deficiencies in its AML/CFT program. However, an annual independent testing requirement could cause the bank to expend more resources unnecessarily. The Agencies could also require a bank to conduct an independent test between their examinations. This updating would ensure that the independent test is current before the Agency begins to review a bank's AML/CFT program. However, as with an annual risk assessment, this timing may be more frequent than necessary for certain lower-risk banks. Another option would be to not specify a frequency connected with the word ''periodic.'' The Agencies could simply add the term ''periodic'' without specifying a time frame.

Consistent with the proposed clarifications to the AML/CFT officer component, the proposed rule also would require independent testers to be ''qualified.'' This requirement is a clarifying change consistent with current practices and expectations. The knowledge, expertise, and experience necessary for a party to be qualified to conduct the independent testing would depend, in part, on the bank's ML/TF risk profile. As with the AML/CFT officer component, the Agencies generally would expect qualified independent testers to have the expertise and experience to satisfactorily perform such a duty, including having sufficient knowledge of the bank's risk profile and AML/CFT laws and regulations.

(b)(2)(vi) Customer Due Diligence

The proposed rule would add CDD as a required component of the Agencies' AML/CFT program rule. CDD is currently a required component in FinCEN's AML program rule, and, therefore, banks are already required to comply with CDD under FinCEN's rules. The inclusion of CDD in the Agencies' proposed rules would mirror FinCEN's existing rule and reflect the Agencies' long-standing supervisory expectations. Long before FinCEN amended its AML program rule to expressly include the CDD component requirement, the Agencies had considered CDD an integral component of a risk-based program, enabling the bank to understand its customers and its customers' activity to better identify suspicious activity.

Adding the CDD component to the Agencies' AML/CFT program rule at paragraph (b)(2)(vi) will eliminate confusion for banks concerning the current differences with FinCEN's AML/CFT program rule. Because banks must already comply with FinCEN's CDD component requirement, the proposed change should not alter current compliance practices.

*(c) Board Oversight*

The Agencies' BSA compliance program rules currently require banks to have written programs approved by the board of directors. The proposed rule would maintain this requirement but move it to a separate subsection and add clarifying text to harmonize the language with FinCEN's proposed rule. The proposed section would read as follows: ''The AML/CFT program and each of its components, as required under paragraphs (b)(2)(i) through (vi) of this section, must be documented and approved by the [bank's] board of directors or, if the [bank] does not have a board of directors, an equivalent governing body. The AML/CFT program must be subject to oversight by the [bank]'s board of directors, or equivalent governing body.''

The Agencies do not intend for there to be a substantive change related to the current requirement. The proposed rule modifies the operative term from ''written'' or ''reduced to writing'' to ''documented'' but does not substantively change the requirement that the program be written. These clarifications are intended to help banks develop a structured AML/CFT program understood across the enterprise. The proposed rule would also add a reference to an ''equivalent governing body'' to clarify that banks without a board of directors must have an equivalent governing body approve the program. For banks without a board of directors, the equivalent governing body can take different forms. For example, for a U.S. branch of a foreign bank, the equivalent governing body may be the foreign banking organization's board of directors or delegates acting under the board's express authority.[31] The proposed rule specifies that approval encompasses each of the components of the AML/CFT program.

Finally, while banks already must obtain board approval for their BSA compliance programs, the proposed rule also would plainly require that the AML/CFT program be subject to board oversight, or oversight of an equivalent governing body. Based on the experience of the Agencies in examining BSA compliance programs over many years, the Agencies do not consider board oversight to be a new requirement. The Agencies have recognized the board's role and responsibility include not only approving the program but also overseeing the bank's adherence to it. The proposed rule makes clear that board approval of the AML/CFT program alone is not sufficient to meet program requirements since the board, or the equivalent governing body, may approve AML/CFT programs without a reasonable understanding of a bank's risk profile or the measures necessary to identify, manage, and mitigate its ML/TF risks on an ongoing basis. Oversight in the context of the proposed requirement contemplates appropriate and effective oversight measures, such as governance mechanisms, escalation, and reporting lines, to ensure that the board of directors, or a designated board committee, can properly oversee whether AML/CFT programs are

[31] The Federal Reserve, the FDIC, and the OCC each require the U.S. branches, agencies, and representative offices of the foreign banks they supervise operating in the United States to develop written BSA compliance programs that are approved by their respective bank's board of directors and noted in the minutes or that are approved by delegates acting under the express authority of their respective bank's board of directors to approve the BSA compliance programs. ''Express authority'' means the head office must be aware of the U.S. AML program requirements, and there must be some indication of purposeful delegation.

operating in an effective, risk-based, and reasonably designed manner.

*(d) Presence in the United States*

Section 6101(b)(2)(C), of the AML Act, codified at 31 U.S.C. 5318(h)(5), provides that the duty to establish, maintain, and enforce a bank's AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator. The proposed rule would incorporate this statutory requirement into the AML/CFT program rule by restating that the duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to the oversight and supervision by, the relevant Agency.

The Agencies recognize that banks may currently have AML/CFT staff and operations outside of the United States or contract out or delegate parts of their AML/CFT operations to third-party providers located outside of the United States. This approach may be to improve cost efficiencies, to enhance coordination particularly with respect to cross-border operations, or for other reasons.

*(e) Customer Identification Program*

The proposed rule would maintain the current Customer Identification Program requirements but would move them to a separate section. The Agencies propose minor, non-substantive updates to reference the ''AML/CFT'' terminology and harmonize the language between the Agencies to ''require a customer identification program to be implemented as part of the AML/CFT program.'' These technical changes are not anticipated to establish new obligations.

## V. Alternatives

As noted, these proposed rules are intended to conform the Agencies' program rules with FinCEN's and would reduce regulatory burden for banks by allowing them to follow a consistent regulatory approach between the Agencies and FinCEN. The Agencies considered maintaining their regulations in their current form but chose not to do so because the Agencies believe, and past experience has shown, that having uniform BSA compliance program rules supports the purposes of the BSA and the Agencies' mandate to ensure that their supervised institutions ''establish and maintain procedures reasonably designed to assure and monitor the compliance'' with the BSA, whereas incongruent and overlapping rules would likely sow confusion and inhibit these policy objectives.

## VI. Request for Comments

The Agencies welcome comment on all aspects of the proposed amendments but specifically seeks comment on the questions below. The Agencies encourage commenters to reference specific question numbers when responding.

*Incorporation of AML/CFT Priorities*

1. What steps are banks planning to take, or can they take, to incorporate the AML/CFT Priorities into their AML/CFT programs? What approaches would be appropriate for banks to use to demonstrate the incorporation of the AML/CFT Priorities into the proposed risk assessment process of risk-based AML/CFT programs?

a. Is the incorporation of the AML/CFT Priorities under the risk assessment process as part of the bank's AML/CFT program sufficiently clear or does it warrant additional clarification?

b. What, if any, difficulties do banks anticipate when incorporating the AML/CFT Priorities as part of the risk assessment process?

*Risk Assessment Process*

2. Please comment on how and whether banks could leverage their existing risk assessment process to meet the risk assessment process requirement in the proposed rule. To the extent it supports your response, please explain how the proposed risk assessment process requirement differs from existing practices to address current and emerging risks, react to changing circumstances, and maximize the benefits of compliance efforts.

3. Should a bank's risk assessment process be required to take into account additional or different criteria or risks than those listed in the proposed rule? If so, please specify.

4. The proposed rule requires a bank to update its risk assessment using the process proposed in this rule. Are there other approaches for a bank to identify, manage, and mitigate illicit finance activity risks aside from a risk assessment process?

5. Is the explanation of the term ''distribution channels'' discussed in this **SUPPLEMENTARY INFORMATION** section consistent with how the term is generally understood by banks? If not, please comment on how the term is generally understood by banks.

6. Is the explanation of the term ''intermediaries'' discussed in this **SUPPLEMENTARY INFORMATION** section consistent with how the term is generally understood by banks? If not, please comment on how the term is generally understood by banks.

7. The proposed rule would require banks to consider the BSA reports they file as a component of the risk assessment process. To what extent do banks currently leverage BSA reporting to identify and assess risk?

8. For banks with an established risk assessment process, what is the analysis output? For example, does it include a risk assessment document? What are other methods and formats used for providing a comprehensive analysis of the bank's ML/TF and other illicit finance activity risks?

*Updating the Risk Assessment*

9. The proposed rule uses the term ''material'' to indicate when an AML/CFT program's risk assessment would need to be reviewed and updated using the process proposed in this rule. Does this rule and/or **SUPPLEMENTARY INFORMATION** section warrant further explanation of the meaning of the term ''material'' used in this context? What further description or explanation, if any, would be appropriate?

10. The proposed rule requires a bank to review and update its risk assessment using the process proposed in this rule, on a periodic basis, including, at a minimum, when there are material changes to its ML/TF risk profile. Please comment on the time frame for the bank to update its risk assessment using the process proposed in this rule. What time frame would be reasonable? What factors might a bank consider when determining the frequency of updating its risk assessment using the process proposed in this rule? For example, would the frequency be based on a particular period, such as annually, the bank's risk profile, the examination cycle, or some other factor or period?

11. Please comment on whether a comprehensive update to the risk assessment using the process proposed in this rule is necessary each time there are material changes to the bank's risk profile or whether updating only certain parts based on changes in the bank's risk profile would be sufficient. If the response depends on certain factors, please describe those factors.

*Effective, Risk-Based, and Reasonably Designed*

12. Does the proposed regulatory text that ''an effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-

risk and lower-risk customers and activities'' permit sufficient flexibility for banks to continue to focus attention and resources appropriately? Does redirection allow banks to appropriately reduce resource allocation to lower risk activities? What approaches would be appropriate for a bank to use to demonstrate that attention and resources are focused appropriately and consistent with the bank's risk profile?

13. What are the current practices of banks when allocating resources?

14. Do banks anticipate any challenges in assigning resources to a higher-risk product, service, or customer type that is not listed in the AML/CFT Priorities? Are there any additional changes or considerations that should be made?

*Other AML/CFT Program Components*

15. The proposed rule would make explicit a long-standing supervisory expectation for banks that the BSA officer is qualified and that independent testing be conducted by qualified individuals. Please comment on whether and how the proposed rule's specific inclusion of the concepts: (1) ''qualified'' in the AML/CFT program component for the AML/CFT officer(s) and (2) ''qualified,'' ''independent,'' and ''periodic'' in the AML/CFT program component for independent testing, respectively, may change these components of the AML/CFT program?

16. How do banks anticipate timing the independent testing in light of periodic updates to the risk assessment process?

*Innovative Approaches*

17. The proposed rule encourages, but does not require, the consideration of innovative approaches to help banks meet compliance obligations pursuant to the BSA. Under the proposed rule, a bank's internal policies, procedures, and controls may provide for ''consideration, evaluation, and, as warranted by the [bank's] risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations.'' Should alternative methods for encouraging innovation be considered in lieu of a regulatory provision?

18. Please describe what innovative approaches and technology banks currently use, or are considering using, including but not limited to artificial intelligence and machine learning, for their AML/CFT programs. What benefits do banks currently realize, or anticipate, from these innovative approaches and how they evaluate their benefits versus associated costs?

*Board Approval and Oversight*

19. Does the requirement for the AML/CFT program to be approved by an appropriate governing body need additional clarification?

20. Should the proposed rule specify the frequency with which the board of directors or an equivalent governing body must review and approve the AML/CFT program? If so, what factors are relevant to determining the frequency with which a board of directors should review and approve the AML/CFT program?

21. How does a bank's board of directors, or equivalent governing body, currently determine what resources are necessary for the bank to implement and maintain an effective, risk-based, and reasonably designed AML/CFT program?

*Duty To Establish, Maintain, and Enforce an AML/CFT Program in the United States*

22. Please address if and how the proposed rule would require changes to banks' AML/CFT operations outside the United States. Some banks have AML/CFT staff and operations located outside of the United States for a number of reasons. These reasons can range from cost efficiency considerations to enterprise-wide compliance purposes, particularly for banks with cross-border activities. Please provide the reasons banks have AML/CFT staff and operations located outside of the United States. Please address how banks ensure AML/CFT staff and operations located outside of the United States fulfill and comply with the BSA, including the requirements of 31 U.S.C. 5318(h)(5), and implementing regulations.

23. The requirements of 31 U.S.C. 5318(h)(5) (as added by section 6101(b)(2)(C) of the AML Act) state that the ''duty to establish, maintain and enforce'' the bank's AML/CFT program ''shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator.'' Is including this statutory language in the rule, as proposed, sufficient or is it necessary to otherwise clarify its meaning further in the rule?

24. Please comment on the following scenarios related to persons located outside the United States who perform actions related to an AML/CFT program:

a. Do these persons perform duties that do not involve the exercise of significant discretion or judgment as part of the duty of establishing, maintaining, and enforcing banks' AML/CFT programs? Examples might include obtaining and conducting an initial review of CIP and CDD information, coding the scenarios defined by BSA personnel to be used in monitoring for suspicious transactions, the dispositioning of certain initial alerts based on established standards and criteria, or related data processing activities.

b. Do these persons have a responsibility for an AML/CFT program and perform the duty for establishing, maintaining, and enforcing a bank's AML/CFT program? Please comment on whether ''establish, maintain, and enforce'' would also include quality assurance functions, independent testing obligations, or similar functions conducted by other parties.

25. How do banks view the requirements in 31 U.S.C. 5318(h)(5) that affect their AML/CFT operations based wholly or partially outside of the United States, such as customer due diligence or suspicious activity monitoring and reporting systems and programs?

26. Please comment on implementation of the requirements in 31 U.S.C. 5318(h)(5) for ''persons in the United States.''

a. What AML/CFT duties could appropriately be conducted by persons outside of the United States while remaining consistent with the requirements in 31 U.S.C. 5318(h)(5)? Should all persons involved in AML/CFT compliance for a bank be required to be in the United States or should the requirement only apply to persons with certain responsibilities performing certain functions? If the requirement should only apply to persons with certain responsibilities performing certain functions, please explain which responsibilities and functions these should be.

b. Should ''persons in the United States'' as established in 31 U.S.C. 5318(h)(5) be interpreted to mean performing their relevant duties while physically present in the United States, that they are employed by a U.S. bank, or something else?

c. How would a bank demonstrate ''persons in the United States'' as established in 31 U.S.C. 5318(h)(5) are accessible to, and subject to oversight and supervision by, the Secretary and the appropriate Federal functional regulator?

27. Please comment on if and how the requirements in the proposed rule and 31 U.S.C. 5318(h)(5) should apply to foreign agents of a bank, contractors, or to third-party service providers. Should the same requirements apply regardless

of whether persons are direct employees of the bank?

Written comments must be received by the Agencies no later than October 8, 2024.

## VII. Administrative Law Matters

### *A. The Paperwork Reduction Act*

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule have been submitted to OMB for review and approval by the OCC, FDIC, and NCUA under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The Agencies are proposing to extend for three years, with revision, these information collections.

*Title of Information Collection:*

*OCC:* Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements

*Board:* Recordkeeping Requirements of Regulation H and Regulation K Associated with Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements

*NCUA:* Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements

*FDIC:* Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements

*OMB Control Numbers:*

*OCC:* 1557–0180

*Board:* 7100–0310

*NCUA:* 3133–0108

*FDIC:* 3064–0087

*Respondents:*

*OCC:* All national banks, Federal savings associations, Federal branches and agencies.

*Board:* All state member banks; Edge and agreement corporations; and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board, except for a Federal branch or a Federal agency or a state branch that is insured by the FDIC.

*NCUA:* All federally insured credit unions.

*FDIC:* All insured state nonmember banks, insured state-licensed branches of foreign banks, insured state savings associations.

*Current Actions:* The proposed rule contains recordkeeping requirements that clarify the recordkeeping requirements included in the agencies currently approved information collections. Under the proposed rule, respondents ''must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program to ensure and monitor compliance with the requirements of the Bank Secrecy Act.'' [32] The proposed rule also requires that ''the AML/CFT program and each of its components, as required under paragraphs (b)(2)(i) through (vi) of this section, must be documented and approved by the [the Respondent's] board of directors.'' [33]

The Agencies reviewed the methodology used to estimate the recordkeeping burden found in the currently approved information collections and determined that the OCC, FDIC, and NCUA included activities that are better classified as other types of burden and beyond the scope of recordkeeping burden in their burden estimates. The Board limited its burden estimate to recordkeeping activities. The Agencies acknowledge those existing burdens in the currently approved information collections but the OCC, FDIC, and NCUA have determined much of those ongoing burdens are not specifically related to recordkeeping. The Agencies are taking this opportunity to revise and align the burden estimation methodology and assumptions used for this information collection to show only recordkeeping activities which the Agencies assume are not affected by the size of the respondent institution. The Agencies assume that the recordkeeping requirements in the proposed rule encompass two distinct activities: (1) the one-time burden associated with documenting the required AML/CFT program and creating its necessary policies and training and testing materials; and (2) the ongoing (occasional) burden of documenting (a) revisions to policies, (b) required periodic reviews of the risk assessment and independent testing, (c) compliance with training requirements, and (d) Board of Directors oversight of the AML/CFT program as required by the proposed rule.

Based on supervisory experience, the Agencies estimate the time required to document and retain a record of the necessary changes to a respondent's newly created compliance program as prescribed in the proposed rule, averages approximately 32 hours. In accordance with OMB guidance, since the implementation burden is incurred only in year one of the three-year PRA clearance cycle, the annual burden is the average of the implementation burden imposed over three years or 10.67 hours per year (32 hours in year one, plus zero hours for years two and three; divided by three).

Based on supervisory experience, the Agencies estimate the annual burden related only to documenting maintenance of the AML/CFT program and Board of Directors oversight averages approximately 8 hours per year. The Agencies assume that all their supervised entities will review their AML/CFT program annually and will submit the revised plan for Board of Director ratification every year.

*Estimated Annual Burden:*

OCC Summary of Estimated Annual Burden

[OMB No. 1557–0180]

| Information collection (obligation to respond) | Type of burden (frequency of response) | Number of respondents | Number of responses per respondent | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|
| 1. Establish AML/CFT Program. *(Implementation)* 12 CFR 21.8(b) and (c) (Mandatory). | Recordkeeping (One Time) ..... | 1,044 | .3 | 32 | 11,136 |

[32] 12 CFR 21.21(b)(1) (OCC); 12 CFR 208.63(b)(1) (Board); 12 CFR 326.8(b)(1) (FDIC); 12 CFR 748.2(b)(1) (NCUA).

[33] 12 CFR 21.21(c) (OCC); 12 CFR 208.63(c) (Board); 12 CFR 326.8(c) (FDIC); 12 CFR 748.2(c) (NCUA).

OCC SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued
[OMB No. 1557–0180]

| Information collection (obligation to respond) | Type of burden (frequency of response) | Number of respondents | Number of responses per respondent | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|
| 2. Maintain AML/CFT Program. *(Ongoing)* 12 CFR 21.8(b) and (c) (Mandatory). | Recordkeeping (Annual) ..... | 1,044 | 1 | 8 | 8,352 |
| *Total Estimated Annual Burden (Hours):* ..... | ..... | ..... | ..... | ..... | *19,488* |

BOARD SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 7100–0310]

| Information collection (obligation to respond) | Type of burden (frequency of response) | Number of respondents | Number of responses per respondent | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|
| 1. Establish AML/CFT Program. *(Implementation)* 12 CFR 208.8(b) and (c) (Mandatory). | Recordkeeping (One Time) ..... | 878 | .3 | 32 | 9365 |
| 2. Maintain AML/CFT Program. *(Ongoing)* 12 CFR 208.8(b) and (c) (Mandatory). | Recordkeeping (Annual) ..... | 878 | 1 | 8 | 7,024 |
| *Total Estimated Annual Burden (Hours):* ..... | ..... | ..... | ..... | ..... | *16,389* |

NCUA SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3133–0108]

| Information collection (obligation to respond) | Type of burden (frequency of response) | Number of respondents | Number of responses per respondent | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|
| 1. Establish AML/CFT Program. *(Implementation)* 12 CFR 748.2(b) and (c) (Mandatory). | Recordkeeping (One Time) ..... | 4,604 | .3 | 32 | 49,120 |
| 2. Maintain AML/CFT Program. *(Ongoing)* 12 CFR 748.2(b) and (c) (Mandatory). | Recordkeeping (Annual) ..... | 4,604 | 1 | 8 | 36,832 |
| *Total Estimated Annual Burden (Hours):* ..... | ..... | ..... | ..... | ..... | *85,952* |

FDIC SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0087]

| Information collection (obligation to respond) | Type of burden (frequency of response) | Number of respondents | Number of responses per respondent | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|
| 1. Establish AML/CFT Program. *(Implementation)* 12 CFR 326.8(b) and (c) (Mandatory). | Recordkeeping (One Time) ..... | 2,936 | .3 | 32 | 31,317 |
| 2. Maintain AML/CFT Program. *(Ongoing)* 12 CFR 326.8(b) and (c) (Mandatory). | Recordkeeping (Annual) ..... | 2,936 | 1 | 8 | 23,488 |
| *Total Estimated Annual Burden (Hours):* ..... | ..... | ..... | ..... | ..... | *54,805* |

Comments are invited on the following:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) the accuracy of the agencies estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on aspects of this document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. Written comments and recommendations for these information collections also should be sent within 30 days of publication of this document 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.

*B. The Regulatory Flexibility Act*

*OCC:*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 636 small entities.[34] The proposed rule would impact all small entities.

The OCC estimates the annual cost for small entities to comply with the proposed rule would be approximately $3,072 dollars per bank (24 hours × $128 per hour). In general, the OCC classifies the economic impact on a small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Based on these thresholds, the OCC estimates the proposed rule would have a significant economic impact on zero small entities, which is not a substantial number. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

*Board:*

The Board is providing an initial regulatory flexibility analysis with respect to this proposal. The RFA, requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposal on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the proposal is not expected to have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. The Board will consider whether to conduct a final regulatory flexibility analysis after any comments received during the public comment period have been considered.

Reasons Why Action Is Being Considered by the Board

As explained above, the Board is amending its AML/CFT compliance program rule to align with changes that are being concurrently proposed by FinCEN and are required of FinCEN by the AML Act. The proposed rule incorporates a risk assessment process in the Board's AML/CFT program rule that requires, among other things, consideration of the national AML/CFT Priorities published by FinCEN. It also would align other requirements, such as customer due diligence requirements, with FinCEN's rule and propose clarifying and other amendments to codify longstanding supervisory expectations.

The Objectives of, and Legal Basis for, the Proposal

The Board's intent is to have AML/CFT program requirements for applicable institutions remain consistent with those imposed by FinCEN. Further, with consistent regulatory text, these institutions will not be subject to any additional burden or confusion from needing to comply with differing standards between FinCEN and the Board. The Board proposes to promulgate this rule pursuant to its safety and soundness authority and under section 8(s) of the FDI Act, 12 U.S.C. 1818(s), which requires the Board to issue regulations requiring supervised institutions to ''establish and maintain procedures reasonably designed to assure and monitor the compliance'' of the institutions with the requirements of the BSA.

Estimate of the Number of Small Entities

The proposal would apply to state member banks; Edge and agreement corporations; and branches, agencies, or representative offices of a foreign bank operating in the United States (other than a Federal branch or agency or a state branch that is insured by the FDIC) (''Board-supervised institutions'').[35] There are approximately 464 Board-supervised institutions that are small entities for purposes of the RFA.[36]

Description of the Compliance Requirements of the Proposal

The proposed rule would revise 12 CFR 208.63 to require Board-supervised institutions to establish and maintain an ''effective'' and ''reasonably designed'' AML/CFT program. Such a program must include: a risk assessment process that will serve as the basis for the AML/CFT program and includes, among other things, consideration of national AML/CFT priorities; one or more qualified AML/CFT compliance officers; policies, procedures and internal controls commensurate to address the bank's illicit finance risks; risk-based procedures for conducting ongoing CDD; an ongoing employee training program; and, independent, periodic AML/CFT program testing performed by qualified persons. The proposed rule would also incorporate a statutory requirement of the AML Act that persons with a duty of establishing, maintaining, and enforcing the AML/CFT program be in the United States and accessible to oversight and supervision by the appropriate regulator.

[34] The OCC bases its estimate of the number of small entities on the SBA's size standards for commercial banks and savings associations, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated banks when determining whether to classify an OCC-supervised bank as a small entity. The OCC used December 31, 2023, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See, footnote 8 of the U.S. SBA's *Table of Size Standards.*

[35] 12 CFR 208.63, 211.5(m), and 211.24(j).

[36] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $850 million or less. *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective Dec. 19, 2022). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity. The small entity information is based on Call Report data as of December 31, 2023.

The Board estimates a rate of $51.20 per hour as the compensation associated with complying with the proposed rule.[37] The estimated cost and burden to comply with the requirement to update programs to incorporate the new definition of ''AML/CFT program'' would be minimal, as this is essentially a change in terminology. Likewise, complying with the additional regulatory requirement to conduct a risk assessment incorporating the AML/CFT priorities would not impose significant additional burden because this is an existing, longstanding supervisory expectation for Board-supervised institutions and because the priorities reflect longstanding AML/CFT concerns previously identified by FinCEN and governmental agencies.[38] Accordingly, Board-supervised institutions should already have a risk assessment incorporating the AML/CFT priorities and the other components of the proposed rule in place. The Board estimates that the additional burden associated with these minimal changes on small entities to be approximately $760,218 (32 hours × $51.20 per hour × 464 small entities) in the first year after adoption, and approximately $190,054 (8 hours × $51.20 per hour × 464 small entities) in each successive year.

Consideration of Duplicative, Overlapping, or Conflicting Rules and Significant Alternatives to the Proposal

The Board has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the proposal, other than FinCEN's proposed AML/CFT program rule, described above. In addition, the Board considered the alternative of leaving its program rule unrevised but determined not to do so, for the reasons explained in the Alternatives section above.

*NCUA:*

As of December 2023, the NCUA supervised 4,604 federally insured credit unions (FICUs). The agency considers FICUs with fewer than $100 million in assets to be small entities for purposes of the RFA. At year-end 2023, 2,831 FICUs qualified as small—61.5 percent of supervised institutions. Typically, credit unions are much smaller than banks. At year end, for example, the median asset size for FICUs was $55.9 million (roughly one-sixth the commercial bank median); the median asset size of small FICUs (assets <$100 million) was $20.8 million. FICUs near the median typically report five full-time equivalent employees (FTEs). Because this rule applies to FICUs of all sizes, it will undoubtedly affect small credit unions. Both qualitative and quantitative evidence, however, point to an economically insignificant impact on small FICUs.

As for qualitative evidence, the NCUA already expects FICUs to maintain robust BSA–AML policies, consistent with the size and scope of the credit union. The NCUA believes this rule will *marginally* tighten supervisory expectations relative to the current regime. Of course, adapting to *marginal* changes could still prove challenging for credit unions with as few as five FTEs. For that reason, the NCUA has resources available to help small credit unions adjust to such challenges and, more broadly, support overall growth and development.

As for quantitative evidence, the OCC and FDIC present analysis showing the number of supervised institutions for whom compliance will potentially be burdensome. The threshold for ''burdensome'' is a compliance cost exceeding five percent of compensation expense or 2.5 percent of total non-interest expense. The NCUA believes these hurdles do not automatically carry over to FICUs because of the significant differences between the size, structure, and operation models of banks and credit unions. Unlike commercial banks, for example, credit unions are cooperatives. And, historically, many small credit unions have relied on volunteers and sponsor support to contain expenses—thereby suggesting the threshold for materiality should be higher for credit unions. But even assuming that every small credit union needs 32 hours to comply with the rule, that all credit unions pay the average hourly wage for FICUs with fewer than $100 million in assets, and the bank thresholds for materiality are appropriate, the number of credit unions facing a significant compliance burden is roughly in line with the figures obtained by the FDIC.

*FDIC:*

The RFA, generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[39] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[40] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As previously discussed, the proposed rule would establish consistency with the AML Act and FinCEN's proposed regulation, clarify existing requirements and make certain technical changes, if adopted. All FDIC-supervised Insured Depository Institutions (IDI) are required to comply with AML/CFT program requirements. As of the quarter ending December 31, 2023, the FDIC supervised 2,936 institutions,[41] of which 2,221 are considered small entities for the purposes of RFA.[42] Therefore, the FDIC estimates that the proposed rule would directly affect all 2,221 small, FDIC-supervised IDIs.

The proposed rule introduces changes that are unlikely to substantively affect small, FDIC-supervised IDIs. The proposed rule includes a purpose statement similar to the one FinCEN is proposing at 31 CFR 1010.210(a), without establishing new obligations.

The proposed rule would amend the current requirements to maintain a

[37] To estimate hourly compensation, the assumed distribution of occupation groups involved in the actions taken by institutions in response to the proposed rule in year 1 and in subsequent years include Executives and Managers (1 percent of hours), Compliance Officers (29 percent), and Clerical (70 percent). This combination of occupations results in an overall estimated hourly total compensation rate of $51.20. This average rate is derived from the U.S. Bureau of Labor Statistics (BLS) Specific Occupational Employment and Wage Estimates for May 2023, and March 2023 BLS' Cost of Employee Compensation data for the Employment Cost Index between March 2023 and March 2024.

[38] AML/CFT Priorities, page 3 (June 30, 2021).

[39] 5 U.S.C. 601, *et seq.*

[40] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective Dec. 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC insured depository institution is ''small'' for the purposes of RFA.

[41] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[42] FDIC Consolidated Reports of Condition and Income Data, Dec. 31, 2023.

''reasonably designed'' BSA compliance program by replacing it with a requirement to maintain an ''effective, risk-based, and reasonably designed AML/CFT program.'' Further, the proposed rule would add the term ''AML/CFT'' to its regulations consistent with the AML Act. The FDIC believes that proposed terms ''effective'' and ''risk-based'' are implicit in the term ''reasonably designed'' as established in the current BSA compliance program. The FDIC does not anticipate that the inclusion of ''CFT'' in the program rules will establish new obligations or impose additional costs or burdens. Therefore, the FDIC believes that these proposed changes are unlikely to be substantive for small, FDIC-supervised institutions.

The proposed rule would adopt a requirement that a small, FDIC-supervised IDI's AML/CFT compliance program ''focuses attention and resources in a manner consistent with the [bank's] risk profile that takes into account higher-risk and lower-risk customers and activities . . .'' However, the FDIC believes that it is both a long-standing practice of the industry and supervisory expectation, that the AML/CFT program of covered entities be risk-based. Further, banks already evaluate customers and activities according to risk as part of existing requirements under CDD and suspicious activity monitoring. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any substantive effect on small, FDIC-supervised IDIs.

If adopted, the proposed rule would establish that an AML/CFT program include a risk assessment process. For more than fifteen years the Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual (FFIEC BSA/AML Examination Manual) has recognized the use of risk assessments by banks to structure their risk-based compliance programs and has set forth guidance to examiners in reviewing risk assessment processes. The FDIC believes that most banks will be able to leverage their existing risk assessment processes to comply with this aspect of the proposed rule. Further, the business activity factors listed are generally consistent with banks' current risk assessment practices and the Agencies' supervisory expectations. Therefore, the FDIC believes that these proposed changes are unlikely to be substantive for small, FDIC-supervised institutions.

The proposed rule would amend an existing requirement for banks to establish and maintain a system of internal controls to maintain compliance. Specifically, the proposed rule would require that a bank ''[r]easonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the recordkeeping and reporting requirements of the Bank Secrecy Act.'' Based on supervisory experience, the FDIC believes that most small, FDIC-supervised IDIs have already implemented internal policies, procedures, and controls to manage and mitigate ML/TF risks. As a result, the FDIC believes that the proposed paragraph (b)(2)(ii) will impose minimal additional compliance burden.

As previously discussed, the proposed rule would make several changes to the existing requirement that banks designate a compliance officer as part of its BSA compliance program. Specifically, the FDIC proposes to change the regulatory reference from ''BSA'' or ''BSA Compliance'' officer to ''AML/CFT officer'' to formally reflect the CFT considerations for this role under the AML Act. The FDIC believes that this change does not impose a new obligation on small, FDIC-supervised IDIs. Further, the proposed rule also adds the word ''qualified'' to the FDIC's existing compliance officer requirement, but does not change substantively the current requirements concerning a bank's BSA officer. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any substantive effect on small, FDIC-supervised IDIs.

As previously discussed, the proposed rule would clarify that independent testing must be conducted periodically by qualified personnel of the bank or by a qualified outside party. Since the original adoption of the BSA compliance program rule, the FDIC has required that banks perform independent testing. The Agencies have not defined ''periodic'' so as to enable small, FDIC-supervised IDIs to comply with the independent testing requirement in a manner that is most appropriate to their activities, systems, customers and risks. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to substantively affect small, FDIC-supervised IDIs.

If adopted, the proposed rule would add CDD as a required component of the FDIC's AML/CFT compliance program rule requirements. The inclusion of CDD mirrors FinCEN's existing rule and reflects the FDIC's long-standing supervisory expectations. Therefore, the FDIC believes that this aspect of the proposed rule will impose minimal additional compliance burden.

If adopted, the proposed rule would require that the documented program be made available to the Agencies upon request. The proposed rule modifies the operative term from ''in writing'' to ''documented,'' but does not substantively change the requirement that the program be written. Therefore, the FDIC does not believe that this aspect of the final rule will pose any substantive burden on small, FDIC-supervised IDIs.

The proposed rule incorporates the statutory requirement for the AML/CFT program to be plainly subject to board oversight, or oversight of an equivalent governing body. The FDIC does not view this as a new requirement, as board approval of the AML/CFT program is implicit in the existing requirements. Therefore, the FDIC believes this aspect of the proposed rule will impose no additional compliance burden.

As previously discussed, the proposed rule would amend the FDIC's ''BSA'' or ''AML'' program regulations by adopting the term ''AML/CFT,'' in place of ''BSA'' or ''AML'' program rules. Further, the proposed rule would amend the existing training requirement in the FDIC's BSA compliance program rules to clarify that banks must have an ''ongoing'' employee training program. The BSA and the FDIC's current BSA/AML compliance program rules have long required banks to have an ''ongoing employee training program.'' Therefore, the FDIC believes that these changes are clarifying or technical in nature and do not substantively change requirements for small, FDIC-supervised institutions.

The proposed rule would make several changes that could substantively affect small, FDIC-supervised IDIs. In particular, the proposed rule would require FDIC-supervised institutions to incorporate the Treasury Secretary's priorities for anti-money laundering and countering the financing of terrorism policy (AML/CFT Priorities), as appropriate, into their AML/CFT compliance program. The FDIC believes that most banks will be able to leverage their existing risk assessment processes when considering their exposure to each of the AML/CFT Priorities. However, incorporation of the AML/CFT Priorities into the risk assessment process will likely pose some regulatory and recordkeeping costs to covered institutions in order to achieve compliance with this aspect of the proposed rule. The FDIC does not have the information necessary to estimate the costs small, FDIC-supervised IDIs are likely to incur, but believes that such costs are likely to be small.

As previously discussed, the proposed risk assessment process would require consideration of ML/TF and other illicit finance activity risks of a bank based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations. The FDIC believes that most banks are generally familiar with these business activity factors, however consideration of ''distribution channels'' and ''intermediaries'' may pose new regulatory costs for small, FDIC-supervised institutions. The FDIC does not have the information necessary to estimate the costs small, FDIC-supervised IDIs are likely to incur, but believes that such costs are likely to be small.

The proposed rule would require that banks review and evaluate information that the AML/CFT programs produce pursuant to 31 CFR chapter X, such as suspicious activity reports and currency transaction reports. As previously discussed, it has been both a long-standing industry practice and an expectation of the FDIC that AML/CFT programs be risk-based. As such, the FDIC believes that some small, FDIC-supervised IDIs may already review and evaluate information that the AML/CFT programs produce. However, the proposed incorporation of explicit consideration of such information may pose some new regulatory costs to small, FDIC-supervised IDIs. The FDIC does not have the information necessary to estimate the costs small, FDIC-supervised IDIs are likely to incur, but believes such costs are likely to be small.

Generally, the FDIC believes that the proposed rule is unlikely to burden small, FDIC-supervised IDIs by clarifying requirements and supporting a more efficient AML/CFT compliance program. The proposed rule would clarify and harmonize compliance requirements with the AML Act and FinCEN's proposed regulation, thereby benefiting covered entities by reducing confusion and duplicative compliance efforts. Further, the proposed rule would enable IDIs to focus attention and resources in a manner consistent with the bank's ML/TF risk profile, which takes into account higher-risk and lower-risk customers and activities. Finally, the proposed rule would encourage, but would not require, banks to consider, evaluate, and as appropriate, implement innovative approaches to meet compliance obligations pursuant to the BSA. Therefore, the proposed rule could enable more efficient allocation of resources to identify and manage risks.

Finally, the FDIC estimates that the proposed rule will pose some additional recordkeeping costs to small, FDIC-supervised IDIs associated with establishing policies, procedures and controls. The FDIC estimates that FDIC-supervised IDIs, including small IDIs, will expend 32 labor hours, on average, to incorporate the proposed rule's amendments into their existing policies and procedures in the first year after adoption. Further, in each successive year the FDIC estimates that FDIC-supervised IDIs will expend 8 labor hours, on average, to maintain and update those policies and procedures. The FDIC believes that these compliance requirements constitute recordkeeping burdens under the PRA. Therefore, the FDIC estimates that all small, FDIC-supervised IDIs will incur 71,072 labor hours in the first year after adoption complying with the recordkeeping requirements of the proposed rule,[43] and 17,768 labor hours in each subsequent year.[44]

According to the FDIC's analysis small, FDIC-supervised IDIs will incur some costs to comply with the recordkeeping requirements of the proposed rule, however those costs are unlikely to be substantial. Employing a total hourly compensation estimate of $51.20,[45] the FDIC estimates that small, FDIC-supervised IDIs will incur $3,638,886.40 in compliance costs in the first year[46] after the final rule becomes effective, and $909,721.60 in compliance costs in each subsequent year.[47] However, in the first year after the final rule becomes effective, estimated average costs exceed the 5 percent threshold of annual salaries and benefits for only 3 (0.14 percent) small, FDIC-supervised IDIs, and exceed the 2.5 percent threshold of total non-interest expense for only 6 (0.27 percent) small, FDIC-supervised IDIs.[48] The FDIC estimates that the estimated recordkeeping compliance costs will exceed those thresholds for fewer small, FDIC-supervised IDIs in subsequent years.

The FDIC believes that covered institutions are likely to incur other regulatory costs to achieve compliance with the changes in this proposed rule, if adopted, such as changes to internal systems and processes. However, the FDIC believes that any such increased costs are unlikely to be substantial because, as previously discussed, the proposed rule would generally reflect long-standing industry practice and expectations and further clarify existing requirements.

Based on the information above, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

*C. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act[49] requires the FDIC, OCC, and Federal Reserve Board to use plain language in all proposed and final rules published after January 1, 2000. While the NCUA is not subject to section 722 of the Gramm-Leach-Bliley Act, the Plain Writing Act of 2010 imposes similar, clear communication standards on the NCUA and its rulemakings. The Agencies have sought to present the proposed rule in a simple and straightforward manner. The Agencies invite comments on whether the proposal is clearly stated and effectively organized, and how the Federal banking agencies might make the proposal easier to understand. For example:

- Is the material presented in an organized manner that meets your needs? If not, how could this material be better organized?
- Are the requirements in the notice of proposed rulemaking clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?

[43] 2,221 * 32 labor hours = 71,072.

[44] 2,221 * 8 labor hours = 17,768.

[45] The assumed distribution of occupation groups involved in the actions taken by institutions in response to the proposed rule in year 1 and in subsequent years include Executives and Managers (1 percent of hours), Compliance Officers (29 percent), and Clerical (70 percent). This combination of occupations results in an overall estimated hourly total compensation rate of $51.20. This average rate is derived from the BLS' Specific Occupational Employment and Wage Estimates for May 2023, and March 2023 BLS' Cost of Employee Compensation data for the Employment Cost Index between March 2023 and March 2024.

[46] 2,221 * 32 labor hours * $51.20 per hour = $3,638,886.40.

[47] 2,221 * 8 labor hours * $51.20 per hour = $909,721.60.

[48] Based on Call Reports data as of Dec. 31, 2023. The variable ESALA represents annualized salaries and employee benefits and the variable CHBALNI represents non-interest bearing cash balances.

[49] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

• What else could make the proposed rule easier to understand?

*D. OCC Unfunded Mandates Reform Act of 1995 Determination*

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $100 million or more in any one year (adjusted annually for inflation). The OCC has prepared an impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analysis will be available at: *https://www.regulations.gov,* Docket ID OCC–2024–0005.

*E. The Economic Growth and Regulatory Paperwork Reduction Act*

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the Federal banking agencies are required to review all of their regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[50] The Federal banking agencies and the NCUA [51] submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the Federal banking agencies will take to address issues that were identified.[52]

*F. Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[53] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that the regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of the regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[54] The Agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and their customers, and the benefits of the proposed rule that the Agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

*G. Providing Accountability Through Transparency Act of 2023*

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as *regulations.gov*).

In summary, the Agencies seek comment on a proposed rule that would amend the requirements that each Agency has issued for its supervised banks (currently referred to as ''BSA compliance programs'') to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs. The amendments are intended to conform with changes that are being concurrently proposed by FinCEN as a result of the AML Act.

The proposal and the required summary can be found at *https://www.regulations.gov, https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html, https://www.federalreserve.gov/apps/foia/proposedregs.aspx,* and *https://www.fdic.gov/resources/regulations/federal-register-publications/index.html#.*

*H. NCUA Analysis on Executive Order 13132 on Federalism*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule would apply to all federally insured credit unions, including state-chartered credit unions. This scope is set by statute. The NCUA works cooperatively with state regulatory agencies on all supervisory matters, including BSA/AML matters, and will continue to do so. The NCUA expects that any effect on states or on the distribution of power and responsibilities among the various levels of government will be minor. The NCUA welcomes comments on ways to eliminate, or at least minimize, any potential impact in this area.

*I. NCUA Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[55] The proposed rule relates to federally insured credit unions' BSA/AML programs, and any effect on family well-being is expected to be indirect.

**List of Subjects**

*12 CFR Part 21*

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Flood insurance, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 326*

Banks, banking, Currency, Reporting and recordkeeping requirements, Security measures.

[50] Public Law 104–208, section 2222, 110 Stat. 3009, 3009–414 and 3009–415 (1996).

[51] The NCUA elected to participate by voluntarily conducting its own parallel review of its regulations. NCUA's separate findings were incorporated in the EGRPRA Report. *See https://ncua.gov/newsroom/news/2017/banking-agencies-issue-joint-report-congress-under-economic-growth-and-regulatory-paperwork. See https://ncua.gov/newsroom/news/2017/banking-agencies-issue-joint-report-congress-under-economic-growth-and-regulatory-paperwork https://ncua.gov/newsroom/news/2017/banking-agencies-issue-joint-report-congress-under-economic-growth-and-regulatory-paperwork.*

[52] 82 FR 15900 (Mar. 31, 2017).

[53] 12 U.S.C. 4802(a).

[54] *Id.*

[55] Public Law 105–277, section 654, 112 Stat. 2681, 2681–528 (1998).

*12 CFR Part 748*

Bank secrecy, Catastrophic acts, Report of suspected crimes, Security program, Suspicious transactions.

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 21**

**Authority and Issuance**

For the reasons stated in the preamble, the Office of the Comptroller of the Currency proposes to amend 12 CFR part 21 as follows:

## PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND ANTI-MONEY LAUNDERING/COUNTERING THE FINANCING OF TERRORISM COMPLIANCE

■ 1. The authority citation for part 21 continues to read as follows:

**Authority:** 12 U.S.C. 1, 93a, 161, 1462a, 1463, 1464, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

■ 2. The heading of part 21 is revised to read as set forth above.

■ 3. Revise and republish subpart C to read as follows:

## Subpart C—Procedures for Anti-Money Laundering/Countering the Financing of Terrorism Compliance

### § 21.21 Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program requirements.

(a) *Purpose.* The purpose of this section is to ensure that each national bank and Federal savings association implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the requirements 31 U.S.C. chapter 53, subchapter II (Bank Secrecy Act), and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X; focuses attention and resources in a manner consistent with the risk profile of the national bank or Federal savings association; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

(b) *Establishment and contents of an AML/CFT program*—(1) *General.* Each national bank and Federal savings association must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program to ensure and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X.

(2) *AML/CFT program.* An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the national bank's or Federal savings association's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(i) Establish a risk assessment process that serves as the basis for the national bank's or Federal savings association's AML/CFT program, including implementation of the components required under paragraphs (b)(2)(ii) through (vi) of this section. The risk assessment process must:

(A) Identify, evaluate, and document the national bank's or Federal savings association's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(*1*) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(*2*) The money laundering, terrorist financing, and other illicit finance activity risks of the national bank or Federal savings association based on the national bank's or Federal savings association's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(*3*) Reports filed by the national banks or Federal savings associations pursuant to the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X; and

(B) Provide for updating the risk assessment using the process required under this paragraph (b)(2)(i) on a periodic basis, including, at a minimum, when there are material changes to the national bank's or Federal savings association's money laundering, terrorist financing, and other illicit finance activity risks;

(ii) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of Treasury at 31 CFR chapter X. Such internal policies, procedures, and controls may provide for a national bank's or Federal savings association's consideration, evaluation, and, as warranted by the national bank's or Federal savings association's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act, the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X, and this section;

(iii) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(iv) Include an ongoing employee training program;

(v) Include independent, periodic AML/CFT program testing to be conducted by qualified national bank or Federal savings association personnel or by a qualified outside party; and

(vi) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph (b)(2)(vi)(B), customer information must include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230).

(c) *Board oversight.* The AML/CFT program and each of its components, as required under paragraphs (b)(2)(i) through (vi) of this section, must be documented and approved by the national bank's or Federal savings association's board of directors or, if the national bank or Federal savings association does not have a board of directors, an equivalent governing body. The AML/CFT program must be subject to oversight by the national bank's or Federal savings association's board of directors, or equivalent governing body.

(d) *Presence in the United States.* The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to the oversight and supervision by, the OCC.

(e) *Customer identification program.* Each national bank or Federal savings association is subject to the requirements of 31 U.S.C. 5318(l) and

the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 1020.220, which require a customer identification program to be implemented as part of the AML/CFT program required under this section.

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 208**

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 208 as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 4. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 5. Revise and republish § 208.63 to read as follows:

### § 208.63 Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program requirements.

(a) *Purpose.* The purpose of this section is to ensure that each state member bank implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the requirements of 31 U.S.C. chapter 53, subchapter II (Bank Secrecy Act), and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X; focuses attention and resources in a manner consistent with the risk profile of the state member bank; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

(b) *Establishment and contents of an AML/CFT program*—(1) *General.* A state member bank must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program to ensure and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X.

(2) *AML/CFT program.* An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the state member bank's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(i) Establish a risk assessment process that serves as the basis for the state member bank's AML/CFT program, including implementation of the components required under paragraphs (b)(2)(ii) through (vi) of this section. The risk assessment process must:

(A) Identify, evaluate, and document the state member bank money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(*1*) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(*2*) The money laundering, terrorist financing, and other illicit finance activity risks of the state member bank based on the state member bank's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(*3*) Reports filed by the state member bank pursuant to the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X; and

(B) Provide for updating the risk assessment using the process required under this paragraph (b)(2)(i) on a periodic basis, including, at a minimum, when there are material changes to the state member bank money laundering, terrorist financing, and other illicit finance activity risks;

(ii) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X. Such internal policies, procedures, and controls may provide for a state member bank's consideration, evaluation, and, as warranted by the state member bank's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act, the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X, and this section;

(iii) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(iv) Include an ongoing employee training program;

(v) Include independent, periodic AML/CFT program testing to be conducted by qualified state member bank personnel or by a qualified outside party; and

(vi) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph (b)(2)(vi)(B), customer information must include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230).

(c) *Board oversight.* The AML/CFT program and each of its components, as required under paragraphs (b)(2)(i) through (vi) of this section, must be documented and approved by the state member bank's board of directors or, if the state member bank does not have a board of directors, an equivalent governing body. The AML/CFT program must be subject to oversight by the state member bank's board of directors, or equivalent governing body.

(d) *Presence in the United States.* The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to the oversight and supervision by, the Board.

(e) *Customer identification program.* Each state member bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 1020.220, which require a customer identification program to be implemented as part of the AML/CFT program required under this section.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 326**

**Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 326 as follows:

## PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND ANTI-MONEY LAUNDERING/ COUNTERING THE FINANCING OF TERRORISM COMPLIANCE

■ 6. The authority citation for part 326 is revised to read as follows:

**Authority:** 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1883, 5412; 31 U.S.C. 5311 *et seq.*

■ 7. Revise the heading of part 326 to read as set forth above.

■ 8. Revise and republish subpart B to read as follows:

## Subpart B—Procedures for Monitoring Anti-Money Laundering/Countering the Financing of Terrorism Compliance

### § 326.8 Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program requirements.

(a) *Purpose.* The purpose of this section is to ensure that each FDIC-supervised institution implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the requirements of 31 U.S.C. chapter 53, subchapter II (Bank Secrecy Act), and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X; focuses attention and resources in a manner consistent with the risk profile of the FDIC-supervised institution; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

(b) *Establishment and contents of an AML/CFT program*—(1) *General.* An FDIC-supervised financial institution must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program to ensure and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X.

(2) *AML/CFT program.* An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with FDIC-supervised institution's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(i) Establish a risk assessment process that serves as the basis for the FDIC-supervised institution's AML/CFT program, including implementation of the components required under paragraphs (b)(2)(ii) through (vi) of this section. The risk assessment process must:

(A) Identify, evaluate, and document the FDIC-supervised institution's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(*1*) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(*2*) The money laundering, terrorist financing, and other illicit finance activity risks of the FDIC-supervised institution based on the FDIC-supervised institution's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(*3*) Reports filed by the FDIC-supervised institution pursuant to the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X; and

(B) Provide for updating the risk assessment using the process required under this paragraph (b)(2)(i) on a periodic basis, including, at a minimum, when there are material changes to the FDIC-supervised institution's money laundering, terrorist financing, and other illicit finance activity risks;

(ii) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X. Such internal policies, procedures, and controls may provide for FDIC-supervised institution's consideration, evaluation, and, as warranted by the FDIC-supervised institution's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act, the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X, and this section;

(iii) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(iv) Include an ongoing employee training program;

(v) Include independent, periodic AML/CFT program testing to be conducted by qualified FDIC-supervised institution personnel or by a qualified outside party; and

(vi) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph (b)(2)(vi)(B), customer information must include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230).

(c) *Board oversight.* The AML/CFT program and each of its components, as required under paragraphs (b)(2)(i) through (vi) of this section, must be documented and approved by the FDIC-supervised institution's board of directors or, if the FDIC-supervised institution does not have a board of directors, an equivalent governing body. The AML/CFT program must be subject to oversight by the FDIC-supervised institution's board of directors, or equivalent governing body.

(d) *Presence in the United States.* The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to the oversight and supervision by, the FDIC.

(e) *Customer identification program.* Each FDIC-supervised institution is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 1020.220, which require a customer identification program to be implemented as part of the AML/CFT program required under this section.

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 748**

**Authority and Issuance**

For the reasons stated in the preamble, the National Credit Union

Administration proposes to amend 12 CFR part 748 as follows:

## PART 748—SECURITY PROGRAM, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS, CYBER INCIDENTS, AND ANTI-MONEY LAUNDERING/COUNTERING THE FINANCING OF TERRORISM PROGRAM

■ 9. The authority citation for part 748 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1786(b)(1), 1786(q), 1789(a)(11); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 10. The heading of part 748 is revised to read as set forth above.

■ 11. Revise and republish § 748.2 to read as follows:

### § 748.2 Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program requirements.

(a) *Purpose.* The purpose of this section is to ensure that each federally insured credit union implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the requirements of 31 U.S.C. chapter 53, subchapter II (Bank Secrecy Act), and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR chapter X; focuses attention and resources in a manner consistent with the risk profile of the federally insured credit union; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

(b) *Establishment and contents of an AML/CFT program*—(1) *General.* A federally insured credit union must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program to ensure and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of Treasury at 31 CFR chapter X.

(2) *AML/CFT program.* An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the federally insured credit union's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(i) Establish a risk assessment process that serves as the basis for the federally insured credit union's AML/CFT program, including implementation of the components required under paragraphs (b)(2)(ii) through (vi) of this section. The risk assessment process must:

(A) Identify, evaluate, and document the federally insured credit union's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(*1*) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4), as appropriate;

(*2*) The money laundering, terrorist financing, and other illicit finance activity risks of the federally insured credit union based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(*3*) Reports filed by the federally insured credit union pursuant to the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X; and

(B) Provide for updating the risk assessment using the process required under this paragraph (b)(2)(i) on a periodic basis, including, at a minimum, when there are material changes to the federally insured credit union's money laundering, terrorist financing, and other illicit finance activity risks;

(ii) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of Treasury at 31 CFR chapter X. Such internal policies, procedures, and controls may provide for a federally insured credit union's consideration, evaluation, and, as warranted by its risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and the implementing regulations issued by the Department of Treasury at 31 CFR chapter X, and this section;

(iii) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(iv) Include an ongoing employee training program;

(v) Include independent, periodic AML/CFT program testing to be conducted by qualified federally insured credit union personnel or by a qualified outside party; and

(vi) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph (b)(2)(vi)(B), customer information must include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230).

(c) *Board oversight.* The AML/CFT program and each of its components, as required under paragraphs (b)(2)(i) through (vi) of this section, must be documented and approved by the federally insured credit union's board of directors or, if the federally insured credit union does not have a board of directors, an equivalent governing body. The AML/CFT program must be subject to oversight by the federally insured credit union's board of directors, or equivalent governing body.

(d) *Presence in the United States.* The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to the oversight and supervision by, the NCUA.

(e) *Customer identification program.* Each federally insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and the Department of the Treasury at 31 CFR 1020.220, which require a customer identification program to be implemented as part of the AML/CFT program required under this section.

**Michael J. Hsu,**

*Acting Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System.

**Ann E. Misback,**

*Secretary of the Board.*

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 20, 2024.

**James P. Sheesley,**

*Assistant Executive Secretary.*

By the National Credit Union Administration Board on July 10, 2024.

**Melane Conyers-Ausbrooks,**

*Secretary of the Board.*

[FR Doc. 2024–16546 Filed 8–8–24; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 21

**[Docket No. FAA–2024–1656]**

## Draft Policy Statement Regarding Safety Continuum for Powered-Lift

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

**ACTION:** Notification of availability; request for comments; extension of comment period.

**SUMMARY:** On June 13, 2024, the FAA published in the **Federal Register** a notification of availability for draft Policy Statement PS–AIR–21.17–01, ''Safety Continuum for Powered-lift''. The comment period for this document expires on August 12, 2024. By letter dated August 1, 2024, the General Aviation Manufacturers Association (GAMA) requested that the FAA extend the public-comment deadline to September 12, 2024, for GAMA member organizations to conduct a more thorough review and contribute constructively to the proposed criteria facilitating the development of robust, harmonized standards that maximize safety for powered-lift operations.

**DATES:** The comment period for the document published June 13, 2024, at 89 FR 50241, is extended. Comments should be received on or before September 12, 2024.

**ADDRESSES:** Send comments identified with ''Safety Continuum for Powered-lift'' and docket number FAA–2024–1656, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the instructions for submitting comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* The FAA will post all comments it receives without change to *www.regulations.gov/,* including any personal information the commenter provides. DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *DocketsInfo.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** James Blyn, Product Policy Management: Airplanes, GA, Emerging Aircraft, and Rotorcraft AIR–62B, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–5762; email *james.blyn@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites the public to submit comments on the draft policy statement as specified in the **ADDRESSES** section. Commenters should include the subject line ''Safety Continuum for Powered-lift'' and docket number FAA–2024–1656 on all comments submitted to the FAA. The most helpful comments will reference a specific portion of the draft document, explain the reason for any recommended change, and include supporting data. The FAA will also consider all comments received on or before the closing date before issuing the final policy statement. The FAA will also consider late filed comments if it is possible to do so without incurring expense or delay.

### Extension of the Comment Period

The FAA recognizes that the public will benefit from adequate time to review the draft policy statement. Therefore, the FAA is extending the comment period for an additional 31 days to September 12, 2024.

You may examine the draft policy statement on the agency's public website and in the docket as follows:

- At *www.regulations.gov* in Docket FAA–2024–1656.
- At *www.faa.gov/aircraft/draft_docs/.*

Issued in Kansas City, Missouri, on August 6, 2024.

**Patrick R. Mullen,**

*Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.*

[FR Doc. 2024–17719 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2024–2015; Project Identifier MCAI–2023–00769–T]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by reports of missing or damaged inboard flap seal plate assemblies. This proposed AD would require repetitive inspections for cracks of the attaching angles of the inboard flap seal plates and replacement. This proposed AD would also require the eventual replacement of both inboard flap seal plates, which would terminate the repetitive inspections. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by September 23, 2024.

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

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

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2015; or in person at Docket Operations between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

• For Bombardier material identified in this proposed AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.

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

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

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–2015; Project Identifier MCAI–2023–00769–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

## Confidential Business Information

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

## Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–42, dated June 19, 2023 (Transport Canada AD CF–2023–42) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states that there have been multiple reports in service of missing or damaged inboard flap seal plates. An investigation revealed a premature fatigue failure mode of the inboard flap seal plates. Left uncorrected, an inboard flap seal plate may partially or totally detach. Under certain flight conditions, a missing inboard flap seal plate could lead to excessive buffeting and vibration, and consequent damage to the airplane.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2015.

## Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletins 700–27–5509 and 700–27–6509, both Revision 01, both dated May 5, 2023. This material specifies procedures for repetitive detailed inspections for cracks of the attaching angles of the inboard flap seal plates and replacing the inboard flap seal plates if any crack is detected. This material also specifies procedures for replacing both existing inboard flap seal plates with structurally more robust redesigned components. The replacement actions include a detailed visual inspection for damage (including signs of failure, cracking, and deformation) of the flap inboard closing ribs and trailing edges, an eddy current or liquid penetrant inspection for cracks running out of the flap inboard closing rib holes common to the outboard stiffener and angle, and repair for cracks and other damage. The replacement would eliminate the need for the repetitive detailed inspections. These documents are distinct since they apply to different airplane models. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## FAA's Determination

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

## Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described.

## Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 43 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 24 work-hours × $85 per hour = $2,040 | $37,919 | $39,959 | $1,718,237 |

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this proposed AD.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc.:** Docket No. FAA–2024–2015; Project Identifier MCAI–2023–00769–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by September 23, 2024.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9861, 9872, 60001 through 60004 inclusive, 60006 through 60023 inclusive, 60025 through 60029 inclusive, 60031, 60033 through 60036 inclusive, 60038 through 60042 inclusive, 60044, 60046 through 60048 inclusive, 60050 through 60055 inclusive, 60058 through 60060 inclusive, 60062 through 60067 inclusive, 60069 through 60071 inclusive, 60073 through 60086 inclusive, and 60088 through 60101 inclusive.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by reports of missing or damaged inboard flap seal plates. The FAA is issuing this AD to address the unsafe condition, which could result in the partial or total detachment of the flap seal plate. Under certain flight conditions, a missing inboard flap seal plate could lead to excessive buffeting and vibration, and consequent damage to the airplane.

**(f) Compliance**

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

**(g) Detailed Inspection**

At the applicable time specified in figure 1 to paragraph (g) of this AD, perform a detailed inspection for cracks of the attaching angles of the inboard flap seal plates, in accordance with Section 2.B. (Part A) of the Accomplishment Instructions of Bombardier Service Bulletin 700–27–5509 or 700–27–6509, both Revision 01, both dated May 5, 2023; as applicable, except do corrective actions as specified in paragraph (h) of this AD.

**Figure 1 to Paragraph (g)—Compliance Requirements**

| Total flight hours as of the effective date of this AD | Compliance time after the effective date of this AD |
|---|---|
| Less than or equal to 750 | Within 250 flight hours |
| More than 750 | Within 100 flight hours |

**(h) Corrective Actions for Inboard Flap Seal Plates**

(1) If no crack is found during any inspection required by paragraph (g) of this AD, repeat the inspection thereafter at intervals not to exceed 250 flight hours, except as specified in paragraph (i) of this AD.

(2) If any crack is found during any inspection required by paragraph (g) of this AD, do the actions specified in paragraph (i) of this AD before further flight.

**(i) Replacement of Inboard Flap Seal Plates**

Unless already done as specified in paragraph (h)(2) of this AD: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (i)(1) through (3) of this AD, in accordance with Section 2.C. (Part B) of the Accomplishment Instructions of Bombardier Service Bulletin 700–27–5509 or 700–27–6509, both Revision 01, both dated May 5, 2023; as applicable.

(1) Replace the inboard flap seal plates with redesigned plates.

(2) Do a detailed visual inspection for damage of the flap inboard closing ribs and trailing edges.

(3) Do an eddy current or liquid penetrant inspection for cracks running out of the flap inboard closing rib holes common to the outboard stiffener and angle.

**(j) Repair for Flap Inboard Closing Ribs and Trailing Edges**

If any crack or other damage is found during any inspection required by paragraph

(i)(2) or (3) of this AD, repair before further flight using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If the method is approved by the DAO, the approval must include the DAO-authorized signature.

**(k) Terminating Action for Repetitive Inspections**

Accomplishment of the actions required by paragraph (i) of this AD terminates the requirements of paragraph (h)(1) of this AD.

**(l) Credit for Previous Actions**

This paragraph provides credit for actions required by this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 700–27–5509 or 700–27–6509, both dated October 4, 2022.

**(m) No Reporting Requirement**

Although Bombardier Service Bulletins 700–27–5509 and 700–27–6509, both Revision 01, both dated May 5, 2023; specify to submit certain information to the manufacturer, this AD does not include that requirement.

**(n) Additional AD Provisions**

The following provisions also apply to this AD:

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

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

**(o) Additional Information**

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

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (p)(3) of this AD.

**(p) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 700–27–5509, Revision 01, dated May 5, 2023.

(ii) Bombardier Service Bulletin 700–27–6509, Revision 01, dated May 5, 2023.

(3) For Bombardier material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on August 1, 2024.

**Victor Wicklund,**

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

[FR Doc. 2024–17455 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2024–2007; Project Identifier MCAI–2023–01270–T]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by a determination that new or more restrictive maintenance tasks are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance tasks. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by September 23, 2024.

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

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

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2007; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For Bombardier, Inc. material identified in this proposed AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–2007; Project Identifier MCAI–2023–01270–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

**Confidential Business Information**

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

**Background**

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–78, dated December 19, 2023 (Transport Canada AD CF–2023–78) (also referred to as the MCAI), to correct an unsafe condition for all Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states that airplanes could experience misleading electrical system status indications (push button annunciators (PBA) and engine indicating and crew alerting system (EICAS)) as a result of contamination of electrical contacts in the left-hand (LH) direct current power center (DCPC) internal communication data bus. The MCAI states that new or more restrictive maintenance tasks have been developed to rectify lower time LH DCPC units not addressed by previously issued AD's.

The FAA is proposing this AD to address erratic indications, which could cause the flightcrew to turn off fully operational electrical power sources, leading to partial or complete loss of electrical power. The unsafe condition, if not addressed, could result in loss of flight displays and reduced controllability of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2007.

**Material Incorporated by Reference Under 1 CFR Part 51**

The FAA reviewed the following documents:

- Task 24–61–01–101, ''Restoration of the left DC Power Center (DCPC) (Pre SB100–24–30),'' Section 5–10–20, ''Time Limits—Supplementary Limitations,'' of Part 2, ''Airworthiness Limitations'', of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks, Revision 24, dated August 9, 2023.
- Task 24–61–01–101, ''Restoration of the Left DC Power Center (DCPC) (Pre SB350–24–005),'' Section 5–10–20, ''Time Limits—Supplementary Limitations,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Challenger 350 BD–100 Time Limits/Maintenance Checks, Revision 14, dated August 9, 2023.

This material specifies new or more restrictive airworthiness limitations for safe life limits.

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

**FAA's Determination**

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

**Proposed Requirements of This NPRM**

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance tasks.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i)(1) of this proposed AD.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 356 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours x $85 per work-hour).

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc.:** Docket No. FAA–2024–2007; Project Identifier MCAI–2023–01270–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by September 23, 2024.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical Power.

**(e) Unsafe Condition**

This AD was prompted by a determination that new or more restrictive maintenance tasks are necessary. The FAA is issuing this AD to address to address erratic indications, which could cause the flightcrew to turn off fully operational electrical power sources, leading to partial or complete loss of electrical power. The unsafe condition, if not addressed, could result in loss of flight displays and reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Maintenance or Inspection Program Revision**

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the tasks specified in figure 1 to paragraph (g) of this AD, of Part 2, ''Airworthiness Limitations,'' of the applicable Time Limits/Maintenance Checks (TLMC) manual. The initial compliance time for doing the tasks is at the interval specified in the applicable TLMC manual specified in figure 1 to paragraph (g) of this AD, or within 60 days after the effective date of this AD, whichever occurs later.

**Figure 1 to paragraph (g)—Time Limits—Supplementary Limitations Tasks**

| Airplane Model | Chapter 5 Task No. | Task Title | TLMC Section | BD-100 TLMC |
|---|---|---|---|---|
| BD-100-1A10 (Challenger 300) | 24-61-01-101* | Restoration of the Left DC Power Center (DCPC) (Pre SB100-24-30) | 5-10-20, "Time Limits – Supplementary Limitations" | August 9, 2023 |
| BD-100-1A10 (Challenger 350) | 24-61-01-101* | Restoration of the Left DC Power Center (DCPC) (Pre SB350-24-005) | 5-10-20, "Time Limits – Supplementary Limitations" | August 9, 2023 |

**Note 1 to paragraph (g):** The asterisk (or ''one star'') with the last three digits of the task numbers listed in figure 1 to paragraph (g) of this AD indicates that the task is an airworthiness limitation task.

**(h) No Alternative Actions, Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(j) Additional Information**

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

**(k) Material Incorporated by Reference**

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

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

(i) Task 24–61–01–101, ''Restoration of the left DC Power Center (DCPC) (Pre SB100–24–30),'' Section 5–10–20, ''Time Limits—Supplementary Limitations,'' of Part 2, ''Airworthiness Limitations'', of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks, Revision 24, dated August 9, 2023.

(ii) Task 24–61–01–101, ''Restoration of the Left DC Power Center (DCPC) (Pre SB350–24–005),'' Section 5–10–20, ''Time Limits—Supplementary Limitations,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Challenger 350 BD–100 Time

Limits/Maintenance Checks, Revision 14, dated August 9, 2023.

(3) For Bombardier Inc. material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514 855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.

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

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

Issued on July 31, 2024.

**Victor Wicklund,**

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

[FR Doc. 2024–17362 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2024–2014; Project Identifier MCAI–2024–00162–E]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2023–21–08, which applies to certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000 engines. AD 2023–21–08 requires revisions to the airworthiness limitation section (ALS) of the operator's existing approved aircraft maintenance program (AMP). Since the FAA issued AD 2023–21–08, the manufacturer revised the time limits manual (TLM) to introduce new or more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts, which prompted this AD. This proposed AD would require revisions to the ALS of the operator's existing approved AMP, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by September 23, 2024.

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

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

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2014; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI) any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

**FOR FURTHER INFORMATION CONTACT:** Ethan Carlson, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 578–2291; email: *ethan.m.carlson@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2014; Project Identifier MCAI–2024–00162–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

### Confidential Business Information

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

### Background

The FAA issued AD 2023–21–08, Amendment 39–22580 (88 FR 77889, November 14, 2023) (AD 2023–21–08), for certain RRD Model Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H engines. AD 2023–21–08 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2022–0259, dated December 20, 2022 (EASA AD 2022–0259) to correct an unsafe condition identified as the manufacturer revising the engine TLM life limits of certain critical rotating parts.

AD 2023–21–08 requires revisions to the ALS of the operator's existing approved AMP. The FAA issued AD 2023–21–08 to prevent the failure of critical rotating parts.

**Actions Since AD 2023–21–08 Was Issued**

Since the FAA issued AD 2023–21–08, EASA superseded EASA AD 2022–0259 and issued EASA AD 2024–0062, dated March 6, 2024 (EASA AD 2024–0062) (also referred to as the MCAI). The MCAI states that the manufacturer published a revised TLM introducing new or more restrictive tasks and limitations. These new or more restrictive tasks and limitations include updating Direct Accumulation Counting data files.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2014.

**Material Incorporated by Reference Under 1 CFR Part 51**

The FAA reviewed EASA AD 2024–0062, which specifies instructions for accomplishing the actions specified in the applicable TLM, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved maintenance or inspection program, as applicable, by incorporating the limitations, tasks, and associated thresholds and intervals described in the TLM. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements in This NPRM**

This proposed AD would retain none of the requirements of AD 2023–21–08. This proposed AD would require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, EASA AD 2024–0062 will be incorporated by reference in the final rule. This AD, therefore, requires compliance with EASA AD 2024–0062 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2024–0062. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2014.

**Differences Between This Proposed AD and the MCAI**

Where EASA AD 2024–0062 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2024–0062, this proposed AD requires revising the ALS of the existing approved aircraft maintenance or inspection program, as applicable, within 30 days after the effective date of this AD.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 28 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Revise the ALS | 1 work-hours × $85 per hour = $85 | $0 | $85 | $2,380 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2023–21–08, Amendment 39–22580 (88 FR 77889, November 14, 2023); and

■ b. Adding the following new airworthiness directive:

**Rolls-Royce Deutschland Ltd & Co KG:** Docket No. FAA–2024–2014; Project Identifier MCAI–2024–00162–E.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by September 23, 2024.

**(b) Affected ADs**

This AD replaces AD 2023–21–08, Amendment 39–22580 (88 FR 77889, November 14, 2023).

**(c) Applicability**

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H engines.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by the manufacturer revising the engine Time Limits Manual life limits of certain critical rotating parts. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of critical rotating parts, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2024–0062, dated March 6, 2024 (EASA AD 2024–0062).

**(h) Exceptions to EASA AD 2024–0062**

(1) Where EASA AD 2024–0062 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2024–0062.

(3) Where paragraph (3) of EASA AD 2024–0062 specifies ''Within 12 months after the effective date of this AD, revise the approved AMP,'' replace that text with ''Within 30 days after the effective date of this AD, revise the airworthiness limitation section (ALS) of the existing approved engine maintenance or inspection program, as applicable.''

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2024–0062 is on or before the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2024–0062 or within 30 days after the effective date of this AD, whichever occurs later.

(5) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2024–0062.

**(i) Provisions for Alternative Actions and Intervals**

No alternative actions and associated thresholds and intervals, including life limits, are allowed for compliance with paragraph (g) of this AD unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2024–0062.

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

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

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

**(k) Additional Information**

For more information about this AD, contact Ethan Carlson, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 578–2291; email: *ethan.m.carlson@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0062, dated March 6, 2024.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on August 2, 2024.

**Peter A. White,**

*Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.*

[FR Doc. 2024–17592 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Parts 259 and 261

**[Docket No. DOT–OST–2024–0091]**

**RIN 2105–AF15**

## Family Seating in Air Transportation

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) is proposing to require U.S. and foreign air carriers to seat children aged 13 and under adjacent to at least one accompanying adult at no additional cost beyond the fare, subject to limited exceptions. The Department considers family seating to be a basic service, essential for the provision of adequate air transportation, that must be included in the advertised fare. Under this proposal, a carrier's failure to provide family seating would subject it to civil penalties on a per passenger (child) basis, and if the carrier charged families a fee beyond the fare to secure family seating, the carrier would be subject to civil penalties for each fee imposed.

**DATES:** Comments should be filed by October 8, 2024. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2024–0091 by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140,

1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

*Instructions:* You must include the agency name and docket number DOT–OST–2024–0091 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Privacy Act:* Anyone can search the electronic form of all comments received in any of the dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

*Docket:* For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Maegan Johnson, Senior Trial Attorney, Nicole Smith, Trial Attorney, or Blane A. Workie, Assistant General Counsel, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax), *Maegan.johnson@dot.gov, nicole.smith@dot.gov,* or *blane.workie@dot.gov* (email).

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *A. Background*

The FAA Extension, Safety, and Security Act of 2016 (2016 FAA Extension Act) requires the Department to review U.S. air carrier family seating policies and, if appropriate, direct air carriers to establish policies that enable young children, age 13 and under, to sit adjacent to an accompanying family member, age 14 or over, to the maximum extent practicable and at no additional cost.[1] In response to this directive, in 2017, the Department's Office of Aviation Consumer Protection (OACP) reviewed family seating complaints received between June 1, 2016 and June 1, 2017, to better understand the issues facing consumers. OACP also conducted a review of the nine largest U.S. airlines'[2] family seating policies and had discussions with each of these airlines to learn about their family seating policies, practices, and procedures. Based on its review of airline family seating policies and consumer complaints, the Department determined that it was unnecessary to direct airlines to establish policies that enable a child to sit next to an adult family member at that time.

OACP conducted a follow-up review in 2019 and learned that airlines had implemented enhanced approaches for providing family seating (*e.g.,* more than one airline had developed an automated system to assign young children to seats next to an adult family member), but airlines did not guarantee family seating. Also, the total number of family seating complaints against U.S. airlines received by the Department trended slightly higher from July 2017 through June 2019.[3] In the Joint Explanatory Statement accompanying the Consolidated Appropriations Act of 2019, the House and Senate Committees on Appropriations (Committees) requested that the Department provide a report to the Committees ''on its review of family seating policies and a justification for its decision to defer to current airline seating policies,'' noting that the Department has stated that it completed its review and deferred to current airline family seating policies.[4] The Department submitted the requested report to the Committees on March 12, 2020. In that report, the Department concluded that ''[i]n lieu of directing airlines to establish specific seating policies, [it would] continue[ ] to update the family seating web page . . . [and] monitor and review the family seating complaints it receives on a regular basis to better understand what is and is not working.''

In July 2021, DOT Secretary Buttigieg and other officials from the Department met with consumer advocates who, as one of their top priorities, urged the Department to issue a rule requiring airlines to seat children next to at least one adult family member at no additional cost. The consumer advocates emphasized that, while the number of complaints about children being seated apart from an accompanying adult on a flight may not be large, the harm to the children who are separated is significant. After the meeting, the Department publicly stated that it would review this matter again to determine what other actions should be taken.[5]

In July 2022, the Department issued a notice encouraging airlines to review and improve, as needed, their policies and procedures to ensure young children are seated adjacent to at least one accompanying adult to the maximum extent practicable and at no additional cost.[6] In the notice, the Department asked airlines to review and improve their policies and procedures and stated that, four months from the date of the notice, it would initiate a review of airlines' family seating policies to ensure that children aged 13 or younger would be seated adjacent to an accompanying adult without paying an additional fee. In November 2022, the Department reviewed the ten largest U.S. airlines'[7] family seating policies and discovered that airlines generally promised to make efforts to seat families together, but many required families to pay an additional fee to be assured that a young child traveling in the party would be seated adjacent to an accompanying adult.

In February 2023, the President called upon Congress to ban airline family seating fees and announced that the Department would publish a family seating fee dashboard and initiate a rulemaking to ban the practice.[8] The

[1] Public Law 114–190, codified at 49 U.S.C. 42301 note prec.

[2] The Department focused its review on the largest U.S. airlines, *i.e.,* a certificated U.S. air carrier that accounted for at least one percent of domestic scheduled passenger revenues. OACP reviewed the following airlines: Alaska Airlines, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, Southwest Airlines, Spirit Airlines, and United Airlines. Together, these airlines and their operating partners accounted for approximately 95 percent of domestic passenger air traffic.

[3] In calendar year 2017, 0.38% of complaints (44 complaints) filed with the Department by consumers against U.S. airlines concerned family seating. In calendar year 2018, 0.51% of air travel service complaints (46 complaints) against U.S. airlines concerned family seating. In calendar year 2019, 2.4% of air travel service complaints (230 family seating complaints) against U.S. airlines concerned family seating. This increase corresponded with a consumer advocacy group's effort to encourage air travelers to file complaints with the Department if they were dissatisfied with an experience related to family seating.

[4] See *https://www.govinfo.gov/content/pkg/CRPT-115srpt268/html/CRPT-115srpt268.htm.*

[5] See Travel Weekly, DOT takes another look at how families are split on airplanes, available at *https://www.travelweekly.com/Travel-News/Airline-News/DOT-reexamining-family-seating-airplanes* (Sept. 13, 2021).

[6] See *https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice.*

[7] The Department focused its review on the largest U.S. airlines, *i.e.,* a certificated U.S. air carrier that accounted for at least 1-percent of domestic scheduled passenger revenues. OACP reviewed the following airlines: Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, Southwest Airlines, Spirit Airlines, and United Airlines.

[8] See *https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/.* Also, see *https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-*

Continued

Secretary of Transportation (Secretary) also announced the Department's plan to launch a dashboard that provides information to air travelers on the largest airlines' guarantees to seat young children adjacent to at least one accompanying adult without the traveler having to pay an additional fee.

In anticipation of the dashboard's release, some airlines amended their family seating policies and added language to their customer service plans guaranteeing that they would provide adjacent seats for young children 13 or under traveling with an accompanying adult at no additional cost, subject to limited conditions. When the Department's family seating dashboard was published on OACP's website on March 6, 2023, only three out of the ten largest U.S. carriers had committed to guaranteeing adjacent seating for families at no additional cost. Since then, one additional airline has made that commitment.[9]

Because most airlines would not guarantee that they would seat a parent and a child together at no extra cost, the Department initiated this rulemaking to ensure a young child is able to sit adjacent to an accompanying adult. On March 10, 2023, the Secretary also submitted a legislative proposal to Congress to amend chapter 417 of title 49, U.S. Code, to ensure that young children are seated adjacent to at least one accompanying adult at no additional cost, subject to certain conditions.[10]

### *A. Need for a Rulemaking*

The Department views family seating as a basic service, essential for the provision of adequate air transportation, that should be provided to passengers at no additional cost. As described in the Regulatory Impact Analysis (RIA) developed in support of this rulemaking, the Department estimates the percentage of consumers, including families with young children, who may pay seating fees. According to complaints received by DOT, some parents mistakenly assume that they will be seated next to their young children when they purchase tickets for air transportation.[11] These passengers assume that fee-free family seating is already required because a parent would need to supervise and tend to their child during a flight, not to mention the potential harm that may occur from a child being separated from a parent during a flight.

Based on the nature and severity of the complaints the Department has received, and the reluctance shown by the majority of the largest U.S. airlines to amend their family seating policies to guarantee family seating at no additional cost, demonstrates a need for action in this area. Additionally, the Department received several hundred comments on its Enhancing Transparency of Airline Ancillary Service Fees NPRM that urged the Department to ban family seating fees, rather than requiring that those fees be disclosed to consumers early in the purchasing process.[12]

Specifically, the Department is concerned about the hardship experienced by families when they are unable to ensure family seating in advance of travel and about families paying extra fees just to ensure that they are seated with their children. Furthermore, a carrier's failure to provide family seating harms not only passengers traveling with young children, but also other passengers on the aircraft who may be asked or directed to give up their seats to accommodate families on the day of travel or who may be required to sit next to an unsupervised child.

Consumers traveling with young children have reported feeling undue stress and anxiety when they are unable to receive assurances from carriers before the date of travel that they will be seated next to their young children. Although most airlines have indicated that their gate agents and flight crew will attempt to seat families together during the boarding process, these attempts are often taxing and, sometimes, unsuccessful. In one passenger complaint received by the Department, the passenger alleges that she purchased a ''basic'' ticket, and she was assigned a seat in a different row than her 4-year-old son.[13] She states that her son was assigned to a seat in between two men that she had never met before, and the flight attendant onboard the aircraft refused to assist her with asking passengers to shuffle seats because it was a full flight. Similarly, the Department received another consumer complaint alleging that a 10-year-old child suffered an anxiety attack when, at the start of boarding, the child was still assigned to a seat in a separate row from his parents.[14]

The Department is also concerned that the carriers that do not guarantee family seating advise passengers to purchase advance seat assignments, purchase seats in a higher fare class, or pay a fee to receive early boarding on the aircraft, simply to ensure that families are seated together. Many U.S. airlines offer basic economy, or another equivalent low-cost economy ticket. These low-cost economy ticket options typically do not allow passengers to select a seat assignment for free. Thus, if a passenger wants to ensure that they will receive a seat assignment next to their child in advance of the flight, carriers that do not guarantee free family seating typically advise passengers to either pay the advance seat assignment selection fee, or purchase seats that cost more than the low-cost economy tickets to be assured of seats adjacent to their young child. Thus, families traveling with young children are being forced to purchase a more expensive fare to

*biden-state-of-the-union-address-as-prepared-for-delivery/.*

[9] See *https://www.transportation.gov/airconsumer/airline-family-seating-dashboard.*

[10] See *https://www.transportation.gov/resources/individuals/aviation-consumer-protection/family-seating-legislative-proposal.*

[11] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[12] See, *e.g.,* Comment from National Consumers League, available at *https://www.regulations.gov/comment/DOT-OST-2022-0109-0097* (''DOT should not assume that air carriers will stop charging seat reservation fees for family seating following the enactment of the proposed ancillary fee transparency regulations. To end this practice, the undersigned consumer and traveler rights organizations continue to urge the Department to utilize its existing authorities to require airlines to seat children 13 years old and younger with accompanying adults at no additional charge.''); Comment from PUBLIC INTEREST RESEARCH GROUP, available at, *https://www.regulations.gov/comment/DOT-OST-2022-0109-0383* (''. . . OACP receives complaints involving children as young as 11 months old not seated next to their adult travel partner. This is unacceptable. We support the OACP's position that airlines should not charge additional fees for a child 13 or younger to be seated next to an accompanying adult.''); Comment from AARP, available at, *https://www.regulations.gov/comment/DOT-OST-2022-0109-0093* (''. . . the high fees for changing or cancelling travel plans and fees for families to reserve seats together do not promote affordable access to travel by air. While disclosure is an essential first step, we would encourage the Department, and the airlines themselves, to reduce or eliminate such fees wherever possible.''); Comment from Travel Agent Org, available at, *https://www.regulations.gov/comment/DOT-OST-2022-0109-0492* (''Suggestion: Follow the way of other counites like Canada's APPR and require free adjacent seating for families with kids under 13.'').

[13] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[14] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

ensure that they are seated with their young children.

Most carriers have indicated to the Department that they would try to make accommodations at the airport to ensure that families are seated together, regardless of the fare purchased by the passenger. Nonetheless, passengers who purchase low-fare economy tickets for their family have reported having difficulty when attempting to obtain family seating at the gate, and have, in some instances, been shamed by airlines for failing to purchase a higher fare ticket to ensure that their family will be assigned adjacent seats.

To illustrate, one passenger alleged that she purchased inexpensive seats on a large U.S. carrier and when she approached a gate agent on the day of travel, the agent initially refused to assign her a seat next to her two-year old and four-year old children and stated that she should have booked in a ''higher class.'' [15] The passenger states that the agent eventually facilitated new seat assignments for her family, but she was upset by the lack of empathy shown by the agent and the unpleasantness of the encounter. In another complaint received by the Department, a passenger alleges that she was seated eight rows apart from her 3-year-old child and that the airline stated that it hoped she would be able to sit with her child on the day of travel or, in the alternative, that the passenger could pay for upgraded seats.[16]

The Department also notes that even if a passenger reserves seats in advance, pays a fee to selects seats, or purchases seats in a higher class to ensure family seating, the passenger may be later assigned seats away from a young child in their travel party if the carrier changes the flight's aircraft. For example, the Department received a complaint from a passenger who alleges that he booked a flight for himself and his 8-year-old daughter. He states that when he booked his flight, he made sure that he reserved a seat directly next to his daughter, but when the airline changed the flight schedule, they also changed his seat assignment, and he was no longer seated next to his daughter.[17]

Families have also identified child safety concerns as a major cause of stress and anxiety when a carrier does not provide passengers with assurances that they will be seated next to their young child on a flight.[18] In one passenger complaint received by DOT, a passenger alleges that her three children, all under the age of 13, were assigned seats away from the accompanying adults in their travel party. She states that she was concerned about the seating arrangement because there would be no responsible adult available to help her children with masks or life vests in the case of an emergency, no one to help her children load baggage into the overhead bin, and no assurances that her children were protected sitting next to strangers.[19] No family should have to worry about the safety of a young child, including during a potential emergency, because their child is seated rows away and next to complete strangers.

Additionally, carriers that do not guarantee family seating to passengers traveling with children cause harm to passengers traveling without children. When a carrier assigns a young child a seat away from their accompanying adult, other passengers must make the decision to sit next to an unsupervised child or to forfeit the seat they may have paid to obtain, to remedy a situation the carrier created. When a parent and child are seated apart, carriers rely heavily on the goodwill of other passengers on the aircraft to relinquish their seats to allow a child and a parent to be seated next to each other on the aircraft. However, due to carriers' seating policies, many passengers may have paid an additional fee for the seat they selected or have paid an additional fee to board the aircraft early. If the passenger elects not to relocate, the passenger would then sit next to, and potentially have to look after, an unsupervised child. Similarly, the Department views it as unreasonable for passengers who paid for early boarding to relinquish their seats to families traveling with young children to remedy the situation the carrier created. The seat switching process also creates a transaction cost on all parties involved, including delays in boarding and departure time, that could have been avoided if the family had already been assigned seats together prior to boarding, or in the case of open seating carriers, boarded in a manner that ensured family seating.

As described above, the Department has received various complaints describing stress-inducing incidents where families with very young children were assigned seats apart from a parent, and complaints describing fees that had to be paid to ensure that a parent was seated adjacent to their child. These additional costs can be a significant expense and can be a barrier for families who cannot afford to pay additional fees to ensure that a child in the travel party is seated adjacent to at least one accompanying adult.

In this rulemaking, the Department proposes to amend 14 CFR part 259, Enhanced Protections for Airline Passengers, and create a new 14 CFR part 261 Family Seating, to require U.S. and foreign air carriers to seat children aged 13 and under next to at least one accompanying adult at no additional cost, as defined in this rulemaking, subject to limited exceptions. Under this proposal, a carrier would be prohibited from imposing additional charges to provide adjacent seating. Failure to provide family seating at no additional cost beyond the fare, including by charging for seat selection or upgraded priority boarding, would subject the carrier to civil penalties on a per passenger (child) basis or a per fee basis. If an airline fails to provide adjacent seating as required by the proposed rule, it would be required to provide the passengers remedial choices.

[15] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[16] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[17] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[18] Hundreds of commenters on the Department's Enhancing Transparency of Airline Ancillary Service Fees NPRM noted that family seating ''is a basic human safety right. No child should have to sit next to strangers on a plane, airlines need to proactively offer children seating next to an accompanying adult.'' See, *e.g., https://www.regulations.gov/document/DOT-OST-2022-0109-0696.*

[19] See Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: *https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

*B. Statutory Authority*

1. Authority To Regulate Under the FAA Reauthorization Act of 2024

Section 516 of the FAA Reauthorization Act of 2024 (2024 FAA Reauthorization Act, Reauthorization Act, or Act) [20] provides that the Secretary of Transportation ''shall issue a notice of proposed rulemaking to establish a policy'' that directs assigned seating air carriers to seat young children, under 14 years of age, adjacent to an accompanying adult to the greatest extent practicable, if the adjacent seats are available any time after the ticket has been issued, but before the first passenger boards the flight.[21] Additionally, the Reauthorization Act also prohibits air carriers from charging a fee or imposing an additional cost beyond the ticket price to provide this service. Further, the Act states that section 516 should not be construed in such a way as to ''allow the Secretary to impose a change in the overall seating or boarding policy of an air carrier that has an open or flexible seating policy in place that generally allows adjacent family seating as described in'' that section. Pursuant to Section 516 of the Reauthorization Act, DOT proposes in this NPRM to require assigned seating carriers to provide family seating to young children and an accompanying adult on aircraft at no additional cost. The Department also proposes to require carriers with an open or flexible seating policy to board passengers in a manner that allows a young child and an accompanying adult to secure adjacent seatings on the flight at no additional charge. This proposal, made pursuant to existing statutory authority at 49 U.S.C. 41702 and 41712 as explained in the following paragraphs, is consistent with paragraph (c) of section 516, which prohibits DOT from imposing a change in the overall seating or boarding policies of open or flexible seating carriers. The Department's proposals provide open and flexible seating carriers with the flexibility to work within the framework of their existing seating policies to determine how to board passengers in a way that would allow a young child to secure a seat adjacent to an accompanying adult at no additional charge. For example, a carrier, operating under its existing open or flexible seating policies could ensure family seating by blocking off seats in a specific section of the aircraft dedicated to passengers traveling with families, or by requiring families to be at the gate at a certain time before boarding to obtain family seating.

2. Authority To Regulate Under 49 U.S.C. 41702

With respect to the proposed requirements in this NPRM applicable to air carriers,[22] the Department issues this NPRM pursuant to additional authority under 49 U.S.C. 41702, which states that ''an air carrier shall provide safe and adequate interstate air transportation.'' [23] The Civil Aeronautics Board (CAB), the predecessor to the U.S. Department of Transportation, had the authority to ensure that air carriers provide ''safe and adequate service, equipment and facilities'' under section 404(a) of the Federal Aviation Act of 1958, which was later codified in 49 U.S.C. 41702.[24] The CAB relied on section 404(a) to adopt a regulation that restricted smoking on flights by dividing aircraft cabins into smoking and nonsmoking sections. The CAB reasoned that its authority to require air carriers to provide ''adequate service'' under § 41702 includes ensuring that the service does not cause passenger discomfort and annoyance.[25] The CAB's regulation and interpretation of ''adequate service'' was later challenged by a passenger, but the U.S. Court of Appeals for the Fifth Circuit found that ''adequate service'' referred both to the number of flights provided by an air carrier and the quality of service provided to passengers.[26]

More recently, the Department relied on its authority to provide safe and adequate interstate transportation in § 41702 in its 2016 final rule prohibiting the use of e-cigarettes on-board aircraft.[27] In that final rule, the Department reasoned that it had the authority to rely on the ''adequate'' prong in § 41702 to ban the use of e-cigarettes. The Department argued that discomfort from e-cigarettes was like the discomfort described by the CAB when it chose to restrict smoking on aircraft in 1973.[28]

The Department's proposal in this NPRM promotes ''adequate'' air transportation because requiring airlines to ensure that young children are seated adjacent to an accompanying adult at no additional cost would decrease the significant hardship, stress, and anxiety experienced by families when a young child is not seated next to an accompanying adult on an aircraft. Passenger complaints received by DOT allege that both parents and their children have experienced anxiety and significant stress when faced with the risk of being separated during their flights.[29] Failing to provide family seating also causes discomfort and harm to passengers who are not traveling with young children since these passengers may be asked to voluntarily give up their seats on the day of travel to accommodate a young child and accompanying adult. Forcing passengers, especially those passengers who paid for a specific seat assignment, to choose either to sit next to an unsupervised child or to relinquish their seat and move to a potentially undesirable location on the aircraft causes discomfort and annoyance.

In addition, the rule promotes ''adequate'' service because ensuring that young children are seated adjacent to an accompanying adult is an essential component of basic air transportation service that passengers reasonably believe should be included in their air transportation fare. Adequate service includes the quality of the service

[20] FAA Reauthorization Act of 2024, Public Law 118–63, § 516, 138 Stat. 1025, 1197–1198 (2024).

[21] In addition to the mandate to issue an NPRM in the 2024 FAA Reauthorization Act, in 2016 Congress also required DOT to ''establish a policy directing all air carriers . . . to establish policies that enable young children to sit adjacent to an accompanying family member over age 13 to the maximum extent practicable and at no additional cost.'' See section 2309(a) of the 2016 FAA Extension Act.

[22] Pursuant to 49 U.S.C. 70102, an ''air carrier'' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

[23] Pursuant to 49 U.S.C. 40102(a)(25) ''interstate air transportation'' means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—(A) between a place in—(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (B) when any part of the transportation is by aircraft.

[24] Codification was effectuated in Public Law 103–272 (enacted July 5, 1994).

[25] ''[T]he extent and depth of passenger discomfort and annoyance from unsegregated and unregulated smoking on aircraft compels the conclusion that service which does not provide for the effective separation of smokers constitutes neither adequate service nor reasonable practice and cannot be permitted under the act.'' 38 FR 12209 (May 10, 1973).

[26] See *Diefenthal* v. *Civil Aeronautics Bd.,* 681 F.2d 1039 (5th Cir. 1982) (adequate service can refer both to the number of flights scheduled as well as the quality of service provided).

[27] 81 FR 11415 (March 4, 2016).

[28] 81 FR 11415, 11421 (March 4, 2016).

[29] See *Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

provided to passengers.[30] Current carrier practices of encouraging families to pay fees for a basic service that should be included with the air transportation purchased degrades the quality of the service provided to passengers by the carrier and can ultimately be harmful to any passengers on the aircraft. As such, the Department's authority to ensure adequate service under § 41702 supports the proposed requirements in this NPRM.

Also, in light of passenger complaints received by DOT, the Department's proposal in this NPRM promotes ''adequate'' air transportation under § 41702 by establishing further protections for young children traveling in air transportation. According to passenger complaints, young children who are separated from an accompanying adult may be more vulnerable to harm when traveling on an aircraft. Unlike children traveling as unaccompanied minors, who benefit from a service provided by airlines that typically involves the airline charging a fee to monitor and supervise the transport of a young child, young children who travel unsupervised because the airline failed to provide family seating may undergo unnecessary emotional trauma,[31] may be harmed by another passenger during air transportation,[32] or may not receive the requisite assistance to protect themselves during an emergency on the aircraft. Passenger concerns about protecting children traveling alone on aircraft therefore justify the Department's use of its authority to ensure adequate transportation under § 41702.

3. Authority To Regulate Under 49 U.S.C. 41712

The Department is also issuing this NPRM pursuant to its authority in 49 U.S.C. 41712 to prohibit unfair or deceptive practices by air carriers, foreign air carriers, or ticket agents in air transportation or the sale of air transportation.

On December 7, 2020, the Department issued a final rule that, among other things, requires the Department to provide its reasoning for concluding that a certain practice is unfair or deceptive to consumers when issuing aviation consumer protection rulemakings that are not specifically required by statute and are based on the Department's general authority to prohibit unfair or deceptive practices under section 41712.[33] That final rule adopted definitions for the terms ''unfair'' and ''deceptive.'' A practice is ''unfair'' to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.[34] A practice is ''deceptive'' to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service.[35] Proof of intent is not necessary to establish unfairness or deception.[36] The Department elaborated further on the elements of ''unfair'' and ''deceptive'' in a 2022 guidance document.[37]

a. Unfair Practice

Pursuant to its authority to prohibit unfair practices under section 41712, the Department proposes to ensure that carriers allow young children to be seated adjacent to an accompanying adult on a flight at no additional cost. In support of its proposal, the Department reasons that a carrier's practice of not allowing a young child or young children to be seated adjacent to an accompanying adult unless they pay a fee to ensure adjacent seating is unfair because it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by the benefits to consumers and competition. Although the number of family seating complaints that the Department has received is low, a substantial harm may be demonstrated by a large amount of harm to a small number of people [38] or unwarranted health and safety risk.[39]

The Department believes there is substantial harm whenever a young child is separated from an accompanying adult on a flight due to unwarranted health and safety risks to the child. Consumers report experiencing significant stress and anxiety when they are assigned seats apart from their young children, who, in some circumstances, are too young to feed themselves, fasten their own seatbelt, go to the bathroom, and, in some cases, communicate. Furthermore, as discussed above, young children who travel unsupervised because the airline failed to provide family seating may undergo unnecessary emotional trauma,[40] may be harmed by another passenger during air transportation,[41] or may not receive the requisite assistance

[30] See *Diefenthal,* 681 F.2d at 1044 (adequate service can refer both to the number of flights scheduled as well as to the quality of service provided).

[31] See Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: *https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[32] Press Release, U.S. Fed. Bureau of Investigation, Sexual Assault Aboard Aircraft: Raising Awareness About a Serious Federal Crime, (April 26, 2018), *https://www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618.*

[33] *See* Final Rule, Defining Unfair or Deceptive Practices, 85 FR 78707, Dec. 7, 2020. *See also https://www.govinfo.gov/content/pkg/FR-2022-08-29/pdf/2022-18170.pdf.*

[34] 14 CFR 399.79(b)(1).

[35] 14 CFR 399.79(b)(2).

[36] 14 CFR 399.79(c).

[37] 87 FR 52677 (August 28, 2022).

[38] A parent attempting to travel on a major U.S. airline in 2021 complained to the Department that the airline seated her 11-month-old and 4-year-old children by themselves. The airline did not dispute this occurred and stated that DOT had yet to put any directives in place for U.S. airlines about family seating. In another example, a complaint against another major airline alleged that in 2020 the airline seated a six-year-old apart from a parent and that the traveler next to the child proceeded to watch R-rated content. The airline did not dispute this occurred. Further, one complaint alleges that a child with autism was initially separated from his parents, which caused the child's mother to suffer a panic attack. While another complaint alleges that a 10-year-old child suffered an anxiety attack when initially separated from their parents. Another family alleged being asked to pay $200 per ticket after being separated from a 5-year-old. Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: *https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[39] FTC has found actions to be unfair if they pose a risk of physical harm to children or enticed children to engage in risky or dangerous activities. *FTC Policy Statement on Unfairness,* available at, *https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness* (Dec. 17, 1980) (citing to Philip Morris, Inc., 82 F.T.C. 16 (1973) (approving consent decree to cease distributing unsolicited razor blades directly to homes: ''[T]he distribution of the razor blades, constitutes a hazard to the health and safety of persons . . . particularly young children.'').

[40] *See* Redacted Sample of Consumer Complaints Related to Seat Assignment Fees for Families Traveling with Children 13 and Under Received by the Department of Transportation's Office of Aviation Consumer Protection between 2019 and 2022: *https://www.regulations.gov/document/DOT-OST-2022-0109-0023https://www.regulations.gov/document/DOT-OST-2022-0109-0023.*

[41] Press Release, U.S. Fed. Bureau of Investigation, Sexual Assault Aboard Aircraft: Raising Awareness About a Serious Federal Crime, (April 26, 2018), *https://www.fbi.gov/news/stories/raising-awareness-about-sexual-assaultaboard-aircraft-042618. See also https://www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618.*

to protect themselves during an emergency on the aircraft.

The Department also considers the monetary harm to parents, who are required to purchase adjacent seats to ensure the safety of their children, to be substantial and to satisfy the first prong of the unfairness test. Other travelers may choose to purchase adjacent seats for convenience or companionship, but they would not face the same concerns that parents with young children would if they are not seated together because young children are not able to defend and protect themselves from harm in the same way as an adult. A parent traveling with young children may feel compelled to pay for adjacent seating, even though the cost is high, to ease their minds about the health and safety of their children. For similar reasons, parents traveling with young children are currently not able to take advantage of basic economy fares that do not include the ability to select seats or to be seated together, thereby creating higher travel costs for those with young children.

Furthermore, the practice of not guaranteeing that young children will be seated adjacent to at least one accompanying adult at no additional cost harms other passengers on the aircraft. Most carriers have moved to a seating model where people may pay to select their seat in advance or pay for early boarding. Airlines charge different fees for different seats based on perceived benefits. Despite passengers paying these fees, airlines may ask these passengers to ''voluntarily'' forfeit their seats for families traveling with young children and move to a less desirable seat, with the alternative of being seated next to an unsupervised child and causing stress and anxiety for that child's parent.

For families traveling with young children, the monetary harm suffered by consumers who are coerced into paying more to sit adjacent to their children is not reasonably avoidable because the only way for families to ensure that they are seated together on carriers that do not guarantee family seating is to pay a seat-selection fee, book a seat in a higher fare class, or pay an early boarding fee. For many parents, sitting apart from their child is not an option, and those parents feel compelled to pay the fee or may even be unable to travel altogether because of the additional cost. Furthermore, as discussed above, even those paying fees for adjacent seats may be separated from their children in the event of an aircraft change and would also be unable to avoid the harm of being seated apart from their young children. In addition, the harm to passengers not traveling with young children is not reasonably avoidable because these passengers do not know, prior to travel, if they will be asked to relinquish their seat to accommodate a family traveling with a young child or if they will be seated next to an unsupervised child.

The Department believes that the tangible and significant harm to consumers is not outweighed by countervailing benefits to consumers or competition. As noted above, consumers face substantial harm when a carrier refuses to seat families traveling with young children together at no additional cost, or when the carrier relies on other passengers to choose between sitting next to an unsupervised child or giving up their preferred seat. Further, the countervailing benefits to consumers and competition of permitting family seating fees do not outweigh this substantial harm to consumers. The Department does not believe the harm outweighs any benefit to consumers, such as any potential slight increase in fare cost for consumers traveling without children or families that do not currently pay advance seat fees.

In fact, the Department believes that its proposal will promote competition. Today, airlines are required to state the full price of a ticket, inclusive of all mandatory fees, in their published fares. However, airlines are not required to include fees for adjacent seats in the advertised fare, as they are considered optional services.[42] Many families with young children consider fees for adjacent seats as not truly optional and effectively part of the price. Fees for adjacent seats can quickly add up and transform what seemed like a cheap airline ticket into a pricey one. The addition of a seating fee to the advertised fare effectively raises the final cost of air transportation for families traveling with young children. Banning fees for seating young children adjacent to an accompanying adult will enhance competition, as families will be able to use the published fare to accurately comparison shop between airline offers. Effective competition is enabled when consumers have the information necessary to make informed choices.

The Department also proposes to prohibit unfair practices by requiring a carrier to disclose that it provides family seating at no additional cost and to disclose any carrier-imposed requirements that attach to its family seating policy and are permitted under the proposed rule that may impact the consumer's ability to secure adjacent seats, including carrier requirements for check-in or boarding. These disclosures would be required on a carrier's online platforms and when a consumer calls the carrier's reservation center to inquire about a fare or seating or to book a ticket.

A carrier's failure to disclose that it provides family seating at no additional cost would result in substantial monetary harm to families because uninformed consumers would be likely to needlessly purchase seats assignments, or seats in a higher fair class to, secure family seating, which would result in higher costs to families traveling in air transportation. Additionally, failing to disclose the exceptions to the carrier's family seating policy would cause significant harm to consumers because uninformed families run the risk of unwittingly forfeiting their ability to secure adjacent seats *e.g.,* a family may be refused family seating, resulting in a young child or young children sitting apart from a parent or other responsible adult, if the family was unaware of the need to check-in at the boarding gate at a specific time.

The harm is not reasonably avoidable because consumers would have no way of learning the parameters of a carrier's family seating policy if a carrier failed to make the disclosures proposed in this NPRM. The only way that a consumer would learn that a carrier provides family seating for free, or that certain exceptions to the carrier's family seating policy exist, would be if the consumer made a direct inquiry to the carrier. The Department believes that such an inquiry is unlikely to occur because an ordinary consumer would reasonably assume that a carrier has provided pertinent information about its seating policies, including for family seating to enable young children to sit next to a parent or other responsible adult, on its online platform.

Finally, the harm to consumers is not outweighed by the benefit because, as discussed above, the additional cost of purchasing assigned seats or seats in a higher fare class would raise the cost of air transportation for families traveling with young children. Additionally, uninformed consumers run the risk of failing to secure family seating.

b. Deceptive Practice

Pursuant to its authority to prohibit deceptive practices under section 41712, the Department is proposing to require carriers to disclose that they will seat a young child adjacent to an accompanying adult at no additional cost with limited exceptions and disclose the exceptions that may impact

[42] Optional Services is a service the airline provides, for a fee, beyond passenger air transportation. See defined in 14 CFR 399.85(d).

the consumer's ability to secure adjacent seats, if the proposal to ban family seating fees is adopted in final. The Department is proposing to require this disclosure on carrier's online platforms and when a customer calls the carrier's reservation center to inquire about a fare or seating or to book a ticket. Without this disclosure, it is likely that a consumer, acting reasonably under the circumstances, would be misled and unnecessarily pay for adjacent seats or inadvertently not take the required steps to secure adjacent seats. The carrier's disclosure that it will provide family seating at no additional cost, and disclosure of the applicable exceptions to its policy, is a material matter for consumers, as the disclosure prevents unnecessary payment of fees and ensures families know what they need to do to ensure they are seated together.[43]

*C. Hearing Procedures*

For the reasons discussed in the Statutory Authority section of this NPRM, the Department proposes that failing to provide family seating at no additional cost is an unfair practice. The Department also proposes that, if family seating fees are banned, it would be a deceptive practice for carriers not to disclose to families that they will seat a young child adjacent to an accompanying adult at no additional cost with limited exceptions.

Pursuant to 14 CFR 399.75(b)(1), any interested party may file a petition to hold a hearing on the proposed rule prior to the close of the comment period. As stated in the **DATES** section, petitions must therefore be received by October 8, 2024.

14 CFR 399.75(b)(2) provides that the Department will grant a petition if the petitioner makes a clear and convincing showing that granting the petition is in the public interest. Factors considered in determining whether a petition is in the public interest include: (1) Whether the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act; (2) whether the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; (3) whether the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; (4) whether the requested hearing would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by § 399.75; and (5) whether the hearing would unreasonably delay completion of the rulemaking. DOT must also provide an explanation of the basis for the decision on a petition. (14 CFR 399.75(b)(3)).

*D. Summary of Proposed Regulatory Provisions*

The Department is proposing to enhance its aviation consumer protection requirements by adopting a new part under Subchapter A of Title 14 of the Code of Federal regulations, 14 CFR part 261, which would require U.S. and foreign air carriers to allow young children to be seated adjacent to an accompanying adult on a flight at no additional cost. In addition, the Department seeks to enhance its aviation consumer protection requirements by amending 14 CFR part 259 to require carriers to notify passengers of their family seating policies in their customer service plans. The Department's proposed protections are described in the summary table below.

| Subject | Proposal |
|---|---|
| Applicability | Would apply to U.S. and foreign air carriers that operate or market scheduled passenger flights to, within, or from the U.S. on at least one aircraft that has a designed capacity of 30 or more passenger seats. |
| Family Seating Requirement | Would require adjacent seats for a young child (age 13 and under) and an accompanying adult (age 14 and over) within the same class of service at no additional cost beyond the fare, with limited exceptions. This Part clarifies that family seating is a basic service, essential for the provision of adequate air transportation, that must be included in the advertised fare. |
| Exceptions to Family Seating Requirements. | Would provide four exceptions to the family seating requirement when: (1) the young child is not traveling with an accompanying adult; (2) the booking party or accompanying adult declines to accept the adjacent seats or chooses to sit apart from the young child; (3) the number of young children traveling makes it impossible to provide adjacent seats due to the layout of the aircraft; or (4) the young child and/or accompanying adult do not comply with the carrier's check-in or boarding requirements.<br>In situations where it is impossible to seat multiple young children adjacent to an accompanying adult, carriers must seat the young children across the aisle from, or directly in front of or directly behind the accompanying adult at no additional cost beyond the fare. |
| Available Family Seating at Booking | If adjacent seats are available at booking, would require a carrier that assigns seats in advance of the date of departure of a flight (Assigned Seating Carrier) to make every reasonable effort to provide adjacent seat assignments to a young child and accompanying adult at the time of booking, but no later than 48 hours after the tickets are purchased, for each flight segment, unless an exception applies. |
| No Available Family Seating at Booking—Options, Notification by Airline, and Decision by Passenger. | If adjacent seats are not available at booking, an Assigned Seating Carrier must provide the booking party the choice between: (1) a full refund or, (2) the option to wait for family seating to become available for the booked flight closer to the scheduled departure.<br>For flights purchased more than two weeks prior to departure, would require an Assigned Seating Carrier to contact the booking party within 48 hours after the ticket for air transportation has been purchased and provide the booking party a minimum of seven days to choose between: (1) a full refund or, (2) the option to wait for family seating to become available for the booked flight closer to the scheduled departure. |

[43] See Fed. Trade Comm'n, FTC Policy Statement on Deception, 103 F.T.C. 174, 182 (1984) (''Information has been found material where it concerns the purpose, safety, efficacy, or cost, of the product or service. Information is also likely to be material if it concerns durability, performance, warranties, or quality'').

| Subject | Proposal |
|---|---|
| | Requires an Assigned Seating Carrier, for flights purchased less than two weeks prior to departure, to contact the booking party as soon as practical after the ticket for air transportation has been purchased and provide the booking party a reasonable amount of time to choose between: (1) a full refund or, (2) the option to wait for family seating to become available for the booked flight closer to the scheduled departure. |
| Waiting for Available Family Seating—Adjacent Seats Become Available. | Would specify that when a booking party chooses to wait for available family seating, and adjacent seats become available before the first passenger boards the aircraft, an Assigned Seating Carrier must notify the booking party and assign the adjacent seats to a young child and accompanying adult as soon as the seats become available. |
| Waiting for Available Family Seating—Adjacent Seats Do Not Become Available. | Would specify that when a passenger chooses to wait for available family seating, and adjacent seats do not become available before the first passenger boards the aircraft, an Assigned Seating Carrier must offer the booking party and/or the accompanying adult the choice between free rebooking on the next flight with available family seating at no additional cost or continuing travel in seats that are not adjacent. |
| Disclosure of Family Seating Policy ..... | Would require carriers to clearly and conspicuously disclose their family seating policies on their public-facing online platforms and when a customer calls the carrier's reservation center to inquire about a fare or seating or to book a ticket that the carrier will allow a young child to be seated adjacent to an accompanying adult at no additional cost beyond the fare. The disclosure is also required to include any exceptions to the family seating requirement, including any carrier requirements for check-in and boarding that may impact the ability to secure adjacent seats. |
| Mitigating Passenger Harm—Options Available. | Requires a carrier to mitigate passenger harm if the carrier fails to provide family seating as proposed by offering a choice between: (1) rebooking at no additional cost on the next flight with available family seating, (2) transporting the young child or young children and an accompanying adult on the flight without adjacent seats, or (3) a refund. |
| Mitigating Passenger Harm—Refund Calculation. | States that the amount of refund that the booking party is entitled to receive would be the entire cost of the ticket if family seating as required by this rule is not provided on any segment of the outbound flight and the young child and passengers on that reservation decide not to travel to destination. States that the amount of refund in all other cases would be the cost of the unused portion of the ticket. |
| Mitigating Passenger Harm—Right of Passengers Stuck at Connecting Airport on Outbound Trip. | Would specify that, if a carrier fails to provide family seating as specified in this rule and that failure results in the young child and accompanying adult being stuck at a connecting airport on the outbound trip and they choose to no longer travel, the carrier must provide return transportation to the origination airport at no cost. |
| Customer Service Plan ..... | Would require that carriers update their Customer Service Plans to include a commitment to notify passengers that the carrier will provide adjacent seats to a young child and accompanying adult at no additional cost. |
| Civil Penalty ..... | States that carriers that violate the family seating requirements would be subject to civil penalties. Specifies that if young children and an accompanying adult are not provided adjacent seats as required by the proposed rule and none of the exceptions apply, then a separate violation would occur for each child that is not seated next to an accompanying adult. Also, specifies that when a fee beyond the fare is imposed to secure family seating, a separate violation occurs for each fee imposed. |
| Removal of Passengers for Safety or Operational Reasons. | Clarifies that this rule would not prohibit carriers from removing or reseating a young child and an accompanying adult, because of safety or operational reasons. Proposes that the selection of passengers for removal must be non-discriminatory. |
| Inclusion of Fees for Basic Services in Advertised Fare. | Seeks comments on whether fees for other basic airline services should be required to be included in the advertised fare. |

*E. Summary of Regulatory Impact Analysis*

SUMMARY OF ECONOMIC IMPACTS, ANNUAL

[2022 Dollars, millions]

| | | |
|---|---|---|
| *Benefits (+):* | | *Benefits (+).* |
| Reduced disutility to passengers from separation of families traveling by air. | Unquantified. | |
| *Costs (−):* | | *Costs (−):* |
| Implementation costs ..... | $5–21 ..... | Implementation costs. |
| *Net societal benefits (costs)* ..... | Not applicable ..... | *Net societal benefits (costs).* |
| *Transfers (0):* | | *Transfers (0):* |
| Increase in consumer surplus from elimination of seating fees for families (airlines to families). | $910 ..... | Increase in consumer surplus from elimination of seating fees for families (airlines to families). |
| Decrease in consumer surplus for solo air passengers (solo passengers to airlines). | $760. | |
| Decrease in consumer surplus for families who do not pay for seat reservations in the baseline (families to airlines). | $51 ..... | Decrease in consumer surplus for families who do not pay for seat reservations in the baseline (families to airlines). |
| Airline revenue loss (airlines to consumers) ..... | $85 ..... | Airline revenue loss (airlines to consumers) |
| *Benefits (+):* | | *Benefits (+):* |

SUMMARY OF ECONOMIC IMPACTS, ANNUAL—Continued

[2022 Dollars, millions]

| | | |
|---|---|---|
| Reduced disutility to passengers from separation of families traveling by air. | Unquantified | Reduced disutility to passengers from separation of families traveling by air. |
| *Costs (−):* | | *Costs (−):* |
| Implementation costs | $5–21 | Implementation costs. |
| *Net societal benefits (costs)* | Not applicable | *Net societal benefits (costs).* |

Benefits, which we did not quantify, are due to the reduction in disutility to passengers from separation of families traveling by air. Costs are the upfront costs that carriers will incur to adjust their ticketing systems to allow them to distinguish passengers traveling as a family from other passengers. Aside from these implementation costs, the other quantified effects of the proposed rule are transfers. Families who currently pay for seat assignments will experience an increase in consumer surplus when their seating fees are eliminated. The elimination of seating fees encourages families to increase air travel, which puts upward pressure on airfares. Passengers that do not travel as a family and families who do not currently purchase seat reservations experience a loss in consumer surplus due to an airfare increase. Airlines initially will incur a loss in revenue primarily from the loss in seating fee revenue from families, as well as a smaller amount from the reduced travel on the part of solo passengers and families who do not pay seating fees in the baselines.

## II. Discussion of Proposals

### *A. Overview of Proposal*

In this rulemaking, the Department proposes to require U.S. and foreign air carriers to ensure that young children aged 13 and under are seated adjacent to at least one accompanying adult aged 14 or over at no additional cost, subject to limited exceptions.[44] Under this rulemaking, the specific requirements that U.S. and foreign air carriers would be required to follow to ensure a young child is seated adjacent to an accompanying adult at no additional cost differ depending on the carrier's seating method. There are different requirements for an open seating carrier and an assigned seating carrier. However, in both cases, carriers would be prohibited from imposing additional charges for adjacent family seating. Further, under this proposed rule, carriers would be required to take certain steps to mitigate passenger harm if they fail to provide family seating as required by the proposed rule. Additionally, the Department would consider it a violation each time a young child is not provided the opportunity to secure a seat adjacent to an accompanying adult as required by the proposed rule, including each time an additional charge is incurred to secure an adjacent seat. Each violation could subject an airline to civil penalties. The Department believes that the proposed requirements along with the proposed exceptions will ensure that carriers have policies that enable young children to sit adjacent to an accompanying adult to the maximum extent practicable and at no additional cost.

The Department seeks comment on its proposal to require carriers to provide family seating at no additional cost beyond the fare, and whether its proposal protects families adequately. Should families traveling with young children continue to be forced to purchase adjacent seating in order to ensure that they will sit together, or should carriers provide this service to passengers traveling with young children at no additional cost beyond the fare, as is being proposed? Additionally, the Department seeks comment on whether its family seating requirements provide needed protections for children on aircraft. The Department is also examining whether fees for other basic airline services such as booking a ticket should be required to be included in the advertised fare and solicits comment in this area, as described in Section K.

### *A. Applicability*

In this NPRM, the Department proposes to adopt family seating requirements in 14 CFR part 261 that would apply to U.S. and foreign air carriers that operate and market scheduled passenger flights to, from, or within the U.S. using at least one aircraft that has a designed capacity of 30 or more passenger seats. The Department is of the view that the rulemaking should apply to both marketing and operating carriers because they both interact with consumers regarding seating, including families traveling with young children. Marketing carriers interact with consumers in advance of travel since they typically hold out services to the public, ticket passengers, offer reservation services, and assign seats. Operating carriers interact with consumers on the date of the travel by assisting families who are not seated adjacent to their young children. The Department seeks comment on its decision to apply this rulemaking to both marketing and operating carriers.

As proposed, this rulemaking would apply to carriers that operate aircraft with a designed seating capacity of 30 or more seats. This is consistent with the Department's past practice, as many of the Department's consumer protection requirements do not apply to small U.S. carriers that operate passenger service exclusively with aircraft that have fewer than 30 seats.[45] Very few passengers travel on aircraft with fewer than 30 seats.[46] Although aircraft designed to have a maximum passenger capacity of 60 seats or fewer are considered small aircraft,[47] DOT has not proposed to exclude them because a substantial number of passengers are transported on flights operated by aircraft with between 30 and 60 seats. According to data from the Department's Bureau of Transportation Statistics (BTS), a total of 760,159,634 domestic passengers were transported in 2022, 734,090,772 (or 96.6%) of which

[44] Although the provisions in the proposed regulation on family seating do not reference adjacent seating for individuals with disabilities, the Department has separate regulations in 14 CFR part 382, pursuant to the Air Carrier Access Act, that specify when a carrier is permitted to require a passenger with a disability to travel with a safety assistant, and when a carrier is required to provide an adjoining seat at no additional cost to a person assisting a passenger with a disability, such as a personal care attendant, a safety assistant, or an interpreter. See 14 CFR 382.29 and 14 CFR 382.81(b).

[45] The requirements relating to tarmac contingency plans and reporting tarmac delays, specific customer service plan provisions, and denied boarding compensation also do not apply to these carriers. *See* 14 CFR 259.2, 14 CFR 250.2.

[46] According to data from the Department's Bureau of Transportation Statistics (BTS), a total of 760,159,634 domestic passengers were transported in 2022 and 2,351,381 or 0.3% were on flights using aircraft with less than 30 seats. See Bureau of Transportation Statistics ''T–100 Domestic Segment Data (World Area Code)'', *https://www.bts.gov/browse-statistical-products-and-data/bts-publications/data-bank-28ds-t-100-domestic-segment-data.*

[47] An air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000 pound payload capacity). *See* 14 CFR 399.73.

were on flights using aircraft of more than 60 seats, 23,717,481 (or 3.1%) of which were on flights using aircraft with 30 through 60 seats, and 2,351,381 (or 0.3%) were on flights using aircraft with fewer than 30 seats.[48] We solicit comment on whether the Department should cover carriers as proposed or limit or expand the carriers covered by this rulemaking. We ask proponents and opponents of any alternative to provide arguments and evidence in support of their positions.

*B. Family Seating Requirements (Definitions)*

The Department proposes to require carriers to ensure adjacent seating for a young child and an accompanying adult within the same class of service at no additional cost with limited exceptions when there is available family seating. The Department proposes definitions for each key term.

1. Adjacent Seating

In this NPRM, the Department proposes to define ''adjacent seating'' as two or more seats positioned next to each other in the same row of the aircraft and not separated by an aisle. The Department's family seating dashboard published on its aviation consumer protection website identifies those carriers that guarantee adjacent seats for a child 13 or under and an accompanying adult at no additional cost for all fare types, subject to limited conditions. However, the Department does not define adjacent seating on the Dashboard, and some carriers have interpreted adjacent seating to include a seat across the aisle from another seat. By proposing a definition of adjacent seats, the Department is ensuring that there is consistency in the service that families with young children receive across airlines. Further, the Department believes that its proposed definition of adjacent seats is necessary to ensure that an accompanying adult is seated close enough to care adequately for a young child and to ease anxiety about the seat that a child may be assigned on the aircraft. The Department seeks comment on its proposed definition of adjacent. Specifically, should adjacent be defined as two seats next to each other in the same row and not separated by an aisle as proposed? Or, conversely, should airlines be permitted to seat a child across the aisle from or near an accompanying adult, and if the latter, what should ''near'' mean?

2. Young Child or Young Children

The Department is proposing to define ''young child or young children'' in this NPRM to mean an individual(s) age 13 or under on the date of scheduled departure of the purchased flight. This definition is consistent with section 516 of the 2024 FAA Reauthorization which defines ''young child'' to mean ''an individual who has not attained 14 years of age.''

The Department considered modeling its definition of young child after language in FAA Advisory Circular 120–27F [49] addressing air carrier weight and balance control programs, which defines a child to be less than 13 years of age. The Department chose ''13 or under'', as prescribed in the Act, instead of the ''under 13'' age designation, as prescribed in FAA Advisory Circular 120–27F, because the definition in the FAA Advisory Circular was singularly focused on the weight and balance safety aspects of the aircraft and did not consider the mental fitness of a child and whether a child is old enough to be safely seated alone. The Department also considered the age that airlines permit children to travel unaccompanied as standard passengers. Many U.S. airlines do not accept children traveling alone as standard passengers unless they are 15 or older, although some U.S. airlines do allow children 12 or older to travel alone.[50]

The Department believes that children should not be separated from their families on a flight because, if they are separated, they are not supervised or monitored by their families or by airline staff. In this NPRM, the Department proposes to apply family seating policies to children aged 13 or under. We solicit comment on whether 13 or under is the appropriate definition for a young child. We encourage commenters to provide data or other evidence as support for why a particular age group is appropriate.

The Department also recognizes that there may be situations where there are multiple young children traveling on the same reservation record as an accompanying adult. This rule seeks to ensure, to the extent feasible given the layout of an aircraft, that young children are seated adjacent to an accompanying adult. We request comment on whether the Department should specify that airlines must seat the children across the aisle from, or directly in front of or directly behind the accompanying adult, when multiple young children are traveling with an accompanying adult.

3. Accompanying Adult and Booking Party

The Department is proposing to define ''accompanying adult'' as an individual age 14 or over on the date of the scheduled departure who is traveling with a young child or young children on the same reservation record. The Department uses ''individual,'' rather than family member, when defining an accompanying adult because the adult may not be related to the young child. For example, the accompanying adult may be a family friend or caretaker.

When considering the appropriate age to use in the definition of an accompanying adult, the Department took into account airline policies on the minimum age for children to travel unaccompanied as young adults. A review of the policies of the 10 largest U.S. airlines revealed that airlines' policies vary and that there is no universally agreed upon age when a child is considered a young adult. Airlines use 12, 13, 14, and 15 as the cutoff for children to travel alone as young adults.[51] The Department also considered the cognitive ability of children and the ages that children are given greater responsibility. The Federal Aviation Administration (FAA) allows individuals who are 15 years of age or older to be seated in an exit seat. This means that the FAA has determined that a 15-year-old has the capacity to understand and follow the crew's instruction and perform safety functions without the assistance of an adult companion or parent. The Department also considered the Fair Labor Standards Act (FLSA), which sets 14 years old as the minimum age of

[48] See Bureau of Transportation Statistics ''T–100 Domestic Segment Data (World Area Code)'', *https://www.bts.gov/browse-statistical-products-and-data/bts-publications/data-bank-28ds-t-100-domestic-segment-data.*

[49] AC 120—27F—Aircraft Weight and Balance Control, available at *https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1035868* (May 6, 2019).

[50] Allegiant, American, Delta, Frontier, Spirit, and United do not allow children under 15 to travel alone for safety reasons. See *https://www.allegiantair.com/traveling-with-children, https://www.delta.com/us/en/children-infant-travel/unaccompanied-minor-program, https://www.united.com/en/us/fly/travel/accessibility-and-assistance/unaccompanied-minors.html, https://www.aa.com/i18n/travel-info/special-assistance/unaccompanied-minors.jsp, https://customersupport.spirit.com/en-us/category/article/KA-01160,* and *https://faq.flyfrontier.com/help/traveling-with-children-or-pets.* Hawaiian and Southwest allow children ages 12 and up to travel alone. See *https://www.southwest.com/help/flying-with-children/unaccompanied-minors-flying-alone,* and *https://www.hawaiianairlines.com/legal/domestic-contract-of-carriage/rule-12.*

[51] Children who are 12 years old or older can fly alone on Hawaiian and Southwest, children who are 13 years old or older can fly alone on Alaska, children who are 14 years old or older can fly alone on JetBlue, and children who are 15 years old or older can fly alone on Allegiant, American, Delta, Frontier, Spirit, and United.

employment. A 14-year-old is deemed to have the capacity to take on certain paid responsibilities outside of the home.[52]

In evaluating whether to propose an accompanying adult to be a 14- or 15-year-old, the Department factored in the benefit of avoiding an age gap between the age of a young child and accompanying adult. Avoiding such a gap would ensure that the family seating protections would also apply to a young child traveling with an older teenager, like a sibling. For these reasons, the Department is proposing to define an accompanying adult to be an individual age 14 or over on the scheduled departure date.

The Department requests comment on its definition of an accompanying adult. Specifically, is a 14-year-old too young to act as an accompanying adult to a young child? And if so, what should be the appropriate minimum age of an accompanying adult? Comments that are most useful provide information regarding the reasons why a particular age is appropriate. We also seek comment on the proposed use of the term ''accompanying adult.''

The Department is proposing to define the term ''booking party'' as the person who booked the reservation for air travel. Since the booking party may or may not be an accompanying adult, we believe that it is important to define ''booking party'' to draw a distinction between the roles, rights, and responsibilities of the booking party versus the accompanying adult. For example, a parent may book tickets for her two children aged 11 and 16 without the intent for the parent to travel. The Department seeks comment on its definition of booking party and defining the booking party separate from an accompanying adult.

4. No Additional Cost

The Department is proposing to define ''no additional cost'' to mean no added charge beyond the fare. Additionally, the Department is proposing to define ''fare'', a term used in the Department's definition of no additional cost, to mean the price paid for air transportation, including all basic services and all mandatory government taxes and carrier-imposed fees. The proposed definition of ''fare'' does not include ancillary service fees for optional services that have been determined by the Department not to be basic services. Furthermore, the Department is proposing to define the term ''ancillary service fee'' as a fee charged for any optional service that a carrier provides beyond passenger air transportation. Such fees may include, but are not limited to, charges for checked or carry-on baggage, canceling or changing a reservation, advance seat selection, in-flight beverages, snacks and meals, lounge access, bedding or other amenities, or seat upgrades so long as the fees are not for basic services.

The Department's proposed definition of ''no additional cost'' is consistent with the 2024 FAA Reauthorization Act, which ''prohibits an air carrier from charging a fee, or imposing an additional cost beyond the ticket price of the additional seat, to seat each young child adjacent to an accompanying adult within the same class of service.'' Under this proposal, airlines would be prohibited from charging parents traveling with young children any additional fees to sit with their children beyond what they would pay for the tickets. While this proposed rule would require airlines to provide adjacent seats for a young child and an accompanying adult at no additional cost beyond the fare, airlines would have the flexibility to select which adjacent seats to provide. To the extent that a family with a young child wanted specific seats or wanted to be seated in a specific area of the aircraft, nothing in the proposal would prohibit an airline from charging for those seats.

The Department's proposed definition of ''fare'' in this rulemaking is consistent with the meaning of that term in other aviation consumer protection regulations.[53] This definition does not consider ancillary service fees for optional services paid by passengers, such as baggage fees, to be part of the fare. However, this definition clarifies that the term fare includes all basic services. ''Basic service'' is a defined term under this proposal and is discussed below. In addition, the proposed definition of ''ancillary service fee'' is consistent with the Department's existing definition of ''optional services'' in 14 CFR 399.85(d),[54] although the proposed definition of ancillary service fee clarifies that the term does not include fees for basic services.

The Department seeks comment on its proposed definitions of ''no additional cost'', ''fare'', and ''ancillary service fee.'' The Department also requests comment on continuing to permit airlines to charge fees to families who wish to secure specific seats. Comments that are most helpful will provide information and explain why a particular definition or action is best.

5. Class of Service

The Department is proposing to define class of service as seating in the same cabin class such as First, Business, Premium Economy, or Economy class, based on seat location in the aircraft and seat characteristics such as pitch size, features, or amount of legroom. Under this proposal, Premium Economy would be considered a different class of service from standard Economy, while Basic Economy would not. Consumers who purchase Premium Economy seats are often physically separated from other seats by a partition or bulkhead, they are provided seats with extra legroom than standard Economy, and their seats are often wider and recline further than standard Economy seats. They may also receive perks like free checked bags, special meals, or priority boarding. However, Basic Economy seats do not differ in pitch size or legroom from standard Economy. Typically, consumers who purchase a Basic Economy ticket face restrictions that those who purchase standard Economy do not, such as not being allowed to change or cancel tickets, select seats, or check-in bags. The Department seeks comment on whether Premium Economy or Basic Economy should be considered as a separate class of service from standard Economy under the proposed rule. The 2024 FAA Reauthorization Act prohibits fees ''to seat each young child adjacent to an accompanying adult within the same class of service'' but does not define class of service. Under this proposal, carriers would be obligated to provide family seating within the same class of service, at no additional cost. Carriers would not be required to upgrade the family to a higher class of service, like First, Business, or Premium Economy, to ensure family seating.

Furthermore, the Department is proposing a requirement that family seating must be provided in every class of service. This would mean that

[52] The FLSA allows for the employment of minors between 14 and 16 years of age subject to limitations and if it does not interfere with their schooling or with their health and well-being. 29 CFR 570.31. Minors 14 and 15 years of age are restricted from employment in occupations that involve certain tasks, including, but not limited to, manufacturing, mining, operating a motor vehicle, working in a boiler room, etc. 29 CFR 570.33. Minors 14 and 15 years of age may be employed in occupations involving office and clerical work, cashiering, bagging and carrying out customers' orders, etc. 29 CFR 570.34.

[53] 14 CFR 250.1; 76 FR 23161 (April 25, 2011); See also 14 CFR 399.84.

[54] ''Optional services'' is defined as any service the airline provides, for a fee, beyond passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades. 14 CFR 399.85(d).

carriers cannot define classes of service in a way that would limit the availability of family seating, such as by defining a class of service as consisting of only middle seats, only aisle seats, or only window seats. The Department wants to ensure that carriers do not intentionally limit the ability for passengers to achieve family seating in all classes of service. At the same time, the Department is concerned that a proposal that adjacent seats be available in all classes of service may not always be feasible. For example, a carrier's first-class cabin may consist of single seats that are separated by an aisle, which would make providing adjacent seats as defined in this rulemaking impossible. For this reason, the Department has included as an exception for circumstances when an aircraft seating configuration would make it impossible to provide adjacent seating to a young child and an accompanying adult. The Department solicits comment on whether there are instances when family seating may not be physically possible in all classes of service and what remedial efforts could be made to address these constraints.

6. Available Family Seating

The Department is proposing to define ''available family seating'' as two or more adjacent seats located in the purchased class of service that have not been assigned to other passengers, and to which a young child or children and an accompanying adult may be assigned. Under this definition, an airline would not be required to seat a young child with both child's parents to accomplish the family seating requirements in the proposed rule. So long as the airline seats the young child with at least one accompanying adult, the airline would fulfill its responsibility to provide family seating. The Department seeks comment on its decision to define family seating as seating each child with one accompanying passenger, which may result in a child sitting with only one parent, as opposed to the entire party.

Also, the Department is proposing to define available family seating, rather than just using the term ''available'', to create a distinction between seats that are available for families (capable of assignment to a young child and an accompanying adult) and seats that are vacant but may not be available for seating a young child. For example, young children are not permitted to sit in certain seats on an aircraft. The Federal Aviation Administration (FAA) regulations on exit row seating prohibit a carrier from seating children under the age of 15 in an exit row because they are unable to perform certain duties that a passenger seated in an exit row may be called upon to perform in an emergency.[55] Thus, although these seats may be vacant and capable of assignment when a passenger makes a reservation for air transportation, a carrier would not be able to assign a young child to a seat in the exit row of an aircraft given the age requirements to sit in these seats. We note that, if exit row seats are the only vacant adjacent seats in the purchased class of service, we would consider family seating to be unavailable for purposes of this proposed rule.

The proposed definition of ''available family seating'' would also not include seats that are in a different class of service or have already been assigned to other passengers. Specifying that the seat must be in the same class of service is consistent with the 2024 FAA Reauthorization Act prohibits fees ''to seat each young child adjacent to an accompanying adult within the same class of service.'' The Department also does not require carriers to move other passengers who have been assigned seats, some of whom have paid for the seats, as those passengers are entitled to the seats assigned to them. The Department seeks comment on the definition of available family seating as seats that are in the same class of service, are capable of assignment to a young child, and have not already been assigned to other passengers.

*C. Assigned Seating Carriers*

Under this rulemaking, the specific requirements that U.S. and foreign air carriers would be required to follow to ensure a young child is seated adjacent to an accompanying adult differ depending on the carrier's seating method. There are different requirements for an open seating carrier and an assigned seating carrier. The Department is proposing that the following requirements apply to assigned seating carriers, which are carriers that assign seats or allow individuals to select seats on a flight, in advance of the date of departure of a flight.

1. Available Family Seating at Time of Booking

When there is available family seating at the time of booking, assigned seating carriers would be required to make every reasonable effort to assign adjacent seats to a young child and accompanying adult at the time of booking the reservation, but no later than 48 hours after the tickets are purchased, at no additional cost, unless an exception applies. The proposed rule provides carriers up to 48 hours to assign family seating if the carrier is unable to assign the seats during the booking process (*e.g.,* the carrier does not have an automated reservation system to assign seats, ticket was purchased through a ticket agent). The Department seeks comment on its proposal to require airlines to make every reasonable effort to assign adjacent seating assignments at the time of booking, and, if the airline is unable to assign the seats at the time of booking, to allow airlines up to 48 hours after a ticket has been issued to assign adjacent family seating. Specifically, is 48 hours too long for families to wait to receive an assigned seat if the carrier is unable to assign the seats during the booking process? Alternatively, should carriers be given more time to provide advance family seating assignments if the carrier is unable to assign the seats during the booking process? If so, how long, and based on what rationale? Should families be allowed to select their seats at no additional charge during the booking process? The Department also seeks comment on whether passengers would be able to determine that there is available family seating at booking by looking at a carrier's seat map or if carriers would block certain seats, including those a carrier may put aside for families with young children, as unavailable on its seat map.

2. No Available Family Seating at Booking

a. Options Provided by Carrier

When there is no available family seating at the time of booking/when the passenger purchases the reservation, the proposed rule would require assigned seating carriers to offer passengers the option to either: (1) obtain a refund, or (2) wait for adjacent seating to become available. The Department is proposing different time periods for assigned seating carriers to notify passengers of these options and for passengers to notify the carriers of their choice based on when the tickets were purchased. For tickets purchased two or more weeks prior to departure, the Department is proposing that assigned seating carriers contact the booking party within 48 hours after the tickets were purchased to offer passengers a choice between a full refund and waiting for available family seating on that flight. The booking party would then have a minimum of seven days to choose between the options. For tickets purchased less than two weeks prior to departure, the Department is

[55] See Exit Seating, 14 CFR 121.585(b)(2).

proposing that carriers contact the booking party as soon as practical after the tickets have been purchased and provide the booking party a reasonable amount of time to choose between receiving a full refund or waiting for available family seating on that flight. If the booking party fails to make a choice within the specified period, carriers would be able to proceed with the reservation as though the passenger chose to wait for available family seating on that flight.

The Department seeks comment on whether providing passengers the choice between a refund or waiting for available family seating on that flight are sufficient options for carriers to provide to families if there is no available family seating at the time of booking. For example, should carriers be required to reserve a seating option that places the young child as close as possible to an accompanying adult, while a family waits for available family seating? If so, what should constitute ''as close as possible''? Must the carrier seat the young children and accompanying adult across the aisle from each other, or seat the young children directly in front of or directly behind the accompanying adult, or some other option?

Under the proposal, if the family chooses to wait for adjacent seats to become available before the first passenger boards the aircraft, the carrier would not be required to offer the family an additional opportunity to receive a refund if adjacent seats do not become available later. Should carriers be obligated to disclose, before the passenger makes the choice between a refund and waiting for available family seating, that they may not have another opportunity to receive a refund? Further, should airlines be required to inform passengers about the probability of their obtaining available family seating before boarding based on historical data about previous similar flights? If so, what process, if any, should carriers be required to follow to make this disclosure?

The Department also seeks comment on its proposal to give passengers a minimum of seven days to choose which option to accept for tickets purchased more than two weeks prior to departure as well as its proposal for airlines to determine what a reasonable time is for passengers to choose their preferred option when tickets are purchased less than two weeks prior to departure. Finally, in those situations where the booking party fails to decide whether to receive a refund or wait for available family seating within the specified timeframe, the Department seeks comment on whether the default option should be that the reservation stays in place and the carrier would proceed as though the booking party chose to wait for available family seating on that flight.

b. Choosing a Refund

If there is no available family seating at the time of booking and the booking party chooses to receive a full refund for their reservation under the proposed rule, a carrier would be required to refund any ancillary service fees paid under that reservation, in addition to the fare. Furthermore, the proposed rule also specifies that each individual in the booking party has the option to receive a refund, or to travel on the reservation, regardless of whether the accompanying adult and young child choose to receive a refund. The Department seeks comment on its proposal to allow the entire booking party to receive a refund if there is no available family seating at booking. The Department also requests comment on its proposal to allow passengers to recoup the entire cost of the reservation, including any ancillary service fees that the passenger paid.

c. Choosing To Wait for Available Family Seating

If the booking party chooses to wait for available family seating in lieu of a refund and adjacent seats become available before the first passenger boards the aircraft, the carrier would be required to notify the booking party and assign the adjacent seats to the young child and accompanying adult as soon as the seats become available. Conversely, if adjacent seating does not become available before the first passenger boards the aircraft, the proposed rule would require carriers to provide passengers the option to rebook seats on the next flight with available family seating at no additional cost, or to travel on their originally scheduled flight in non-adjacent seats. Under this proposal, passengers would not have the option to receive a refund at this point. The Department is of the tentative view that passengers chose to wait for available family seating in lieu of receiving a refund and carriers should not be required to provide a refund at this late date because they would not have sufficient time to sell the seats to other passengers.

The Department seeks comment on its proposal not to require airlines to provide refunds to passengers who initially refused a refund and, instead, opted to wait for available family seating when there was no available family seating at booking. The Department also seeks comment on its proposal to require air carriers to offer passengers waiting for available family seating the option to either rebook on the next available flight with adjacent seats, or travel on their originally scheduled flight without adjacent seats.

In addition, this proposed rulemaking is intended to avoid, as much as possible, last-minute scrambles for seats at the gate or carriers having to ask other passengers to give up their seat to allow a parent and child to sit together. The Department is of the tentative view that the proposed requirements would make it unnecessary for carriers to ask passengers in the cabin to shift seats to allow the child and accompanying adult to sit together or be in seats located as close together as possible. Nevertheless, should there be a requirement for carriers to make best efforts to seat families traveling with young children together even after passengers are on the aircraft? Why or why not?

In the event that there is no available family seating by the time the first passenger boards the aircraft and the family chooses to continue travel in seats that are not adjacent, should carriers be required to provide a seating option that places the young child as close as possible to an accompanying adult? If so, what should constitute ''as close as possible''? Must the carrier seat the young children and accompanying adult across the aisle from each other, or seat the young children directly in front of or directly behind the accompanying adult, or some other option?

The Department also recognizes that allowing passengers to wait for available family seating until the first passenger boards the aircraft may further complicate the boarding process on the day of travel for families and airlines. Airline gate agents may work various gates as needed and have many responsibilities including checking boarding passes, helping passengers onto the flight, accommodating late passengers and may not have sufficient time to adequately assist families at the gate before a flight. Allowing passengers to wait for available family seating until the first passenger boards the aircraft may also be problematic for passengers since passengers would be required to show up at the airport and wait for available family seating, which they may or not receive. As such, the Department seeks comment on whether it should require airlines to provide passengers with the option to wait for available family seating until 24 hours before the flight, as opposed to allowing passengers to wait until the first passenger boards the aircraft. DOT seeks comment on whether the Department

should alternatively require airlines to provide passengers with a refund or the option to travel on the flight in seats that are not adjacent when family seating is not available, instead of giving passengers the option to wait for available family seating for any duration.

d. Disclosure of Family Seating Policies for Assigned Seating Carriers

The Department is proposing to require assigned seating carriers to disclose to consumers that the carriers will provide available family seating at no additional cost. This disclosure would be required to be displayed clearly and conspicuously on carriers' online platforms and the carrier must notify customers of these disclosures when the customers call the carrier's reservation center to inquire about a fare or seating or to book a ticket. Under this proposal, carriers would be required to ask customers if they are traveling with young children, and would only be required to provide family seating information to those customers who indicate they are or might be. The airline would also be required to disclose any exceptions to the airline's family seating policy permitted under the rule, including carrier requirements for check-in or boarding. The Department seeks comment on its proposal to require airlines to disclose their family seating policy on their online platform and on the telephone and whether there are additional ways for assigned seating carriers to provide information to passengers about their family seating policy.

*E. Open Seating Carriers*

1. General Requirement for Open Seating Carriers

The Department's proposed family seating rule also proposes requirements for open seating carriers, or carriers that do not assign or allow individuals to select seats on a flight in advance of the day of departure. For open seating carriers, the Department proposes to require that passengers be boarded in a manner that allows passengers to secure family seating at no additional cost, subject to specified exceptions. While open seating carriers do not charge fees for advance seat assignments or fees to book seats in a higher class of service to ensure family seating, families traveling on open seating carriers may be advised to pay a fee to board the aircraft early to ensure family seating.

The Department understands that there is concern that any potential family seating requirements imposed on open seating carriers would impact the boarding and open seating models that have been employed by these carriers for several years. The Department has also been made aware of concerns that a regulatory proposal that would require open seating carriers to preboard families or provide early boarding to families for free may have a disproportionately negative impact on open seating carriers in comparison to assigned seating carriers because assigned seating carriers would have no obligation to seat families together if there is no available family seating at the time of booking, but an open seating carrier would still have an obligation to provide family seating on a full flight. There also appears to be concern that a family seating requirement could diminish the incentive for non-families to travel on open seating carriers since they would be forced to board the aircraft after families and the available seating options for individuals traveling without young children would be limited.

To address the concerns expressed about the potential negative impacts of a family seating regulation on open seating carriers, the Department proposes a generalized requirement that open seating carriers board passengers in a manner that allows passengers to secure family seating at no additional cost. This broad requirement is designed to provide open seating carriers with the flexibility to determine a way for families to be seated together without impacting the long-standing open seating model. An airline may consider adopting various options that would fulfill this proposed requirement. For instance, carriers could section off a block of seats in a specific section of the aircraft that would be dedicated to passengers traveling with families because the carrier would already be aware of how many families with young children would be traveling on the flight. The carriers could also require that families be present at the gate at a certain time in advance of boarding and board them first. The Department notes that the proposed rule includes as an exception to the proposed family seating requirement for the failure by passengers to comply with carriers' check-in and boarding policies, provided that those polices do not create unreasonably burdensome processes for individuals traveling with young children. The Department seeks comment on whether the proposed requirement for open seating carriers to board families in a manner that allows passengers to secure adjacent family seating at no additional cost is flexible enough to allow open seating carriers to fulfill the requirements while preserving traditional open seating models.

2. Disclosure of Family Seating Policies for Open Seating Carriers

The Department proposes to require open seating carriers to disclose to consumers that they will board passengers in a manner that will allow a young child and an accompanying adult to secure adjacent seats at no additional cost. All other aspects of the disclosure would mirror the disclosure that assigned seating carriers would be required to provide to consumers. The Department seeks comment on the disclosure proposal and whether there are additional ways for open seating carriers to provide information to passengers about their family seating policies.

*F. Exceptions to the Family Seating Requirements*

In this NPRM, the Department proposes four exceptions to the proposed family seating requirements that apply to both assigned seating carriers and open seating carriers. These exceptions define how carriers can provide family seating, as proposed, to the maximum extent practicable.

The first exception would apply when a young child is not traveling with an accompanying adult. If a young child is traveling alone, the young child would be traveling as an unaccompanied minor, and the family seating provisions in this proposed rule would not apply.

The second exception would apply when a booking party declines to accept the family seating provided by the carrier or selects a seat for the young child that is not adjacent to an accompanying adult traveling on the flight reservation or the aircraft. If the family intentionally chooses seats on the aircraft that are not adjacent, the airline would not be responsible for providing family seating. The Department solicits comment on whether a young child should ever be seated separately from an accompanying adult even if a family does not wish to sit in the adjacent seats assigned by the airline.

The third exception would apply when the number of young children traveling under a reservation or the seating configuration makes it impossible for the carrier to provide family seating based on the seat layout of the aircraft. For example, if one accompanying adult is traveling with three young children, it may not be possible for the carrier to provide seats adjacent to one another with no aisle separating the seats. Further, the family's chosen cabin class may not

contain two adjacent seats that are not separated by an aisle. In these situations, the carrier should provide adjacent seating for the maximum possible number of children and seat the accompanying adult and any other young children on the reservation across the aisle from, or directly in front of or directly behind the accompanying adult. The Department requests comment on whether it should impose such an additional requirement. Also, are there any other seating arrangements that the Department should consider when adjacent seating is impossible?

The fourth exception would apply if the young child and accompanying adult do not comply with the carrier's applicable check-in or boarding process requirements. Carriers require passengers to check in at a certain time before the scheduled departure time of the flight. Additionally, carriers require passengers to be at the gate and ready to board at a specified time. These airline requirements apply to all passengers, including families traveling with young children. Passengers who fail to meet the minimum check-in time or boarding requirements, including families traveling with young children, may have their seats reassigned or may not be able to fly. However, carriers would not be permitted to create specific check-in or boarding process requirements that are unreasonably burdensome for families. This rulemaking would not impact airlines' ability to set their own check-in and boarding process requirement for all passengers, including for families with young children.

The Department seeks comments on the proposed four exceptions to its family seating requirements. The Department also seeks comment on whether there should be any other exceptions. For example, the Department is of the tentative view that carriers should still be obligated to provide adjacent family seating, as proposed, when a larger aircraft is substituted for a smaller aircraft. The Department's Family Seating Dashboard, however, allows carriers to condition their family seating guarantee on a larger aircraft not being substituted for a smaller aircraft. The Department seeks comment on whether it should include substitution of a larger aircraft for a smaller aircraft as an exception in this rulemaking. Regardless of whether aircraft substitution is included as an exception to the family seating requirements, what procedures, if any, should carriers follow to ensure that young children are seated adjacent to an accompanying adult or as close as possible to an accompanying adult?

*G. Mitigating Passenger Harm*

Under this proposed rule, carriers would be required to take certain steps to mitigate passenger harm if they fail to provide family seating at no additional cost as required by the proposed rule. Specifically, carriers would be obligated to offer the booking party and/or the accompanying adult(s) a choice between free rebooking on the next available flight with adjacent seats, continuing travel without adjacent seats, or receiving a refund.

In the event that a passenger elects to continue travel on the flight without available family seating, the Department seeks comment on whether airlines should be required to provide a seating option that places a young child as close as possible to an accompanying adult. If so, what should constitute ''as close as possible''? Must the carrier seat the young children and accompanying adult across the aisle from each other, seat the young children directly in front of or directly behind the accompanying adult, or some other option?

Under this proposal, the choice to rebook at no additional cost would be available to every individual on the reservation with the young child if the young child and accompanying adult decide to rebook. This way, a family that wishes to travel together would be able to do so. At the same time, if a young child and an accompanying adult choose to be rebooked, but the other passengers on the reservation choose to remain on the flight, the carrier would be required to accommodate this choice. The Department believes that it is important for the individuals on the reservation to have the freedom to decide whether to travel on their original scheduled flight without adjacent seats or rebook on the next available flight with available family seating when the child and accompanying adult chose to be rebooked. The Department seeks comment on allowing every individual on the reservation to make this choice.

A carrier that fails to comply with the proposed family seating requirements must also offer the young child and an accompanying adult the option to travel on their original flight in seats that are not adjacent. Although this option may not be preferred, the Department is of the tentative view that families should be able to decide the choice that best meets their needs even if that choice is to continue on a flight without adjacent seats. For example, a parent traveling with a 12-year-old child may decide the best option is to continue on the flight even though adjacent seats are not available because the child is seated near the parent and the reason for travel is time sensitive such as a wedding or funeral. However, if this option is chosen, all passengers on the reservation would remain on their originally ticketed flight segment. The Department seeks comment on whether carriers should be encouraged or required to make best efforts to seat families with young children together even after boarding by asking other passengers to switch seats. Although the Department intends for this rulemaking to prevent last-minute scrambles for seats at the gate or carriers having to ask other passengers to give up their seat to allow a parent and child to sit together, are there times when it is beneficial to do so?

Additionally, if the carrier fails to follow the family requirements as proposed, the carrier would also be required to offer every individual on the reservation the option to receive a refund of the airline ticket and any unused ancillary service fees, *e.g.,* baggage fees, lounge access. Furthermore, if a young child and an accompanying adult choose to receive a refund, but the other passengers on the reservation choose to remain on the flight, the carrier would be required to accommodate this choice.

The refund requirement would apply to the entire cost of the reservation if a family is unable to receive family seating on any outbound leg of a trip or a family is informed about the unavailability of family seating before the start of travel. For example, if a mother books a roundtrip flight from Richmond, Virginia to Los Angeles, California with a connection in Chicago, Illinois for her and her young child and the mother is informed that family seating is available from Richmond to Chicago but not from Chicago to California, then the mother would be entitled to a refund for the entire reservation if she decides not to travel with her child. Similarly, if prior to beginning travel, the mother is informed that family seating is available on the outbound but not inbound flights, the mother would be entitled to a refund for the entire reservation if she decides not to travel with her child. However, on a direct return flight, or a return flight with a connection, the carrier would only be required to refund the cost of the unused portion of the return trip; the carrier would not need to refund the outbound portion of the ticket if the family already traveled on this portion of the reservation. For instance, if the mother and her young child traveled to Los Angeles but adjacent seating was not available on their return, then the mother would be entitled to a refund for

the return trip and not the entire reservation. If a carrier fails to comply with the family seating requirements as proposed, and a family is impacted at a connecting airport while on the outbound portion of their trip, and the family chooses to no longer travel, the carrier would also be required to provide return transportation to the family's origination airport, in addition to providing the refund.

The Department seeks comment on its proposal that carriers provide a full refund of the cost of the reservation to passengers who choose this option if family seating is not available on any portion of the outbound trip, and a refund for the cost of the unused portion of the return flight if family seating is not provided on any leg of the return reservation. The Department also seeks comment on its proposal to require carriers to provide return transportation to the family's origination airport if family seating is not provided on the outbound trip at a connecting airport.

*H. Removal or Reseating of Passengers for Safety or Operational Reasons*

Under this proposed rule, carriers would not be prohibited from removing passengers from the aircraft or reseating passengers, including a young child and an accompanying adult, for safety reasons or if failing to do so would be in violation of operational requirements. The proposal seeks to specify that removal in such cases must be non-discriminatory. For example, the airline would select the last passenger to check in for the flight to be removed from the aircraft.

The Department seeks comment on its proposal to allow airlines to remove or reseat a young child and their accompanying adult for aircraft safety or operational issues. The Department also seeks comments on whether, and if so, what remedies for, or mitigations of harms to, impacted passengers should be required in the event that airlines remove or reseat a young child and their accompanying adult for aircraft safety or operational issues.

*I. Customer Service Plans*

This NPRM also proposes to amend 14 CFR 259.5 to require carriers to address family seating in their customer service plans. Specifically, the rule would require carriers to update their customer service plans to include a commitment to notify passengers that the carrier will provide adjacent seats to a young child and an accompanying adult at no additional cost. The Department believes young children being able to sit adjacent to an accompanying adult is a basic service that all carriers should provide at no additional cost beyond the fare. Carriers notifying passengers that family seating is provided at no additional cost in their customer service plans would reduce the chance of customer confusion and better ensure that parents traveling with young children are able to sit together at no additional cost. We seek comment on the proposed requirement that carriers must include a family seating provision in their customer service plans.

*J. Civil Penalties*

In this NPRM, the Department proposes to include a provision notifying airlines that violations of the Department's family-seating requirements subject an airline to civil penalties. The Department proposes that a carrier's failure to provide family seating as required by the proposal would subject it to civil penalties on a per passenger (child) basis. Further, if the carrier imposes fees for family seating, the carrier would be subject it to civil penalties for each fee imposed.

The Department's Office of Aviation Consumer Protection (OACP), a unit within the Office of the General Counsel, has the authority to assess civil penalties against airlines and travel agents up to $40,272 per violation pursuant to 49 U.S.C. 46301 and 14 CFR 383.2. Further, the statute provides that ''a separate violation occurs under this subsection for each day the violation . . . continues or, if applicable, for each flight involving the violation. . . .'' When OACP has evidence of systemic violations, or a single or a few egregious violations, it will take enforcement action.

The Department seeks comment in its proposal to include a provision in the regulation that notifies airlines that they are subject to civil penalties for violating any requirement in the family seating rule. The Department also seeks comment on its proposal that a violation exists each time a young child and accompanying adult do not have the opportunity to secure adjacent seats. For example, if two parents are traveling with three young children and only one parent is provided the opportunity to be seated adjacent to one of the young children, but a parent is not provided the opportunity to be seated adjacent to either of the other two children, should there be two violations? The Department also seeks comments on whether the accompanying adult suffers a separate violation when denied the opportunity to sit adjacent to a young child. As noted above, accompanying adults may suffer significant stress and anxiety when they are not seated adjacent to a young child.

*K. Inclusion of Fees for Basic Services in Advertised Fare*

The Department is examining whether fees for basic airline services such as booking a ticket [56] should be required to be included in the advertised fare. The Airline Deregulation Act of 1978 (ADA), which preempted State regulation of airlines, removed Federal authority to set airline fares and fees and ended most regulation of airline rates, routes, and services. Under the ADA, DOT must consider as being in the public interest, among other things, having an air transportation system that relies on competition to determine the price of air transportation services. The ADA maintained the Department's statutory authority to prohibit unfair and deceptive practices. DOT continues to regulate and enforce consumer protections for airline passengers under its authority to prohibit unfair and deceptive practices. DOT also has the authority to ensure U.S. carriers provide safe and adequate interstate air transportation. The Department is relying on these and other authorities in issuing this rulemaking proposing to require U.S. and foreign air carriers to seat young children adjacent to at least one accompanying adult at no additional cost beyond the fare subject to limited exceptions. The Department is also considering whether, like family seating, it would be an unfair and deceptive practice to charge fees beyond the fare for other basic airline services.

Over the years, airlines have developed a variety of ways to charge passengers fees for air transportation-related services that were once included in the ticket price. The airline industry has unbundled services that traditionally came with a ticket, such as checked bags and seat reservations. The Department has noticed that the unbundling of service has continued to expand, with some airlines now charging for carry-on bags, printing boarding passes [57] at the airport,

[56] See *https://www.spirit.com/optional-services* (displays a ''passenger usage fee'' of $3.99 to $22.99 per segment for consumers who book online and a ''Reservations Center Booking'' fee of $35 per booking for consumers who book over the phone).

[57] See *https://www.spirit.com/optional-services* (displays a fee of $25 per boarding pass printed), *https://www.allegiantair.com/popup/taxes-and-fees* (states that a '' $5.00 per boarding pass fee will apply to passengers who choose to have a boarding pass printed out at select domestic airport locations.'') *https://help.ryanair.com/hc/en-us/articles/12889667116433-What-if-I-do-not-have-access-to-a-printer-to-print-my-boarding-pass-* (explains that consumers will be charged for airline printing boarding pass for them at the check-in desk).

receiving a paper ticket or a receipt, using a credit card to make a ticket purchase,[58] or redeeming, transferring, or redepositing rewards earned by the customer. Additionally, while most airlines still provide complimentary water along with other non-alcoholic drinks and snacks to passengers, some airlines today charge passengers to receive water[59] on the aircraft. The Department has also noticed that carriers are adding charges like a ''carrier interface charge,'' ''passenger interface charge,'' ''electronic carrier usage charge,'' ''ticketing fee,'' or a ''technology development charge,'' for booking online or over the phone, and the fees are avoidable only if customers purchase the ticket in person. Other airlines charge a ticketing fee for purchasing the ticket at the airport. The Department is concerned that this unbundling of services will continue to the detriment of consumers and seeks comment on this issue.

The Department proposes to define ''basic service'' as a service that is essential for a carrier to provide adequate air transportation to a passenger as determined by the Department after notice and comment. The Department is of the tentative view that seating a young child adjacent to an accompanying adult is a basic service.

This NPRM is seeking comment on fees charged by airlines for basic services that used to be included in the ticket price, as well as prospective fees that airlines may charge passengers that the airlines currently include in the ticket price. For instance, carriers currently do not charge passengers for the use of lavatories onboard the aircraft, nor do they charge passengers to carry a small purse or laptop onto the aircraft, but the Department or the public cannot be assured that carriers would not do so in the future. Carriers also do not generally charge for customer service assistance should there be a flight disruption, though at least one airline charges passengers if they choose to receive assistance from airport agents when checking in. Neither the Department nor the public can be assured that airlines would not charge for all types of customer service assistance in the future.

The Department seeks comment on its proposed definition of basic service, and whether seating a young child adjacent to an accompanying adult is a basic service. What, if any, other services beyond adjacent family seating should be considered a basic service? Should services related to the consumers' physical well-being such as access to the lavatory and the availability of drinking water upon request be considered basic services? Should services necessary for air transportation such as booking or paying for a ticket, checking in online, printing a boarding pass for those unable to do so themselves, or receiving customer service be considered basic services? Are there other types or categories of services that should be considered basic beyond those mentioned? The Department is considering prohibiting carriers from unbundling and charging passengers separately for basic services. The information provided by stakeholders—airlines, ticket agents, consumers, and other affected parties—will assist the Department in determining what, if any, additional services should be considered basic services that carriers and ticket agents must include as part of the fare to avoid engaging in an unfair or deceptive practice and to ensure safe and adequate service is being provided.

### B. Regulatory Analysis and Notices

#### *A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' The Office of Management and Budget has determined that this proposed rulemaking is a significant regulatory action as defined in section (3)(f)(1) of Executive Order (E.O.) 12866, as amended by E. O. 14094, ''Modernizing Regulatory Review.'' Accordingly, the Department has prepared an RIA for the proposed rule, summarized in this section and available in the docket. Table 1 below provides a summary of the costs and benefits of this proposed rulemaking.

TABLE 1—SUMMARY OF ECONOMIC IMPACTS, FIRST YEAR

[2022 Dollars, millions]

| | | |
|---|---|---|
| *Benefits (+):* | | *Benefits (+).* |
| Reduced disutility to passengers from separation of families traveling by air. | Unquantified. | |
| *Costs (−):* | | *Costs (−):* |
| Implementation costs | $5–21 | Implementation costs. |
| *Net societal benefits (costs):* | Not applicable | *Net societal benefits (costs).* |
| *Transfers (0):* | | *Transfers (0):* |
| Increase in consumer surplus from elimination of seating fees for families (airlines to families). | $910 | Increase in consumer surplus from elimination of seating fees for families (airlines to families). |
| Decrease in consumer surplus for solo air passengers (solo passengers to airlines). | $760. | |
| Decrease in consumer surplus for families who do not pay for seat reservations in the baseline (families to airlines). | $51 | Decrease in consumer surplus for families who do not pay for seat reservations in the baseline (families to airlines). |
| Airline revenue loss (airlines to consumers) | $85 | Airline revenue loss (airlines to consumers). |
| *Benefits (+):* | | *Benefits (+):* |
| Reduced disutility to passengers from separation of families traveling by air. | Unquantified | Reduced disutility to passengers from separation of families traveling by air. |
| *Costs (−):* | | *Costs (−):* |
| Implementation costs | $5–21 | Implementation costs. |
| *Net societal benefits (costs)* | Not applicable | *Net societal benefits (costs).* |

[58] Various European carriers charge fees for paying for airline tickets with credit cards if you commence your journey in certain countries and your credit card was issued outside the European Economic Area. E.g., *https://www.lufthansa.com/ge/en/opc, https://www.austrian.com/us/en/service-charges.*

[59] *https://content.spirit.com/Shared/en-us/Documents/InFlightMenu_033020.pdf* (no complimentary beverage or snack service on Spirit flights—$4.49 for bottled water).

This rulemaking would require U.S. and foreign air carriers to seat children aged 13 and under adjacent to at least one accompanying adult without a separate charge. Benefits of the proposed rule, which we did not quantify, are due to the reduction in disutility to passengers from separation of families traveling by air. Families can be reassured that they will be seated together during air travel. Some families could experience a reduction in stress and anxiety associated with air travel. Passengers who do not travel with children will no longer be burdened with being seated next to children who are separated from their parents and will no longer fear being relocated from their seat to accommodate families. Airlines will incur implementation costs, which are quantified. Because benefits are not quantified, it is not possible to estimate net benefits.

Most quantifiable economic impacts are transfers, which are benefits and costs that have exactly offsetting effects and do not contribute to the net benefits calculation. The total price of air travel for families who currently purchase seat reservations will decrease, which creates a transfer of consumer surplus to them. The elimination of seating fees for families encourages additional travel, and airfares will increase. Solo passengers and families who do not currently purchase seat reservations will lose consumer surplus due to the airfare increase. The increase in in airfare offsets the increase in consumer surplus to families who pay for seat reservation in the baseline, but the effect is small. Airlines initially will incur revenue losses as well.

An important determinant of the quantifiable impacts is the percentage of passengers who purchase seat assignments in the baseline. This percentage is not known with certainty, and we apply market research that suggests about 37 percent of consumers might be willing to pay for a seat reservation. The 37 percent is applied to the estimated 9.7 percent of passengers who travel as families as well as the remaining 90.3 percent of passengers who travel solo.

*B. Privacy Act*

Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

*C. Executive Order 13132 (Federalism)*

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not include any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*D. Executive Order 13175*

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to conduct an initial regulatory flexibility analysis (IRFA) to assess the impact of a proposed rule on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. The Department has conducted an IRFA for this rulemaking as required by 5 U.S.C. 603 and provides a summary of that analysis in the paragraphs that follow. A description of the reasons the agency is considering the action and a statement of the objectives and legal basis of the rule are described elsewhere in the preamble for this proposed rule and not repeated here.

1. A Description and Estimate of the Number of Small Entities to Which the Rule Will Apply (or an Explanation of Why No Such Estimate Is Available)

A carrier is a small entity if it provides air transportation exclusively with small aircraft, defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less, as described in 14 CFR 399.73. In 2020, 28 carriers meeting these criteria reported passenger traffic data to the Bureau of Transportation Statistics.[60]

2. A Description of the Compliance Requirements of the Rule and Their Costs

The proposed rule would require that airlines distinguish families from other passengers in assessing seating fees, which will involve some upfront costs. A system to ensure family seating would identify bookings with children under 14 and accompanying adults and allow those individuals to reserve seats together in advance with no separate charge. Airlines would need to personalize the pricing of seats based on the ages of the individuals in a reservation. Once this capability is implemented, there should not be other ongoing costs.

The RIA for the proposed rule presented an upper bound cost estimate for making the necessary changes to ticketing systems as 10 percent of $2.02 per passenger. The analysis also reports that revenue per passenger, or ticket price, is $248.64 for a domestic fare. Average ticket prices for small carriers tend to be higher than the market average and thus, $248.64 underestimates revenue per passenger for small carriers. From this information, implementation costs as a percent of revenue amount to 0.008 percent (0.10 * $2.02/$248.64), which is much smaller than the one percent threshold that the Department generally applies for determining significant economic impact. This cost estimate is based upon the assumption that small airlines will make IT adjustments to automate family seating. However, given the small size of the affected aircraft, automation might not be needed. The Department requests comment on the costs to small airlines.

3. A Description of Relevant Federal Rules, if Any, That May Duplicate, Overlap, or Conflict With the Proposed Rule

The Department is not aware of any other Federal rules that duplicate, overlap, or conflict with the proposed rule to prohibit airlines from charging family seating fees.

[60] Bureau of Transportation Statistics No date. ''T1: U.S. Air Carrier Traffic and Capacity Summary by Service Class.'' *https://transtats.bts.gov/*.

4. A Description of Any Significant Alternatives to the Proposed Rule That Would Accomplish the Stated Objectives of the Rule While Minimizing Any Significant Economic Impact of the Proposed Rule on Small Entities

The Department considered continuing to rely on current industry voluntary efforts. As discussed elsewhere in the preamble, on July 8, 2022, the Department issued a notice that urged airlines ''to do everything in their power to ensure that children who are age 13 or younger are seated next to an accompanying adult with no additional charge.'' The Department launched the Family Seating Dashboard on March 6, 2023. The Dashboard currently shows four airlines (Alaska, American, and Frontier, and JetBlue) as having committed to guaranteeing family seating without a separate fee. As outlined above, all other large domestic carriers have policies to do their best to seat families together, but they stop short of guaranteeing it.

Given that six of the ten large airlines have chosen not to guarantee family seating despite the Department's efforts to encourage the practice and calls from consumer advocacy groups,[61] it is unlikely that they would issue such guarantees in the absence of additional pressure from the market or the government. The four airlines with family seating policies in line with the proposed rule could change their policies at any time. The experience with checked baggage fees shows that airlines adopted baggage fees at a time when they were under financial pressure and when competition from low-cost carriers pushed them to unbundle their services and advertise lower ticket prices. It is possible that airlines would re-consider family seating policies in the future in times of financial or competitive pressure. Thus, the no action alternative would not meet the objectives of the proposed rule.

A second alternative would be to adopt the requirement for airlines to guarantee family seating but to not impose a requirement that the airlines eliminate seating fees for families. Airlines would still incur implementation costs. Families who currently pay seating fees because they believe that the only way to assure being seated together is to pay a seating fee could simply stop paying the fees and still be guaranteed seats together. In general, this alternative would yield the same result as the proposed rule. The Department did not propose this option, however, because as described in the proposed rule, the Department believes that charging families to sit together is an unfair practice, and if a ban on family seating is adopted in final then it would also be an unfair and deceptive practice, as described elsewhere in the preamble, not to disclose that paying additional fees or purchasing a higher fare ticket to secure adjacent seating for a young child and accompanying adult is unnecessary.

The Department invites comment on its analysis and the potential economic impact of this rulemaking on small entities.

*F. Paperwork Reduction Act*

This NPRM does not propose any new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.*).

*G. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. While this proposed rule would not have such an effect on State, local, and tribal governments, this proposed rule is estimated to have an annual cost of over 100 million dollars. Agencies may include the assessment required by UMRA in conjunction with other assessments, and the Department has prepared RIA that provides the anticipated cost and benefits of the NPRM.

*H. National Environmental Policy Act*

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' Because this rulemaking relates to ensuring that families traveling with children are seated together, this rulemaking is a consumer protection rulemaking. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

*I. Executive Order 12988, ''Civil Justice Reform''*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOT has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

*J. Short Summary of the Rule Under 5 U.S.C. 553(b)(4)*

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at the entry for RIN 2105–AF15 in the Department's portion of the Unified Agenda, available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2105-AF15.*

[61] See Airlines: Kids should sit with their parents! (*consumerreports.org*), accessed on 10/27/2023.

*K. Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, Div. B, Title III)*

In accordance with Compliance with Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, div. B, title III) and OMB Memorandum (M–23–21) dated September 1, 2023, the Department has determined that this final rule is not subject to the Pay-As-You-Go Act of 2023 because it will not increase direct spending beyond specified thresholds.

**List of Subjects**

*14 CFR Part 259*

Air Carriers, Consumer Protection, Reporting and Recordkeeping Requirements.

*14 CFR Part 261*

Air Carriers, Consumer Protection.

For the reasons stated in the preamble, DOT proposes to amend 14 CFR part 259 and add part 261 as follows:

## PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

■ 1. The authority citation for part 259 is revised to read as follows:

**Authority:** 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, 42301, and FAA Reauthorization Act of 2024, Pub. L. 118–63, 516, 138 Stat. 1025, 1197–1198 (2024).

■ 2. Amend § 259.5 by revising paragraph (b) introductory text and adding paragraph (b)(16) to read as follows:

### § 259.5 Customer Service Plan.

* * * * *

(b) *Contents of Plan.* Each Customer Service Plan shall address the following subjects and comply with the minimum standards set forth:

* * * * *

(16) Disclosing clearly and conspicuously on the carrier's online platform that the carrier will seat a young child adjacent to an accompanying adult at no additional cost, as required by 14 CFR Part 261. Requiring carriers to ask whether the customer is traveling with a young child when the customer calls the carrier's reservation center to inquire about a fare or seating or to book a ticket, and disclosing to a customer who answers affirmatively that the carrier will seat a young child adjacent to an accompanying adult at no additional cost, as required by 14 CFR Part 261.

* * * * *

## PART 261—FAMILY SEATING

■ 3. Add part 261 to read as follows:

Sec.
261.1 Purpose.
261.2 Applicability.
261.3 Definitions.
261.4 Assigned Seating Carriers.
261.5 Open Seating Carriers.
261.6 Exceptions to Family Seating Requirements for Assigned Seating and Open Seating Carriers.
261.7 Traveling with Multiple Children.
261.8 Class of Service.
261.9 Mitigating Passenger Harm.
261.10 Removal or Reseating of Passengers for Safety or Operational Reasons.
261.11 Violations and Civil Penalties.

**Authority:** 49 U.S.C. 41702 and 41712, and the FAA Reauthorization Act of 2024, Pub. L. 118–63, 516, 138 Stat. 1025, 1197–1198 (2024).

### § 261.1 Purpose.

The purpose of this Part is to ensure that U.S. and foreign air carriers allow young children to be seated adjacent to an accompanying adult on a flight at no additional cost. This Part clarifies seating a young child adjacent to an accompanying adult is a basic service that must be included in the advertised fare.

### § 261.2 Applicability.

This Part applies to all U.S. and foreign air carriers that operate and market scheduled passenger flights to or from a U.S. airport using at least one aircraft that has a designed capacity of 30 or more passenger seats.

### § 261.3 Definitions.

*Accompanying Adult* means an individual age 14 or over on the date of the scheduled departure who is traveling with a young child or young children on the same reservation record.

*Adjacent Seats* mean two or more seats positioned next to each other in the same row of the aircraft and not separated by an aisle.

*Ancillary Service Fee* means a fee charged for any optional service that a carrier provides beyond passenger air transportation. Such fees may include, but are not limited to, charges for checked or carry-on baggage, canceling or changing a reservation, advance seat selection, in-flight beverages, snacks and meals, lounge access, bedding or other amenities, or seat upgrades so long as the fees are not for basic services.

*Assigned Seating Carrier* means a carrier that assigns seats, or allows individuals to select seats on a flight, in advance of the date of departure of a flight.

*Available Family Seating* means two or more adjacent seats located in the purchased class of service that have not been assigned to other passengers and to which a young child or children and an accompanying adult may be assigned.

*Basic Service* means a service that is essential for a carrier to provide adequate air transportation to a passenger as determined by the Department after notice and comment.

*Booking Party* means the person who booked the reservation for air travel. The booking party may or may not also be an accompanying adult.

*Class of Service* means seating in the same cabin class such as First, Business, Premium Economy, or Economy class, based on seat location in the aircraft and seat characteristics such as pitch size, features, or amount of legroom.

*Fare* means the price paid for air transportation including all basic services and all mandatory government taxes and carrier-imposed fees. It does not include ancillary service fees for optional services that have been determined by the Department not to be basic services.

*No Additional Cost* means no added charge for a seat beyond the fare.

*Online platform* means any interactive electronic medium, including, but not limited to, websites and mobile applications, that allow the consumer to search for or purchase air transportation from a carrier or ticket agent.

*Open Seating Carrier* means a carrier that does not assign seats or allow individuals to select seats on a flight in advance of the date of departure of the flight.

*Young Child* or *Young Children* means individual(s) age 13 or under on the date of scheduled departure of the purchased flight.

### § 261.4 Assigned Seating Carriers.

(a) *Available family seating at booking.* An assigned seating carrier must make every reasonable effort to assign available family seating to a young child and an accompanying adult at the time of booking a reservation for air transportation on each flight segment of the reservation at no additional cost, unless an exception in § 261.6 applies. If the carrier is unable to assign available family seating at the time of booking the reservation and no exceptions in § 261.6 apply, the carrier must assign available family seating no later than 48 hours after the tickets are purchased.

(b) *When there is no available family seating at booking.* For tickets purchased two or more weeks prior to a flight's departure, an assigned seating carrier must contact the booking party within 48 hours after the ticket for air transportation has been purchased and

provide the booking party a minimum of seven days to choose between the options in paragraphs (b)(1) and (b)(2) of this section. For tickets purchased less than two weeks prior to a flight's departure, an assigned seating carrier must contact the booking party as soon as is practical after the ticket for air transportation has been purchased and provide the booking party a reasonable amount of time based on the circumstances to choose between the options in paragraphs (b)(1) and (b)(2) of this section.

(1) A full refund to the booking party within the timeframe required in 14 CFR parts 259, 260 and 399 of the airline ticket and any ancillary service fees paid for the young child and accompanying adult as well as any other person on the same reservation who chooses not to fly; or

(2) The option to wait for the possibility of available family seating on the flight before the first passenger boards the aircraft. If the booking party chooses to wait as specified in this paragraph, an assigned seating carrier must comply with paragraph (i) or (ii) of this paragraph, whichever is applicable.

(i) *Available family seating before first passenger boards aircraft.* An assigned seating carrier must assign adjacent seats to a young child and an accompanying adult if the seats are available before the first passenger boards the aircraft and must notify the booking party and/or the accompanying adult of the new seat assignments as soon as the seats are assigned.

(ii) *No available family seating before first passenger boards aircraft.* An assigned seating carrier must offer the booking party and/or an accompanying adult the choice between the following options:

(A) Rebooking the young child and accompanying adult as well as any other person on the same reservation who chooses to fly on the next flight with available family seating to the same destination at no additional cost; or

(B) Transporting the young child and accompanying adult as well as any other person on the same reservation on their original ticketed flight in seats that are not adjacent.

(c) *Family Seating Policy Notifications.* (1) *Online Platform Disclosure.* An assigned seating carrier must disclose clearly and conspicuously on its public-facing online platforms that markets air transportation to the general public in the United States:

(i) That the carrier will provide available family seating at no additional cost, as required by this Part, and

(ii) Any exceptions permitted by § 261.6, including any carrier check-in or boarding requirement that may impact the ability to secure adjacent seats for the young child and accompanying adult.

(2) *Oral Disclosure.* When a customer calls the carrier's reservation center to inquire about a fare, seating, or to book a ticket, an assigned seating carrier must ask whether the customer is traveling with a young child. If the customer answers affirmatively, the carrier must disclose:

(i) That it will provide available family seating at no additional cost, as required by this Part, and

(ii) Any exceptions permitted by § 261.6 that would apply to that consumer, including any carrier check-in or boarding requirement that may impact the ability to secure adjacent seats for the young child and accompanying adult.

**§ 261.5 Open Seating Carriers.**

(a) *Boarding.* Open seating carriers must board passengers in a manner that allows a young child and an accompanying adult to secure adjacent seats on the flight at no additional cost, unless an exception in § 261.6 applies.

(b) *Family Seating Policy Notifications.* (1) *Online Platform Disclosure.* An open seating carrier must disclose clearly and conspicuously on its public-facing online platforms that markets air transportation to the general public in the United States:

(i) That the carrier will board passengers in a manner that will allow a young child and an accompanying adult to secure adjacent seats at no additional cost as required by this Part, and

(ii) Any exceptions permitted by § 261.6, including any carrier check-in or boarding requirement that may impact the ability to secure adjacent seats for the young child and accompanying adult.

(1) *Oral Disclosure.* When a customer calls the carrier's reservation center to inquire about a fare, seating, or to book a ticket, an open seating carrier must ask whether the customer is traveling with a young child. If the customer answers affirmatively, the carrier must disclose:

(i) That it will board the passengers in a manner that will allow a young child to be seated adjacent to an accompanying adult at no additional cost as required by this Part, and

(ii) Any exceptions permitted by § 261.6 that would apply to that consumer, including any carrier check-in or boarding requirement that may impact the ability to secure adjacent seats for the young child and accompanying adult.

**§ 261.6 Exceptions to Family Seating Requirements for Assigned Seating and Open Seating Carriers.**

The family seating requirements in sections § 261.4 and § 261.5 do not apply if:

(a) The young child is not traveling with an accompanying adult;

(b) The booking party declines to accept the adjacent seats for the young child and accompanying adult offered by the carrier or selects a seat for the young child that is not adjacent to any accompanying adult traveling on the flight reservation;

(c) The number of young children traveling under the reservation or an aircraft seating configuration makes it impossible for the carrier to provide adjacent seats to young children and the accompanying adult based on the seat layout of the aircraft; or

(d) The young child and/or accompanying adult do not comply with the carrier's applicable check-in or boarding requirements, provided that these requirements do not impose unreasonably burdensome requirements on families traveling with young children.

**§ 261.7 Traveling with Multiple Children.**

In situations where the number of young children traveling under the reservation make it impossible for the carrier to provide adjacent seats to the young children and the accompanying adult as provided in § 261.6(c), carriers must seat the young children and accompanying adult across the aisle from each other, or seat the young children directly in front of, or directly behind the accompanying adult.

**§ 261.8 Class of Service.**

A carrier must provide adjacent seats to a young child and accompanying adult in the same class of service as the tickets purchased. A carrier may not construct its classes of service in such a way that would unreasonably limit the availability of adjacent seats for a young child and an accompanying adult.

**§ 261.9 Mitigating Passenger Harm.**

(a) A carrier that fails to meet the family seating requirements in § 261.4 or § 261.5 or that reseats a young child and an accompanying adult in seats that are not adjacent for aircraft safety or operational reasons under § 261.10 must, unless an exception in § 261.6 applies, provide the booking party and/or the accompanying adult the choice between the following options:

(1) Rebooking the young child and accompanying adult as well as any other

person on the same reservation who chooses to fly on the next flight with available family seating to the same destination at no additional cost;

(2) Transporting the young child and accompanying adult as well as any other person on the same reservation on their original ticketed flight segment in seats that are not adjacent; or

(3) Refunding the booking party within the timeframe required in 14 CFR parts 259 and 399 as follows:

(i) The entire cost of the ticket and ancillary service fees paid if a young child and an accompanying adult as well as any other person on the same reservation chooses not to travel on any portion of an outbound trip.

(ii) The cost of the unused portion of the ticket and ancillary service fees paid if a young child and an accompanying adult as well as any other person on the same reservation chooses not to travel on any portion of a return trip.

(b) If the carrier fails to meet the family seating requirements in § 261.4 or § 261.5 or reseats a young child and an accompanying adult in seats that are not adjacent under § 261.10, absent an exception in § 261.6, and it impacts a young child and an accompanying adult as well as any other person on the same reservation at a connecting airport on the outbound trip and they choose to no longer travel, then the carrier must provide return transportation to the origination airport at no cost.

**§ 261.10 Removal or Reseating of Passengers for Safety or Operational Reasons.**

Nothing in this Part prohibits a carrier from removing passengers from the aircraft or reseating passengers, including a young child and an accompanying adult, for safety reasons or if failing to do so would be in violation of operational requirements. Removal in such cases must be non-discriminatory.

**§ 261.11 Violations and Civil Penalties.**

A carrier that violates any requirement in this Part is subject to civil penalties as set forth in 49 U.S.C. 46301. In instances when a young child and an accompanying adult do not have the opportunity to secure adjacent seats as required in this Part, a separate violation occurs for each child. In instances when a fee beyond the fare is imposed to secure adjacent family seating, a separate violation occurs for each fee imposed.

Issued July 31, 2024, in Washington, DC.

**Peter Paul Montgomery Buttigieg,**

*Secretary of Transportation.*

[FR Doc. 2024–17323 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Chapter I

**[Docket No. FDA–2024–D–2977]**

## Food and Drug Administration Enforcement Policy for Association of American Feed Control Officials—Defined Animal Feed Ingredients; Draft Guidance for Industry; Availability

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

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry (GFI) #293 entitled ''FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients.'' This draft guidance, when finalized, will communicate FDA's enforcement policy regarding ingredients listed in chapter six of the 2024 Association of American Feed Control Officials (AAFCO) Official Publication (OP) after the expiration of the Agency's memorandum of understanding (MOU) with AAFCO. The current MOU, which expires in October 2024, will not be renewed.

**DATES:** Submit either electronic or written comments on the draft guidance by September 9, 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–2977 for ''FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://*

*www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Conway, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6768, *charlotte.conway@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry #293 entitled ''FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients.'' This draft guidance sets forth FDA's proposed policy regarding the marketing of certain unapproved animal food additives, or animal food containing those food additives, in interstate commerce. The draft guidance also describes FDA's proposed policy with respect to animal food labels that identify ingredients by names defined in the AAFCO OP.

The Federal Food, Drug, and Cosmetic Act (FD&C Act) gives FDA the authority to regulate substances used in animal food. Section 201(s) of the FD&C Act (21 U.S.C. 321(s)) defines a food additive, in part, as any substance whose intended use results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food . . . if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety . . . to be safe under the conditions of its intended use. Substances that are ''generally recognized as safe'' (GRAS) [1] for their intended uses in food are not food additives.

Section 409(b) of the FD&C Act (21 U.S.C. 348 (b)) and FDA's implementing regulations at title 21 of the Code of Federal Regulations (21 CFR), part 571, describe the animal food additive petition process and the data and information that must be submitted to FDA as part of an animal food additive petition to support premarket approval. In general, to be legally marketed and used, a food additive must be approved, covered by an FDA regulation, and used as described in the FDA regulation.[2] Otherwise, the food additive is considered unsafe under section 409(a)(2) of the FD&C Act, and the food additive and any food that bears or contains it is adulterated under section 402(a)(2)(C)(i) of the FD&C Act. Approved food additives for animal food use are found in 21 CFR parts 573 and 579.

FDA has affirmed certain substances as GRAS for their intended use in animal food and these are listed in 21 CFR parts 582 and 584. Because the GRAS use of a substance is not subject to premarket review and approval by FDA, it is impracticable to list all substances that are used in food on the basis of a conclusion of GRAS status, therefore these lists are not all-inclusive. However, FDA encourages any person who intends to market a food substance on the basis of a conclusion of GRAS status to submit a GRAS notice to FDA.[3]

AAFCO is an independent organization with voluntary membership of State and Federal regulatory officials in the United States as well as officials from government agencies in other countries, that are responsible for the execution of laws, including regulations, in their jurisdictions pertaining to the production, labeling, distribution, use, or sale of animal food (including ingredients).

Since 1920, AAFCO has maintained the AAFCO OP, which contains, among other things, a comprehensive list of substances added to animal food (commonly referred to as ingredients), many of which include definitions established through the AAFCO ingredient definition request process. Because most States adopt the ingredient definitions listed in the AAFCO OP under their State laws, the AAFCO ingredient definition request process facilitates the marketing of animal food ingredients under those State laws. In 2007, FDA entered into an MOU, 225–07–7001, with AAFCO that outlines how FDA would provide its scientific and technical expertise to AAFCO in reviewing requested ingredient definitions.[4] This MOU has been renewed and revised several times. The current MOU expires in October 2024, and will not be renewed. See *https://www.fda.gov/animal-veterinary/animal-food-feeds/fda-letter-stakeholders-acknowledgment-expiring-fda-aafco-mou.*

We are issuing this draft guidance to describe our policy that FDA generally does not intend to initiate enforcement action with respect to the food additive approval requirements of the FD&C Act for the ingredient, or animal food containing the ingredient, that is listed in the Official Common or Usual Names and Definitions of Feed Ingredients section of chapter six of the AAFCO 2024 OP. We have reviewed many of these ingredients through our participation in the AAFCO ingredient definition request process and recommended that the ingredient definitions, including specifications for use, be added to the AAFCO OP. For those ingredients listed in the 2024 AAFCO OP that are not approved food additives or GRAS and that we did not review as part of the AAFCO ingredient definition request process, at this time, we are not aware of any safety concerns that would cause us to request that an ingredient be withdrawn from the AAFCO OP, and many have a long history of use in animal food. We anticipate that our policy generally not to initiate enforcement action regarding the marketing of these ingredients may help minimize disruptions in access to, or shortages of, ingredients that have been commonly used and relied on for years. Additionally, this approach would allow us to focus our resources on reviewing new ingredients before they are marketed and addressing unsafe ingredients in the marketplace. In addition, the draft guidance describes FDA's policy with respect to the use of certain ingredient names listed in chapter six of the AAFCO 2024 OP on animal food labels.

There is a small set of animal food ingredients that FDA has reviewed in accordance with the procedures described in the MOU and has recommended for inclusion in the

[1] See 21 CFR part 570, subpart E.

[2] The Office of the Federal Register has published this document under the category ''Proposed Rules'' pursuant to 1 CFR 5.9(c). The Office of the Federal Register's categorization is solely for purposes of publication in the **Federal Register** and does not change the nature of the document and is not intended to affect its validity, content, or intent. See 1 CFR 5.1(c).

[3] *https://www.fda.gov/animal-veterinary/animal-food-feeds/generally-recognized-safe-gras-notification-program.*

[4] *https://www.fda.gov/about-fda/domestic-mous/mou-225-07-7001.*

AAFCO OP, but for which AAFCO has not completed the remainder of their new ingredient definition request process. FDA is considering a similar enforcement policy that may be described in future guidance for these ingredients and we are seeking public comment on ways to make these ingredients and their uses known to the public. See the instructions included in this notice for how to comment.

Elsewhere in this issue of the **Federal Register**, we are publishing a notice of availability for a draft guidance on our new Animal Food Ingredient Consultation (AFIC) process to help provide an additional way for firms developing animal food ingredients to consult with the Center for Veterinary Medicine following the expiration of the MOU with AAFCO and while FDA evaluates the animal Food Additive Petition and GRAS Notification programs. To inform that evaluation, elsewhere in this issue of the **Federal Register**, we also are publishing a notice seeking stakeholder input regarding our current animal Food Additive Petition and GRAS Notification review programs for animal food ingredients. We also intend to hold listening sessions and will later provide scheduling information for those listening sessions. While FDA evaluates its current Food Additive Petition and GRAS Notification programs, the AFIC process will provide an additional way for firms to consult with FDA regarding new animal food ingredients and for FDA to review information regarding such ingredients and identify any safety concerns associated with them. The AFIC process also will allow for public awareness of and input on ingredients that FDA is reviewing. See *https://www.fda.gov/animal-veterinary/animal-food-feeds/animal-food-ingredient-consultations-afics.* Our goal is to support innovation in animal food technologies while always maintaining as our priority the production of safe animal food, which includes safety of food for animals consuming the ingredient and for people who consume edible animal products. We encourage firms to have conversations with us early and often in their ingredient and process development phase.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on ''FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients.'' 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

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 6, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17781 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Fiscal Service

### 31 CFR Part 210

**[Docket No. FISCAL–2024–0001]**

**RIN 1530–AA31**

## Federal Government Participation in the Automated Clearing House

**AGENCY:** Bureau of the Fiscal Service, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) is proposing to amend its regulation governing the use of the Automated Clearing House (ACH) Network by Federal agencies. Our regulation incorporates, with some exceptions, updates to the Nacha Operating Rules and the Nacha Operating Guidelines (Operating Rules & Guidelines), which govern the use of the ACH Network by Federal agencies. This proposed rule addresses changes that Nacha has made since the publication of the 2021 Operating Rules & Guidelines, including Supplement #1–2021. These changes include amendments in the 2022, 2023, and 2024 Operating Rules & Guidelines, including supplements thereto, issued before the date of this notice.

**DATES:** Comments on the proposed rule must be received by October 8, 2024.

**ADDRESSES:** Comments on this rule, identified by docket number FISCAL–2024–0001, should be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions on the website for submitting comments.

*Instructions:* All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL–2024–0001 for this rulemaking. In general, comments received will be published on *Regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

In accordance with the U.S. government's eRulemaking Initiative, the Fiscal Service publishes rulemaking information on *www.regulations.gov. Regulations.gov* offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on proposed rules.

**FOR FURTHER INFORMATION CONTACT:** Ian Macoy, Director of Settlement Services, at (202) 874–6835 or *ian.macoy@fiscal.treasury.gov;* or Frank J. Supik, Supervisory Counsel, at *frank.supik@fiscal.treasury.gov.*

**SUPPLEMENTARY INFORMATION:**

## 1. Background

Title 31 CFR part 210 (part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer system that provides for the interbank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions.

The ACH Network facilitates payment transactions between several types of participants, including the:

- Originator: An organization or individual that agrees to initiate an ACH entry according to an arrangement with a Receiver.
- Originating Depository Financial Institution (ODFI): An institution that receives the payment instruction from the Originator and forwards the ACH entry to the ACH Operator.
- ACH Operator: A central clearing facility that receives entries from ODFIs, distributes the entries to appropriate Receiving Depository Financial Institutions, and performs settlement functions for the financial institutions.
- Receiving Depository Financial Institution (RDFI): An institution that

receives entries from the ACH Operator and posts them to the accounts of its depositors (Receivers).

• Receiver: An organization or consumer that has authorized an Originator to initiate an ACH entry to the Receiver's account with the RDFI.

• Third-Party Service Provider: An entity other than the Originator, ODFI, or RDFI that performs any functions on behalf of the Originator, ODFI, or RDFI in connection with processing ACH entries. These functions may include, for example, creating ACH files on behalf of an Originator or ODFI, or acting as a sending point or receiving point on behalf of an ODFI or RDFI.

Rights and obligations among participants in the ACH Network are governed by Nacha's Operating Rules & Guidelines. There is an industry consensus that the Operating Rules & Guidelines provide a uniform set of standards for ACH transactions and that these standards enable efficient transaction processing.

Part 210 incorporates the Operating Rules & Guidelines by reference, with certain exceptions. From time to time, the Fiscal Service amends part 210 to address changes that Nacha periodically makes to the Operating Rules & Guidelines or to revise the regulation as otherwise appropriate. Given their coverage across the payment system and to promote consistent application to all ACH Network participants, the federal government generally adopts changes to the Operating Rules & Guidelines unless the changes address enforcement and compliance of the Operating Rules & Guidelines, would adversely impact government operations, or are irrelevant to Federal agency participation in the ACH Network.

Currently, part 210 incorporates the 2021 Operating Rules & Guidelines, including Supplement #1–2021, subject to certain exceptions. Nacha has adopted several changes since the publication of the 2021 Operating Rules & Guidelines, including Supplement #1–2021, as reflected in the 2024 Operating Rules & Guidelines and supplements thereto.[1] We are proposing to incorporate all of these changes in part 210.

We are requesting public comment on all the proposed amendments to part 210, including with respect to changes that would be incorporated by reference.

[1] The 2024 Operating Rules & Guidelines also incorporates changes that Nacha previously adopted and incorporated into the 2022 and 2023 Operating Rules & Guidelines. This proposal also highlights applicable changes to the Operating Rules & Guidelines that were incorporated into prior versions of the Nacha Operating Rules & Guidelines.

**2. Summary of Proposed Rule Changes**

Since the publication of the 2021 Operating Rules & Guidelines, including Supplement #1–2021, Nacha has published three versions of the Operating Rules & Guidelines: the 2022 Operating Rules & Guidelines, the 2023 Operating Rules & Guidelines, and the 2024 Operating Rules & Guidelines, including Supplement #1–2024. Below, we outline the major changes that were included in these updates.

*(a) 2022 Operating Rules & Guidelines Changes*

The 2022 Operating Rules & Guidelines implemented several changes to the Operating Rules & Guidelines, some of which Nacha had previously adopted with a delayed implementation date and were addressed in a prior Fiscal Service rulemaking.[2] The 2022 Operating Rules & Guidelines also clarified the rules regarding third-party senders in the ACH Network.

Nacha first defined ''nested'' third-party senders and addressed the roles and responsibilities applicable to ODFIs working with them. Nacha defined a Nested Third-Party Sender (Nested TPS) as a Third-Party Sender (TPS) that has an agreement with another TPS to act on behalf of an Originator and does not have a direct agreement with the ODFI. Nacha requires ODFIs' origination agreements with TPSs to address Nested TPSs, and to update their TPS obligations and warranties to cover Nested TPSs.

Moreover, ODFIs must identify all TPSs that have Nested TPS relationships in Nacha's Risk Management Portal and must provide Nacha with the Nested TPS relationships for any of their TPSs upon request. The 2022 Operating Rules & Guidelines provides timeframes for compliance and establishes requirements for updating information that has changed.

Additionally, the Third-Party Senders and Risk Assessments rule requires that a TPS, whether or not it is a Nested TPS, conduct a Risk Assessment. Under that rule, a TPS must implement, or have implemented, a risk management program based on its risk assessment. The rule states that the obligation for the TPS to perform a risk assessment, as with the required rules compliance audit, cannot be passed on to another party. Each TPS must conduct or have conducted its own risk assessment.

The Fiscal Service proposes to adopt these rule changes, in order to maintain consistency with other ACH Network participants and facilitate uniform processing of transactions.

*(b) 2023 Operating Rules & Guidelines Changes*

The 2023 Operating Rules & Guidelines implement several additional changes beyond those in the 2022 Operating Rules & Guidelines, some of which were previously adopted by Fiscal Service.[3] Additional changes include, but are not limited to, implementing parts of the TPS rule discussed above and adopting ''Phase 1'' of Nacha's Micro-Entry Rule.

Phase 1 of the Micro-Entry Rule defined ''Micro-Entries'' as a type of payment in the Operating Rules & Guidelines. ''Micro-Entries'' are ACH credits of less than $1, and any offsetting ACH debits, used for the purpose of verifying a Receiver's account. Originators of Micro-Entries must use a standard ''Company Entry Description'' and populate the ''Company Entry Name'' field with the same or similar name to be used in future entries. The rule also requires Originators using debit entry offsets to send the debit and corresponding credit Micro-Entries simultaneously for settlement at the same time, establishes certain limits on the amount of the Micro-Entries, and prohibits Micro-Entries that result in a net debit to the Receiver.

The Fiscal Service proposes to adopt these rule changes. Adoption of these changes will maintain consistency with other ACH Network participants and facilitate fraud-prevention strategies that may reduce the incidence of improper payments.

*(c) 2024 Operating Rules & Guidelines Changes*

The 2024 Operating Rules & Guidelines implement several additional changes, including ''Phase 2'' of Nacha's Micro-Entry Rule. Phase 2 of the Micro-Entry Rule built upon Phase 1 (discussed above) by requiring Originators of Micro-Entries to use commercially reasonable fraud-detection practices, including the monitoring of forward and return Micro-Entry volumes.

The Fiscal Service proposes to adopt these rule changes. Adoption of these changes will maintain consistency with other ACH Network participants and facilitate fraud-prevention strategies that

[2] *See* 87 FR 42 (Jan. 3, 2022); 31 CFR part 210. Updates to the Operating Rules & Guidelines that were reflected in previous Fiscal Service rulemakings are not discussed in this proposal, even if the implementation date of the updates occurred after adoption of current part 210.

[3] *See* 87 FR 42 (Jan. 3, 2022); 31 CFR part 210.

may reduce the incidence of improper payments.

*(d) 2024 Operating Rules & Guidelines, Supplement #1–2024 Changes*

On April 12, 2024, Nacha published Supplement #1–2024 to the 2024 Nacha Operating Rules (Supplement #1–2024). Supplement #1–2024 included several updates to the Nacha Operating Rules ACH risk management requirements and made several other updates.

(i) Risk Management Requirements

The risk management topics covered in Supplement #1–2024 include clarifying and expanding the use of certain codes, formalizing a current practice regarding certain transactions that are suspected of origination under false pretenses, updating requirements for a ''Written Statement of Unauthorized Debit,'' specifying a timeframe for return of authorized debits, updating certain fraud-monitoring requirements, imposing ACH credit monitoring requirements on RDFIs, creating two new Company Entry Descriptions, and several other minor updates. Each is discussed below in turn.

(1) Use of Return Reason Code R17

The Operating Rules & Guidelines provide several codes to provide additional detail on an ACH transaction. Previously, the Operating Rules & Guidelines did not have a defined code to identify an ACH transaction, in its return, as fraudulent. Supplement #1–2024 will explicitly allow an RDFI to use Return Reason Code R17 to return an entry that it believes is fraudulent. Use of this code is optional, and the Fiscal Service has followed this procedure for several years. Nacha expects, and the Fiscal Service agrees, that this rule is expected to improve the recovery of funds originated due to fraud.

The Fiscal Service proposes to adopt these rule changes. Adoption of these changes will maintain consistency with other ACH Network participants and facilitate fraud-prevention strategies that may reduce the incidence of improper payments.

(2) Expanded Use of ODFI Request for Return—R06

Previously, under the Operating Rules & Guidelines, an ODFI could request that an RDFI return a defined ''Erroneous Entry'' or a credit entry that was originated without the authorization of the Originator using Return Reason Code R06. The RDFI may, but has not been obligated to, comply with the ODFI's request. ODFIs that wish to request the return of a potentially fraudulent entry have not had a clear means to do so, because the rules limited the use of R06 to specific situations.

Supplement #1–2024 expands the permissible uses of the Request for Return to allow an ODFI to request a return from the RDFI for any reason. This updated rule will not impact the Operating Rules & Guidelines' indemnification provisions. However, it requires the RDFI to respond to the ODFI, regardless of whether the RDFI complies with the ODFI's request to return the entry. The RDFI must advise the ODFI of its decision or the status of the request within 10 banking days of receipt of the ODFI's request.

Nacha indicates, and the Fiscal Service agrees, that this update is intended to improve the recovery of funds when fraud has occurred. The update also more accurately reflects how some ACH participants currently conduct their operations.

The Fiscal Service proposes to adopt these rule changes. Adoption of these changes will maintain consistency with other ACH Network participants and facilitate fraud-prevention strategies that may reduce the incidence of improper payments.

(3) Additional Funds Availability Exceptions

The Operating Rules & Guidelines have provided RDFIs with an exemption from funds availability requirements if the RDFI reasonably suspects the credit entry was unauthorized. Supplement #1–2024 provides RDFIs with an additional exemption from the funds availability requirements to include credit ACH entries that the RDFI suspects are originated under false pretenses. While RDFIs remain subject to Regulation CC's funds availability requirements, an RDFI can delay funds availability if its fraud-detection processes and procedures identify a flag.

Nacha asserts that this change will provide participants with an additional tool to manage potentially questionable or suspicious transactions that fall under the ''authorized fraud'' category, and provide RDFIs and ODFIs with additional time to communicate before funds availability is required.

The Fiscal Service proposes to adopt this rule change. Adoption of this change will maintain consistency with other ACH Network participants and may improve the potential for recovery of funds when fraud has occurred.

(4) Timing of Written Statement of Unauthorized Debit

Under the Operating Rules & Guidelines, when a consumer Receiver notifies an RDFI of an unauthorized debit, the RDFI must obtain a ''Written Statement of Unauthorized Debit'' (WSUD). Before Supplement #1–2024, the WSUD was required to be dated on or after the Settlement Date (as defined in the Operating Rules & Guidelines) of the unauthorized debit entry. However, through digital notifications and alerts, a consumer may be able to report an unauthorized debit prior to its posting to the account.

Supplement #1–2024 updates the WSUD rules to allow a consumer Receiver to sign and date a WSUD on or after the date on which the entry is presented to the Receiver, even if the debit has not yet posted to the account. The updated rule does not otherwise change the requirement for an RDFI to obtain a consumer's WSUD.

The Fiscal Service proposes to adopt this rule change. Adoption of this change will maintain consistency with other ACH Network participants and may improve the process and experience when debits are claimed to be unauthorized. Moreover, increasing the speed of returns can help participants manage risk and receive returns faster.

(6) Prompt RDFI Return of Unauthorized Debits

The Operating Rules & Guidelines previously stated that an RDFI must transmit an extended return entry for which it recredits a Receiver's account in such time that the entry can be made available to the ODFI no later than the opening of business on the banking day following the 60th calendar day following the settlement date of the original entry. However, the rules were silent as to the timeframe for the RDFI to return the entry after receiving a signed and dated WSUD.

Supplement #1–2024 updates the Operating Rules & Guidelines to require RDFIs to transmit these returns in such time that the entry can be made available to the ODFI no later than the opening of business on the sixth banking day following the completion of RDFI's review of the consumer's signed WSUD, and in such time that it is made available to the ODFI no later than the opening of business on the banking day following the 60th calendar day following the settlement date of the original entry.

The Fiscal Service proposes to adopt this rule change. Adoption of this change will maintain consistency with

other ACH Network participants. Moreover, increasing the speed of returns can help participants manage risk and receive returns faster.

(7) Fraud Monitoring by Originators, Third-Party Service Providers/Third-Party Senders and ODFIs

The Operating Rules & Guidelines have required Originators to use a commercially reasonable fraudulent-transaction detection system to screen WEB debits and when using Micro-Entries. However, these requirements did not encompass any other transaction types, and have not applied to other types of debits or to any credits other than Micro-Entries.

Supplement #1–2024 will require each non-consumer Originator, ODFI, Third-Party Service Provider, and Third-Party Sender to establish and implement risk-based processes and procedures reasonably intended to identify ACH entries initiated due to fraud. Each of these parties will need to review at least annually their processes and procedures and make any appropriate updates to address evolving risks.

The Fiscal Service proposes to adopt this rule change. Adoption of this change will maintain consistency with other ACH Network participants and may further reduce the incidence of fraud or other improper payments or collections.

(8) ACH Credit Monitoring by RDFIs

The Operating Rules & Guidelines have required ODFIs, but not RDFIs, to perform debit transaction monitoring. These requirements are distinct from existing requirements to monitor suspicious transactions.[4]

Supplement #1–2024 will require RDFIs to establish and implement risk-based processes and procedures reasonably intended to identify credit ACH entries initiated due to fraud. As with the other entities, RDFIs will need to review at least annually their processes and procedures and make any appropriate updates to address evolving risks.

The Fiscal Service proposes to adopt this rule change.[5] Adoption of this change will maintain consistency with other ACH Network participants and may further reduce the incidence of fraud or other improper payments or collections.

(9) Standard Company Entry Descriptions—PAYROLL and PURCHASE

The Operating Rules & Guidelines contain standards to identify certain types of Company Entry Descriptions. This allows network participants to readily identify the type of ACH transaction. Supplement #1–2024 establishes two new Company Entry Descriptions, PAYROLL and PURCHASE. The PAYROLL description must be used for PPD ACH credits that are for the payment of wages, salaries, and other similar types of compensation. The PURCHASE description will be required for e-commerce purchases, which for the purpose of the Operating Rules & Guidelines will be defined as a debit entry authorized by a consumer Receiver for the online purchase of goods.

The new descriptions will enable identification of payroll and e-commerce transactions, which may assist in the identification and reduction of certain types of fraud, such as payroll redirections.

The Fiscal Service proposes to adopt this rule change. Adoption of this change will maintain consistency with other ACH Network participants and can help parties manage risk and improve ACH Network quality.

ii. Minor Updates to the Operating Rules & Guidelines

In addition, Nacha updated and clarified minor topics.[6] These topics include:

- Revising the definition of a ''WEB'' entry and the general rules applying to such entries to clarify that this code must be used for all consumer-to-consumer credits, regardless of how the consumer communicates the payment instruction to the ODFI or the Person-to-Person service provider.
- Revising the definition of ''Originator'' to add a reference to the Originator's authority to credit or debit the Receiver's account. The change includes a notation to the definition that the rules do not always require a Receiver's authorization, such as with Reversing, Reclamation and Person-to-Person Entries.
- Revising the rules regarding Notifications of Change (NOCs) entries to provide Originators discretion on whether to make NOC changes for any single entry, regardless of SEC Code. Previously, the rules applied to single entries bearing certain SEC Codes (ARC, BOC, POP, RCK, TEL, WEB, and XCK), but were silent on single entries bearing other SEC Codes. This change aligned the Operating Rules & Guidelines with common practice, where Originators have treated NOCs for all one-time entries similarly.
- Revising the requirements regarding the protection of account numbers to clarify that once a covered party meets the volume threshold for protecting account numbers for the first time, this requirement remains in effect even if the covered party's future volume falls below the threshold.
- Aligning prenotification rules with current industry practice. The Operating Rules & Guidelines previously allowed Originators to transmit prenotification entries for account validation before initiation of the first credit or debit entry to the Receiver's account. The amendment removed language that limited prenote use to only prior to the first credit or debit entry.
- Replacing references to ''subsequent entry'' in the Operating Rules & Guidelines with synonymous terms (*e.g.,* future, additional, another) to avoid any confusion with the new definition ''Subsequent Entry'' and remedy ambiguous references to the phrase ''subsequent entry'' that result from the other changes.

The Fiscal Service proposes to adopt these rule changes. These changes do not appear to make significant substantive changes. Therefore, adopting these changes will maintain consistency with other ACH Network participants, which can lead to more efficient operations.

*(e) Entry of Federal Government Transactions Into the ACH Network*

In addition to the above updates to the Operating Rules & Guidelines, the Fiscal Service proposes to eliminate a current exemption from the Operating Rules & Guidelines.

Currently, the definition of ''Applicable ACH Rules'' in part 210 exempts the federal government from ''[t]he requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of processing by the Originating ACH Operator.''[7]

This exemption has been used to allow the federal government to transmit ACH transactions outside of the Operating Rules & Guidelines' window. This has facilitated federal government disbursement operations.

[4] *See, e.g.,* 31 CFR Subtitle B, Chapter X.

[5] This change to the Nacha Operating Rules will become effective in two phases, on March 20, 2026, and June 19, 2026. The Fiscal Service proposes to adopt these changes consistent with their effective dates in the Nacha Operating Rules.

[6] These changes to the Nacha Operating Rules were effective as of June 21, 2024. Because this date has already passed, the Fiscal Service proposes to implement these changes on the date when the final rule under this docket becomes effective.

[7] 31 CFR 210.2(d)(4).

However, Treasury believes that this exemption no longer provides material benefits to the government or the public. Removing this restriction would place the federal government on equal footing with industry, with regard to the timing of initiating ACH entries. It may also facilitate Treasury's cash management operations. Accordingly, the Fiscal Service proposes to eliminate current section 210.2(d)(4).

**3. Section-by-Section Analysis**

*§ 210.2(a)*

In order to incorporate in part 210 the Operating Rules & Guidelines changes as described above, we propose to replace references to the 2021 Operating Rules & Guidelines, including Supplement #1–2021, with references to the 2024 Operating Rules & Guidelines, as updated through Supplement #1–2024. In particular, we are proposing to amend the definition of ''ACH Rules'' at § 210.2(a) by replacing the reference to the ''2021 Operating Rules and Guidelines, including Supplement #1–2021'' with a reference to the ACH Rules as published in the 2024 Nacha Operating Rules & Guidelines, as updated through Supplement #1–2024.

*§ 210.2(d)*

We are proposing to remove paragraphs (d)(4) and (d)(8) from current section 210.2(d). The reasons for removing paragraph (d)(4) are described in section 2(e) above. The Fiscal Service proposes to remove paragraph (d)(8) because that paragraph ceased to be effective, by its terms, on March 19, 2022.

*§§ 210.0 and 210.3(b)*

To conform with current Office of the Federal Register structure and format requirements for incorporation by reference (IBR), we are proposing to remove the centralized IBR content currently in § 210.3(b) (reserving paragraph (b)) and add it as a new stand-alone section, § 210.0. We are also proposing to amend the IBR content in new § 210.0 by replacing the references to the 2021 Operating Rules & Guidelines and Supplement #1–2021 with references to Nacha's 2024 Operating Rules & Guidelines, including Supplement #1–2024.

**4. Incorporation by Reference**

In this proposal, the Fiscal Service is proposing to incorporate by reference the 2024 Operating Rules & Guidelines, including Supplement #1–2024, as amended through April 12, 2024. The Office of the Federal Register regulations require that agencies discuss in the preamble of a proposed rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a). In accordance with those regulations, the discussion in sections 1 and 2 of this **SUPPLEMENTARY INFORMATION** describes the Nacha Operating Rules and summarizes the changes to them since the 2021 Operating Rules & Guidelines, including Supplement #1–2021, were incorporated by reference into part 210. Financial institutions utilizing the ACH Network are bound by the Operating Rules & Guidelines and have access to them in the course of their everyday business. The Operating Rules & Guidelines (including the supplements) are available as a bound book or in online form from Nacha—The Electronic Payments Association at: 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171; phone: 703–561–1100; email: *info@nacha.org.*

**5. Procedural Analysis**

*Request for Comment on Plain Language*

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

*Regulatory Planning and Review*

The proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866, as amended. Therefore, the regulatory review procedures contained therein do not apply.

*Regulatory Flexibility Act Analysis*

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes on the federal Government a number of changes that Nacha has already adopted and imposed on private-sector entities that use the ACH Network. The proposed rule does not impose any additional burdens, costs, or impacts on any private-sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

*Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

**List of Subjects in 31 CFR Part 210**

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, Incorporation by reference.

For the reasons set out above, the Fiscal Service proposes to amend 31 CFR part 210 as follows:

## PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

**Authority:** 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Add § 210.0 to read as follows:

**§ 210.0 Incorporation by reference.**

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Bureau of the Fiscal Service must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the Bureau of the Fiscal Service and at the National Archives and Records Administration (NARA). Contact the Bureau of the Fiscal Service at 401 14th Street SW, Room 400A, Washington, DC 20227; phone: 202–874–6680; website: *www.fiscal.treasury.gov*. 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*. The material may be obtained from Nacha, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171; phone: 703–561–1100; email: *info@nacha.org*.

(a) 2024 Nacha Operating Rules & Guidelines: The Guide to the Rules governing the ACH Network, copyright 2024; into § 210.2.

(b) Supplement #1–2024, Notice of Amendment to the 2024 Nacha Operating Rules, dated April 12, 2024; into § 210.2.

■ 3. In § 210.2:

■ a. Revise paragraph (a);

■ b. Remove paragraphs (d)(4) and (d)(8); and

■ c. Redesignate paragraphs (d)(5) through (7) as paragraphs (d)(4) through (6).

The revisions read as follows:

**§ 210.2 Definitions.**

* * * * *

(a) *ACH Rules* means the 2024 Nacha Operating Rules & Guidelines: The Guide to the Rules Governing the ACH Network, as updated through Supplement #1–2024 (both incorporated by reference, see § 210.0) and published by Nacha, a national association of regional member clearing house associations, ACH Operators, and participating financial institutions located in the United States.

* * * * *

**§ 210.3 [Amended]**

■ 4. In § 210.3, remove and reserve paragraph (b).

**David A. Lebryk,**

*Fiscal Assistant Secretary.*

[FR Doc. 2024–17413 Filed 8–8–24; 8:45 am]

**BILLING CODE 4810–AS–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

**[Docket No. RM2024–10; Order No. 7309]**

### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent Postal Service filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Four). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 27, 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. For Media Inquiries: Gail Adams, *Gail.Adams@prc.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

On July 24, 2024, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Four.

## II. Proposal Four

The Postal Service explains that Proposal Four has two components, both aimed at improving estimates for First-Class Mail. Petition at 1. The Postal Service explains that the first component would improve unit mail processing cost estimates ''by expanding the use of Mail.dat information'' while the second would improve workshare cost-avoidance estimates by replacing the Non-automation Presort Cards Benchmark with a new Non-automation Mixed automated area distribution center (AADC) barcode (BC)-Benchmark. Petition, Proposal Four at 1.

### *A. Component One*

*Background.* In terms of the first component, the Postal Service states that it develops yearly mail processing unit cost estimates for First-Class Mail using cost models and calibrations filed in the Annual Compliance Review (ACR). *Id.* at 2. These estimates are based on a field study conducted in January of 2005. *Id.* at 2–3. In contrast, the Postal Service has used Mail.dat files and stratified inflation methods for the cost estimates for other classes of mail. *Id.* at 3. The Postal Service states that ''Mail.dat files were initially developed to prepare a mailing virtually from a known address list and from user-specified preparation parameters—piece length, height, thickness and weight, bundle, and container minimums and maximums, etc.—that would mimic the actual physical preparation.'' *Id.* The Postal Service explains that, initially, Mail.dat files could not accurately reflect First-Class Mail mailings; however, recently the mailing industry and the Postal Service have developed a methodology to create accurate Mail.dat files for First-Class Mail. *Id.* at 3–4.

*Proposal.* The Postal Service seeks to use Mail.dat files to estimate the preparation characteristics of the universe of First-Class Mail Presorted Letters/Postcards, thus improving the processing unit cost estimates for those mailpieces. *Id.* at 4. The Postal Service explains that, because Mail.dat files alone do not constitute a ''census'' encompassing all First-Class Mail Presorted Letters/Postcards pieces, it also proposes to use a stratified inflation methodology utilizing PostalOne! Mailing Statement data to infer the characteristics of the entire population. *Id.* at 5–12.

*Impact.* The Postal Service explains that it ''measured and evaluated the impacts of Component One by applying its procedures to data from the ACR 2023 reporting period, inputting the resulting data into downstream models (folders USPS–FY23–10 and USPS–FY23–11), and examining the consequent changes in reported unit costs.'' *Id.* at 12. The Postal Service states that the results are in accord with what would be expected when transitioning from a model predicated on data from 2005 to ''a procedure that is capable of incorporating much more recent mail entry patterns.'' *Id.* at 14–16.

### *B. Component Two*

*Background.* In terms of the second component, the Postal Service states that it ''seeks to improve the precision of the barcoding cost avoidance for First-Class Mail Automation Mixed AADC (MAADC) Presort Cards by replacing the Nonautomation Presort Cards benchmark with a proposed Nonautomation MAADC BC-Benchmark.'' *Id.* at 17. Specifically, it explains that the most accurate measure of barcode cost avoidance is the difference between a barcoded presorted rate category and a similarly situated rate category that does not contain a barcode. *Id.* However, the current benchmark for Automation MAADC Cards is Presorted Cards, which the

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), July 24, 2024 (Petition).

Postal Service states is not analogous and therefore ''does not provide the true value of the MAADC barcode.'' *Id.* at 18.

*Proposal.* In order to provide a benchmark that more accurately measures the cost avoidance for Automation MAADC Cards, the Postal Service seeks to create a new benchmark—the Non-automation MAADC BC-Benchmark. *Id.* In order to do so, the Postal Service ''would make changes to the First-Class Mail Letters cost avoidance model last filed in Docket No. ACR2023 as folder USPS–FY23–10, while simultaneously employing the Mail Characteristics Study (MCS) changes from Component One,'' discussed above. *Id.*

*Impact.* According to the Postal Service, the changes suggested in Proposal Four would result in a barcode cost avoidance of 0.617 cents (compared to the negative cost avoidance of −0.110 cents resulting from use of the current benchmark), which would ''enable the Postal Service to set appropriate discounts for commercial mailers for pre-barcoding First-Class Mail cards.'' *Id.* at 20. Further, the Postal Service explains that its changes would reduce the avoided cost from $0.018 to $0.006 for Automation Mixed AADC Cards and increase its passthrough from 88.9 percent to 266.7 percent. *Id.*

## III. Notice and Comment

The Commission establishes Docket No. RM2024–10 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Four no later than August 27, 2024. Pursuant to 39 U.S.C. 505, Gregory S. Stanton is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2024–10 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), filed July 24, 2024.

2. Comments by interested persons in this proceeding are due no later than August 27, 2024.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Gregory S. Stanton to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

By the Commission.

**Jennie L. Jbara,**

*Primary Certifying Official.*

[FR Doc. 2024–16787 Filed 8–8–24; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

**[Docket No. RM2024–2; Order No. 7321]**

### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent Postal Service response to Order No. 7049 regarding proposed changes to analytical principles relating to periodic reports (Proposal Eight). This document informs the public of the filing, invites public comment on the Postal Service response, and takes other administrative steps.

**DATES:** *Comments are due:* August 27, 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:**

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## I. Introduction

On July 1, 2024, the Postal Service filed a response to Order No. 7049 [1] regarding proposed changes to analytical principles relating to periodic reports (Proposal Eight).[2] The Commission reopens this docket for the limited purpose of considering the issues raised by the Response and invites public comments on the Response.

## II. Background

In Order No. 7049, the Commission approved the changes in analytical principles proposed by the Postal Service in Proposal Eight with two modifications: (1) the aggregated coverage model specification for box time was approved rather than the Three-Group Coverage Model; and (2) the errors identified in the Postal Service's costing files were corrected as discussed in the order. Order No. 7049 at 37. The Commission also ordered the Postal Service to conduct additional research to justify the groupings presented in the Three-Group Coverage Model or other specification of its choosing for estimating the volume variability of box time, as well as to report the findings of such research by July 1, 2024. *Id.* In addition, the Commission ordered the Postal Service to provide by July 1, 2024 a detailed description of how it plans to assess the potential partial volume variabilities of sequences 026, 049, 051, 052, 037, 038, 083, 053, and 063. *Id.*

On July 1, 2024, the Postal Service filed the Response addressing the two research topics ordered by the Commission in Order No. 7049. Regarding the first research topic, the Postal Service now proposes a Two-Group Coverage Model for estimating the volume variability of box time, grouping products based on whether they have homogeneous high or low coverage-causing characteristics on box time. *See* Response at 3–14. Based on the Postal Service's research, it proposes that the high coverage impact group consists of delivery point sequence (DPS) letters, carrier route flats, walk-sequence saturation (WSS) letters, WSS flats, boxholder letters, and boxholder flats. *Id.* at 14. The Postal Service also proposes that the low coverage impact group consists of random letters, random flats, mailbox parcels, door parcels, locker parcels, and accountables. *Id.* The Postal Service then calculates a variability of 33.66 percent for the high coverage impact group and a variability of 5.63 percent for the low coverage impact group. *Id.* at 17. It then proposes 39.28 percent as the volume variability for box time. *Id.* at 33, Table 15. The Postal Service states the Two-Group Coverage Model is preferrable over the aggregated coverage

[1] Order Approving Analytical Principles Used in Periodic Reporting (Proposal Eight) with Two Modifications, April 18, 2024 (Order No. 7049).

[2] Response of the United States Postal Service to Order No. 7049 Regarding Rural Carrier Costing, July 1, 2024 (Response). The Postal Service also filed a notice of filing of non-public materials relating to the Response. Notice of Filing of USPS–RM2024–2–NP5 and Application for Nonpublic Treatment, July 1, 2024.

model approved in Order No. 7049 for estimating the volume variability of box time because it ''adds precision to the estimating by ferreting out the different effects by using groupings of mail products that have similar coverage-causing characteristics.'' *Id.* at 17.

Regarding the second research topic, the Postal Service proposes the following volume variabilities for the nine sequences ordered by the Commission in Order No. 7049 for it to research:

| Sequence | Proposed volume variability (%) |
|---|---|
| 026 | 29.48 |
| 037 | 84.32 |
| 038 | 84.66 |
| 049 | 29.48 |
| 051 | 84.32 |
| 052 | 84.66 |
| 053 | 84.66 |
| 063 | 5.96 |
| 083 | 46.05 |

Source: Response at 33, Table 15; *see generally, id.* at 18–32.

Chairman's Information Request No. 4 (CHIR No. 4) is issued today, July 30, 2024, concerning the Postal Service's Response and the Postal Service's response to CHIR No. 4 is due August 13, 2024.[3]

## III. Notice of Filing and Related Proceeding

The Commission hereby informs the public of the Postal Service's Response and of the reopening of Docket No. RM2024–2 for the limited purpose of considering issues raised by the Response. More information on the Response and additional filings in this proceeding may be accessed via the Commission's website at *http://www.prc.gov.* Any material filed in this proceeding that is subject to an application for non-public treatment (filed under seal) may be accessed via the Commission's website only by account holders granted access by an order or in accordance with 39 CFR 3011.300(a). The Commission's rules on non-public materials (including access to material filed under seal) appear in 39 CFR part 3011.

Interested persons may submit comments on the Response no later than August 27, 2024. Pursuant to 39 U.S.C. 505, Nikki Brendemuehl continues to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

[3] Chairman's Information Request No. 4, July 30, 2024.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. RM2024–2 for the limited purpose of considering issues raised by the Response of the United States Postal Service to Order No. 7049 Regarding Rural Carrier Costing, filed July 1, 2024.

2. Comments by interested persons in this proceeding are due no later than August 27, 2024.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Nikki Brendemuehl to continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Jennie L. Jbara,**

*Primary Certifying Official.*

[FR Doc. 2024–17156 Filed 8–8–24; 8:45 am]

**BILLING CODE 7710–FW–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 48 CFR Parts 339 and 352

**RIN 0991–AC35**

### HHS Acquisition Regulation: Acquisition of Information Technology; Standards for Health Information Technology (HHSAR Case 2023–001)

**AGENCY:** Department of Health and Human Services.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Health and Human Services (HHS) is proposing to amend and update its Health and Human Services Acquisition Regulation (HHSAR) to implement requirements to procure health information technology (health IT) that meets standards and implementation specifications (standards) adopted by the Office of the National Coordinator for Health Information Technology (ONC) in the following parts: Acquisition of Information Technology and Solicitation Provisions and Contract Clauses.

**DATES:** Comments must be received on or before October 8, 2024, to be considered in the formulation of the final rule.

**ADDRESSES:** Submit written comments in response to HHSAR Case 2023–001 through the Federal eRulemaking Portal at: *https://www.regulations.gov* by searching for ''HHSAR Case 2023–001''. Select the link ''Comment Now'' and follow the ''Submit a comment'' instructions. Please include your name, company name (if any), and indicate they are submitted in response to ''RIN 0991–AC35—HHS Acquisition Regulation: Acquisition of Information Technology; Standards for Health Information Technology (HHSAR Case 2023–001).''

*Warning:* Do not include any personally identifiable information or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

*Inspection of Public Comments:* All comments received before the close of the comment period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS reserves the right to withhold information provided in comments from public viewing that it determines may have an adverse impact on an individual(s). For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.* Follow the search instructions on that website to view the public comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jarreau Vieira, Chief, Acquisition Rule-Making Branch, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Acquisition Policy, 200 Independence Avenue SW, Washington, DC 20201. Email: *acquisition_policy@hhs.gov,* Telephone: (202) 731–4625. This is not a toll-free telephone number.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Authority*

This rulemaking is being taken under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to authorize the issuance of agency acquisition regulations that implement or supplement the Federal Acquisition Regulation (FAR). The OFPP Act, as codified in 41 U.S.C. 1702, provides the authority for the FAR and for the issuance of agency acquisition regulations consistent with the FAR. This authority ensures that Government

procurements are handled fairly and consistently, that the Government receives overall best value, and that the Government and contractors both operate under a known set of rules. The Health and Human Services Acquisition Regulation (HHSAR) is set forth at Title 48 CFR, chapter 3, parts 301 through 370.

Under this authority, we are seeking to implement a department-wide management policy issued by the Secretary of the Department of Health and Human Services (Secretary) in July 2022 (hereafter the ''Secretary's July 2022 Memorandum''), that directed HHS agencies to align and coordinate health IT-related activities in support of HHS health IT and interoperability goals. This policy was supported by requirements in sections 13111 and 13112 of the Health Information Technology for Economic and Clinical Health Act (HITECH Act) (Pub. L. 111–5).

*B. Genesis of Standards for Health Information Technology in the HHSAR*

The Secretary's July 2022 Memorandum recognized that HHS spending on health IT-related activities has grown dramatically in recent years, as various agencies have begun to leverage the large foundation of electronic health records put in place by the $40 billion invested as a result of the HITECH Act, as part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, Feb. 17, 2009), and the related clinical data and interoperability standards that HHS continues to promote. Advancing interoperability and the effective and appropriate use of health IT systems is a key HHS objective, and COVID–19 has further demonstrated the importance of interoperable data to improve the quality, safety, affordability, and efficiency of health care delivery; inform pandemic response; and identify and address disparities in care. As health IT-related activities begin to play an increasingly prominent role in programs across the Department, the Secretary's July 2022 Memorandum states that it is critical to ensure alignment of such activities to avoid the proliferation of ad-hoc health IT and data silos. These silos undercut the effectiveness and efficiency of the Department's policies and programs, are costly for Federal and state agencies and private sector partners to create and maintain, have no synergies across programs, and—due to lack of alignment across and within HHS agencies—impose significant burden on health care providers, technology developers, and other health care stakeholders.

As part of the Secretary's July 2022 Memorandum, the Secretary directed HHS agencies, working with the Assistant Secretary for Financial Resources (ASFR), to develop standard language for use in grants, cooperative agreements, or contracts. The Secretary's July 2022 Memorandum further identified the general elements of this standard language, including that: recipients are expected to utilize health IT that meets standards adopted under Section 3004 of the Public Health Service Act (PHSA), if applicable, when the funding mechanism includes provisions requiring recipients to implement, acquire, or upgrade health IT; health care providers who have been eligible to participate in Center for Medicare & Medicaid Services's (CMS's) health IT-focused incentive programs can meet alignment requirements under this policy by using certified health IT which incorporates standards adopted under PHSA Section 3004; and, where there are no applicable standards adopted under PHSA Section 3004, recipients are encouraged to use other HHS-identified standards or non-proprietary, consensus-based standards developed by a national standard setting organization, such as those referenced in the Interoperability Standards Advisory, are recommended.

We note that this regulation does not impact existing HHS authorities for standards adoption and note that HHS agencies are committed to working together to ensure that standards under such authorities are aligned to advance interoperability for a nationwide health IT infrastructure.

Section 13111 of the HITECH Act requires agencies identified by the Director of the Office of Management and Budget (OMB), in consultation with the Secretary, when implementing, acquiring, or upgrading health IT systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, to utilize, where available, health IT systems and products that meet standards and implementation specifications adopted by ONC on behalf of the Secretary under section 3004 of the Public Health Service Act (PHSA).

Section 13112 of the HITECH Act specifies that agencies, as defined in Executive Order 13410, shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health IT systems, it shall utilize, where available, health IT systems and products that meet standards and implementation specifications adopted under Section 3004 of the PHSA.

On behalf of HHS, ONC adopts standards and implementation specifications under section 3004 of the PHSA in 45 CFR part 170, subpart B. Standards adopted under section 3004 are included in certification criteria for health IT in the ONC Health Information Technology Certification Program in 45 CFR part 170, subpart C. For more information on the ONC Certification Program, see *https://www.healthit.gov/topic/certification-ehrs/certification-health-it.* Health care providers who have been eligible to participate in CMS's health IT-focused incentive programs under sections 4101, 4102, and 4201 of the HITECH Act have been incentivized to adopt health IT that meets certification criteria which incorporate standards in 45 CFR part 170, subpart B. Consistent with HHS policy, the proposals address use of certified health IT by these providers, where applicable.

*C. Implementation Via Class Deviation (2023–01)*

On December 20, 2022, the HHS Senior Procurement Executive issued HHSAR Class Deviation (2023–01) from part 339, Acquisition of Information Technology; Standards for Health Information Technology, in advance of this proposed rule to implement in the HHSAR the requirements of the HITECH Act and HHS' implementation standards.

*D. Purpose of Rule*

This proposed rule is issued to comply with the requirements of 41 U.S.C. 1707 and FAR subpart 1.5 that require publication of a proposed rule for public comment.

Consistent with HHS policy, including the Secretary's July 2022 Memorandum, and with sections 13111 and 13112 of the HITECH Act (Pub. L. 111–5), HHS is proposing to amend the HHSAR to implement and align requirements related to the procurement of health IT with standards and implementation specifications adopted by ONC under section 3004 of the PHSA.

This proposed rule would add a new HHSAR subpart 339.70, Standards for Health Information Technology, which provides definitions, policy, and a prescription for a new HHSAR clause to implement requirements of the HITECH Act, to include: (1) when contracting officers must procure health IT consistent with requirements in the HITECH Act; and (2) when to require use of health IT in a manner consistent with requirements in the HITECH Act,

in contracts and agreements with health care providers, health plans, or health insurance issuers.

This proposed rule would implement requirements in the HHSAR that would apply to all solicitations and contracts, issued by or on behalf of HHS entities, that involve implementing, acquiring, or upgrading health IT used (1) for the direct exchange of individually identifiable health information between agencies and non-Federal entities, or (2) by health care providers, health plans, or health insurance issuers.

## II. Discussion and Analysis

### *A. HITECH Act Discussion*

In this section, we provide discussion of several issues in connection to our proposals in this proposed rule.

#### 1. Acquiring, Implementing, or Upgrading Health IT

We believe additional discussion of terms used in sections 13111 and 13112 of the HITECH Act will help the public to understand how these proposals will be implemented. Specifically, we note that both sections refer to implementing, acquiring, or upgrading of health IT systems as activities to which the statutory provisions apply. We believe the terms acquiring and upgrading health IT are clear for the purpose of this policy. However, we believe additional explanation of the term ''implementing'' as it is used in this policy is warranted. ''Implementing'' health IT may include a variety of activities that are distinct from acquiring or upgrading health IT. For instance, ''implementing'' health IT may include investments in health IT for its maintenance and upkeep, the use of health IT to collect, store, and share health information, and activities supporting the piloting, but not the acquisition, of health IT tools.

We note that the proposals in HHSAR parts 339 and 352 in this proposed rule pertain to ''work performed under the contract that involves implementing, acquiring, or upgrading health IT.'' For example, a contracted party performing research may obtain data from health IT systems. Unless the contract defines specific health IT activities and/or investments related to these data, such activities would be considered incidental to the work performed under the contract and would not be subject to our proposed requirements. We seek comment on additional details that would help with clarifying when a contract activity would be considered ''implementing'' health IT.

### *B. Authorities and Summary of Proposed Changes*

We propose to revise the following parts of the HHSAR, 48 CFR chapter 3: parts 339 and 352.

We propose to revise the authority citations cited in each HHSAR part to reflect as follows: 5 U.S.C. 301; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304. Where additional authorities for a specific part are applicable, we identify them under that discussion of each HHSAR part later in this preamble.

We propose to retain the authority of 5 U.S.C. 301. This authority provides that the head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

We propose to retain the authority of 40 U.S.C. 121(c) and slightly revise the reference. This authorizes the head of each executive agency to issue orders and directives that the agency head considers necessary to carry out the regulations. The Federal Acquisition Regulation System and the publication of the FAR is issued pursuant to this authority as are agency supplements to the FAR such as the HHSAR.

We propose to include a reference to 41 U.S.C. 1121(c)(3). This provision states that the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 1121, as well as other sections of title 41.

We propose to add an authority citation for 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities that are carried out by the HHS Senior Procurement Executive.

And we propose to add the citation of 48 CFR 1.301 through 1.304 to reflect the authority and responsibility set forth in the FAR and delegated to Federal agencies to issue agency regulations that supplement and implement the FAR.

Any other proposed changes to authorities are shown under the individual parts below.

#### 1. HHSAR Part 339—Acquisition of Information Technology

We propose to revise the authority citations for part 339, for the reasons set forth in the discussion and analysis section, to read as follows: 5 U.S.C. 301; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

We propose to add subpart 339.70, Standards for Health Information Technology, to include underlying sections 339.7000, 339.7001, 339.7002, and 339.7003. This subpart is added to implement standards under the authority of the HITECH Act, Public Law 111–5, title XIII, sections 13111 and 13112 that are applicable for HHS contracts, as well as HHS policy.

We propose to add section 339.7000, Scope of subpart, to provide general scope and purpose of the subpart and its underlying sections, which implements and aligns requirements related to the procurement of health IT with standards and implementation specifications adopted by ONC, under section 3004 of the PHSA, consistent with sections 13111 and 13112 of the HITECH Act (Pub. L. 111–5) and HHS policy to advance health IT alignment. The subpart describes the policies and procedures for solicitations and contracts that involve implementing, acquiring, or upgrading health IT that is used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities; or by health care providers, health plans, or health insurance issuers.

We propose to add section 339.7001, Definitions. This section is added to include three definitions applicable to the new subpart: Health information technology (health IT), individually identifiable health information, and the ONC Health Information Technology Certification Program.

We propose to add section 339.7002, Policy—standards for health information technology. This section is added to implement standards for health IT in HHS contracts. This section would require, pursuant to the HITECH Act, Public Law 111–5, title XIII, sections 13111 and 13112, and HHS policy, that health IT shall meet standards and implementation specifications adopted in 45 CFR part 170, subpart B, if applicable. This includes health IT that is—

- Procured by or on behalf of HHS entities, or
- Procured through HHS contracts with health care providers, health plans, or health insurance issuers that involve implementing, acquiring, or upgrading health IT.

Section 339.7002 would prohibit contracting officers from awarding a contract involving health IT as described in this preamble, unless certain conditions are met. First, this section would prohibit contracting officers from awarding a contract that includes implementing, acquiring, or upgrading health IT used for the direct

exchange of individually identifiable health information between agencies and with non-Federal entities unless an offeror/quoter/contractor shall utilize health IT that—

- Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support work performed under the contract; or
- Is certified under the ONC Health Information Technology Certification Program, if certified technology can support work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the contractor is—
  - ○ an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act; or
  - ○ implementing, acquiring, or upgrading technology to be used by an eligible professional in an ambulatory setting, or hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act.

Further, this section would also prohibit contracting officers from awarding a contract if a contractor is a health care provider, health plan, or health insurance issuer, or, to perform the contract, is establishing an agreement with a health care provider, health plan, or health insurance issuer, for any work performed under the contract that involves implementing, acquiring, or upgrading health IT, unless the offeror/quoter/contractor agrees that it shall utilize health IT that—

- Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support work performed under the contract; or
- Is certified under the ONC Health Information Technology Certification Program, if certified technology can support work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the contractor is—
  - ○ an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act; or
  - ○ implementing, acquiring, or upgrading technology to be used by an eligible professional in an ambulatory setting, or hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act.

Finally, this section would also encourage offerors/quoters/contractors, if standards and implementation specifications adopted in 45 CFR part 170, subpart B, cannot support the work as specified in the contract, to use health IT that meets non-proprietary standards and implementation specifications developed by consensus-based standards development organizations. This may include standards identified in the ONC Interoperability Standards Advisory, available at *https://www.healthit.gov/isa/*.

We propose to add section 339.7003, Contract clause, to prescribe a new clause at 352.239–70, Standards for Health Information Technology, in solicitations and contracts, issued by or on behalf of HHS entities, that involve implementing, acquiring, or upgrading health IT used—

(a) for the direct exchange of individually identifiable health information between agencies and with non-Federal entities; or

(b) by health care providers, health plans, or health insurance issuers.

2. HHSAR Part 352—Solicitation Provisions and Contract Clauses

We propose to revise the authority citations for part 352, for the reasons set forth in the discussion and analysis section, to read as follows: 5 U.S.C. 301; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

We propose to add clause 352.239–70, Standards for Health Information Technology, to set forth requirements for the standards for health IT provided or utilized on a contract. The clause would include three definitions: Health information technology (health IT), individually identifiable health information, and the ONC Health Information Technology Certification Program.

The clause would provide that by submission of an offer or a quote, and execution of a contract, the offeror/quoter/contractor agrees that—

- For any work performed under the contract that involves implementing, acquiring, or upgrading health IT procured by or on behalf of HHS entities used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, the offeror/quoter/contractor shall utilize health IT that—

(1) Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support the work performed under the contract; or

(2) Is certified under the ONC Health Information Technology Certification Program, if certified technology can support the work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the Contractor is—

(i) an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act; or

(ii) is implementing, acquiring or upgrading technology to be used by an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act.

- When the contractor is a health care provider, health plan, or health insurance issuer, or, to perform the contract, is establishing an agreement with a health care provider, health plan, or health insurance issuer, for work performed under the contract that involves implementing, acquiring, or upgrading health IT, the offeror/quoter/contractor shall utilize heath IT that—

(1) Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support the work performed under the contract; or

(2) Is certified under the ONC Health Information Technology Certification Program, if certified technology can support the work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the Contractor is—

(i) an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act; or

(ii) implementing, acquiring or upgrading technology to be used by an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act.

Additionally, this section would also encourage contractors, if such standards and implementation specifications adopted in 45 CFR part 170, subpart B, cannot support the work as specified in the contract, to use health IT that meets non-proprietary standards and implementation specifications developed by consensus-based standards development organizations. This may include standards identified in the ONC Interoperability Standards Advisory, available at *https://www.healthit.gov/isa/*.

## III. Executive Order 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Information and Regulatory Affairs has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and has determined that this proposed rule is not a significant regulatory action under E.O. 12866.

HHS's impact analysis can be found as a supporting document at *https://www.regulations.gov,* usually within 48 hours after the rulemaking document is published.

## IV. Paperwork Reduction Act

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

## V. Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

HHS expects that the overall impact of the proposed rule would benefit small businesses because the HHSAR is being updated to provide needed guidance to ensure HHS's contractors properly understand and can propose and provide health IT that meets standards and implementation specifications adopted by the ONC, consistent with sections 13111 and 13112 of the HITECH Act (Pub. L. 111–5, title XIII, sections 13111 and 13112) and HHS policy.

Any additional costs associated with the proposed rule, such as costs to implement the substantive new and revised requirements concerning the HITECH Act, can be factored into the contract price. There are no alternatives that would permit treating small businesses providing services and equipment to HHS differently than other firms. However, with clear guidance and an understanding of the requirement, small businesses will be better postured to provide offers and quotes with fully compliant equipment and thus be able to effectively participate in HHS acquisitions. The use of consensus-based standards presents a potential benefit to small businesses as it provides clear technical guidelines for health IT requirements. This can help to reduce development burden by offering open technical guidelines for implementation, rather than necessitating resource allocation to standards development. In addition, the use of non-proprietary standards allows greater flexibility for customers and mitigates the risk of being ''locked in'' to any one product or vendor. Overall, the use of open, consensus-based standards increases small businesses' ability to compete in the health IT landscape. On this basis, the Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial regulatory flexibility analysis requirements of section 603 does not apply.

While on the basis of the foregoing, HHS has determined that the agency is not required to prepare an Initial Regulatory Flexibility Analysis (IRFA), HHS has prepared an IRFA that is summarized here. Comments are solicited from small businesses and other interested parties and will be considered in the development of the final rule.

## VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

*1. Description of the reasons why the action is being taken.*

This proposed rule would amend the Health and Human Services Acquisition Regulation (HHSAR) to implement updates to the HHSAR to add substantive new language to align requirements related to the procurement of health information technology (health IT) with standards and implementation specifications (standards) adopted by the Office of the National Coordinator for Health Information Technology (ONC), consistent with sections 13111 and 13112 of the Health Information Technology for Economic and Clinical Health Act (''HITECH Act'') (Pub. L. 111–5, title XIII, sections 13111 and 13112) and HHS policy.

Section 13111 of the HITECH Act requires agencies identified by the Director of the Office of Management and Budget (OMB), in consultation with the Secretary, when implementing, acquiring, or upgrading health IT systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, to utilize, where available, health IT systems and products that meet standards and implementation specifications adopted by ONC on behalf of the Secretary under section 3004 of the Public Health Service Act (PHSA).

Section 13112 of the HITECH Act specifies that agencies, as defined in Executive Order 13410, shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health IT systems, it shall utilize, where available, health IT systems and products that meet standards and implementation specifications adopted under section 3004 of the PHSA.

On behalf of HHS, ONC adopts standards and implementation specifications under section 3004 of the PHSA in 45 CFR part 170, subpart B. Standards adopted under section 3004 are included in certification criteria for health IT in the ONC Health Information Technology Certification Program at 45 CFR part 170, subpart C. For more information on the ONC Certification Program, see *https://www.healthit.gov/topic/certification-ehrs/certification-health-it.*

This proposed rule would implement requirements in the HHSAR that would apply to all solicitations and contracts, issued by or on behalf of HHS entities, that involve implementing, acquiring, or upgrading health IT used (1) for the direct exchange of individually identifiable health information between agencies and non-Federal entities, or (2) by health care providers, health plans, or health insurance issuers under HHS contracts. Based on a review of the potential impact on small business entities, HHS has determined that the requirements specified in the proposed rule are inherent to successful performance on any relevant Federal contract.

This proposed rule would provide definitions, policy, and a prescription for a new HHSAR clause to implement requirements of the HITECH Act, to include: (1) when contracting officers must procure health IT that complies with the HITECH Act; and (2) when to require health IT that complies with the HITECH Act in contracts and agreements with health care providers, health plans, or health insurance issuers.

*2. Succinct statement of the objectives of, and legal basis for, the rule.*

The proposed rule implements the HITECH Act, sections 13111 and 13112, and HHS policy. This must be

implemented in the HHSAR in accordance with 41 U.S.C. 1707, and FAR subpart 1.5 that require publication of a proposed rule for public comment.

*3. Description of and, where feasible, estimate of the number of small entities to which the rule will apply.*

To estimate the number of small businesses that could potentially be impacted by the proposed rule, HHS identified contract award actions across key North American Industry Classification System (NAICS) codes, as well as Product Service Codes (PSC) that could be affected for five fiscal years—FY 2018, 2019, 2020, 2021 and 2022 as set forth in the table below. HHS focused on businesses that potentially could be impacted by the proposed revisions to parts 339 and 352 involving health IT, because of the potential costs resulting from the utilization of health information technology that meets standards and implementation specifications adopted under section 3004 of the PHSA, consistent with the HITECH Act, in HHS acquisitions containing such requirements.

| NAICS | NAICS description | Number of contract actions | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | Total | Average |
| 518210 | Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services. | 772 | 799 | 797 | 754 | 909 | 4,031 | 806.2 |
| 524292 | Pharmacy Benefit Management and Other Third Party Administration of Insurance and Pension Funds. | 29 | 29 | 32 | 29 | 44 | 163 | 32.6 |
| 541511 | Custom Computer Programming Services. | 1,327 | 1,288 | 1,343 | 1,332 | 1,668 | 6,958 | 1,391.6 |
| 541512 | Computer Systems Design Services. | 2,838 | 3,095 | 2,891 | 3,103 | 4,497 | 16,424 | 3,284.8 |
| 541513 | Computer Facilities Management Services. | 125 | 130 | 155 | 121 | 161 | 692 | 138.4 |
| 541519 | Other Computer Related Services. | 4,857 | 4,264 | 4,813 | 4,141 | 4,610 | 22,685 | 4,537 |
| 541715 | Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology). | 322 | 644 | 1,074 | 1,498 | 2,227 | 5,765 | 1,153 |
| 541990 | All Other Professional, Scientific, and Tech. Svcs. | 3,356 | 2,943 | 3,216 | 3,305 | 4,271 | 17,091 | 3,418.2 |
| 611310 | Colleges, Universities, and Professional Schools. | 336 | 265 | 228 | 222 | 265 | 1,316 | 263.2 |
| NAICS Total | ..... | 13,962 | 13,457 | 14,549 | 14,505 | 18,652 | 75,125 | 15,025 |
| PSC | Product service code description | | | | | | | |
| 7010 ..... | Information Technology Equipment System Configuration. | 94 | 94 | 94 | 94 | 94 | 94 | 94 |
| 7020 ..... | Information Technology Central Processing Unit (CPU, Computer), Analog. | 47 | 41 | 79 | 19 | 5 | 191 | 38.2 |
| 7021 ..... | Information Technology Central Processing Unit (CPU, Computer), Digital. | 231 | 116 | 207 | 23 | 14 | 591 | 118.2 |
| 7022 ..... | Information Technology Central Processing Unit (CPU, Computer), Hybrid. | 18 | 18 | 14 | 6 | 0 | 56 | 11.2 |
| 7025 ..... | Information Technology Input/Output and Storage Devices. | 149 | 105 | 136 | 40 | 23 | 453 | 90.6 |
| 7030 ..... | Information Technology Software | 1,934 | 1,524 | 1,971 | 674 | 514 | 6,617 | 1,323.4 |
| 7035 ..... | Information Technology Support Equipment. | 501 | 353 | 426 | 106 | 79 | 1,465 | 293 |
| | PSC Total ..... | 2,974 | 2,253 | 2,931 | 898 | 657 | 9,713 | 1,942.6 |
| | Total ..... | 16,936 | 15,710 | 17,480 | 15,403 | 19,309 | 84,838 | 16,967.6 |

As shown, HHS awarded over 84,838 contract actions for nine NAICS (products or services) and seven Product Service Codes for IT or IT-related services during the period FY 2018 through FY 2022. To estimate the number of small businesses potentially impacted by this proposed rule involving the much narrower health IT certification standards and requirements, HHS notes that in FY 2022, the total number of contract actions awarded to small business concerns across the nine NAICS and all operating administrations was around 55%. Using this figure to project the potential impact to small business entities that may be affected by the proposed rule, the Department estimates that up to 8,484 contract actions could be awarded to small businesses.

*4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

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

*5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.*

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

*6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.*

HHS considered whether any other alternatives would reduce the impact on small businesses but concluded that the proposed rule was necessary for consistency with the FAR, for compliance with the HITECH Act and HHS policy, and to ensure the information security and integrity of HHS information and information systems.

## IV. Comments on the Economic Impacts of the Rule

HHS has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. HHS will consider comments from small entities concerning the affected HHSAR parts, to include 339 and 352 that pertains to IT. Interested parties should cite 5 U.S.C. 601, *et seq.* and reference 0991–AC35—HHS Acquisition Regulation: Acquisition of Information Technology; Standards for Health Information Technology (HHSAR Case 2023–001), in comments on the certification or the IRFA presented in this proposed rule.

*A. Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 (URMA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. In 2023, that threshold is approximately $177 million. HHS has determined that this proposed rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the analytical requirements of UMRA do not apply.

## List of Subjects in 48 CFR Parts 339 and 352

Government procurement.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

For the reasons set out in the preamble, HHS proposes to amend 48 CFR parts 339 and 352 as follows:

## PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for part 339 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

■ 2. Subpart 339.70 is added to read as follows:

## Subpart 339.70—Standards for Health Information Technology



### 339.7000 Scope of Subpart

(a) This subpart implements and aligns requirements related to the procurement of health information technology (health IT) with standards and implementation specifications (standards) adopted by the Office of the National Coordinator for Health Information Technology (ONC) under section 3004 of the Public Health Service Act (PHSA), consistent with sections 13111 and 13112 of the HITECH Act (Pub. L. 111–5) and HHS policy to advance health IT alignment.

(b) This subpart provides policies and procedures for solicitations and contracts that involve implementing, acquiring, or upgrading health IT used—

(1) For the direct exchange of individually identifiable health information between agencies and with non-Federal entities; or

(2) By health care providers, health plans, or health insurance issuers.

### 339.7001 Definitions

As used in this subpart—

*Health information technology (health IT)* means hardware, software, integrated technologies or related licenses, intellectual property, upgrades, or packaged solutions sold as services that are designed for or support the use by health care entities or patients for the electronic creation, maintenance, access, or exchange of health information. (42 U.S.C. 300jj(5))

*Individually identifiable health information* means any information, including demographic information collected from an individual, that—

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) Identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (42 U.S.C. 300jj(8), 1320d(6))

*ONC Health Information Technology Certification Program* means the voluntary certification program administered by ONC using a third-party conformity assessment program for health IT. Certification criteria for the Program are found in 45 CFR part 170, subpart C, and incorporate standards and implementation specifications in 45 CFR part 170 subpart B.

### 339.7002 Policy—Standards for Health Information Technology

(a) Pursuant to the HITECH Act, Public Law 111–5, title XIII, sections 13111 and 13112, and HHS policy, health IT procured by or on behalf of HHS entities, or procured through HHS contracts with health care providers, health plans, or health insurance issuers that involve implementing, acquiring, or upgrading health IT, shall meet standards and implementation specifications adopted in 45 CFR part 170, subpart B, if applicable.

(b) Contracting officers shall not award a contract unless the offeror/quoter/contractor agrees, by submission of an offer (or a quote) and execution of the contract, that—

(1) For any work performed under the contract that involves implementing, acquiring, or upgrading health IT procured by or on behalf of HHS entities used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities unless the offeror/quoter/contractor shall utilize health IT that—

(i) Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support work performed under the contract; or

(ii) Is certified under the ONC Health Information Technology Certification Program, if certified technology can support work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the contractor is—

(A) An eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act; or

(B) Implementing, acquiring, or upgrading technology to be used by an

eligible professional in an ambulatory setting, or hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act.

(2) If the contractor is a health care provider, health plan, or health insurance issuer, or, to perform the contract, is establishing an agreement with a health care provider, health plan, or health insurance issuer, for any work performed under the contract that involves implementing, acquiring, or upgrading health IT, the offeror/quoter/contractor shall utilize health IT that—

(i) Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support work performed under the contract; or

(ii) Is certified under the ONC Health Information Technology Certification Program, if certified technology can support work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the contractor is—

(A) An eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act; or

(B) Implementing, acquiring, or upgrading technology to be used by an eligible professional in an ambulatory setting, or hospital, eligible under sections 4101, 4102, and 4201 of the HITECH Act.

(c) If standards and implementation specifications adopted in 45 CFR part 170, subpart B, cannot support the work as specified in the contract, the offeror/quoter/contractor is encouraged to use health IT that meets non-proprietary standards and implementation specifications developed by consensus-based standards development organizations. This may include standards identified in the ONC Interoperability Standards Advisory, available at *https://www.healthit.gov/isa/.*

**339.7003 Contract Clause**

The contracting officer shall insert the clause at 352.239–70, Standards for Health Information Technology, in solicitations and contracts issued by or on behalf of HHS entities that—

(a) Involve implementing, acquiring, or upgrading health IT used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities; or

(b) Are with health care providers, health plans, or health insurance issuers that, under the solicitation or contract, would be implementing, acquiring, or upgrading health IT.

## PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority for part 352 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; 42 U.S.C. 2003; and 48 CFR 1.301 through 1.304.

### Subpart 352.2—Text of Provisions and Clauses

■ 4. The heading for subpart 352.2 is revised to read as set forth above.

■ 5. Section 352.239–70 is added to read as follows:

**352.239–70 Standards for Health Information Technology**

As prescribed in 339.7003, insert the following clause:

**Standards for Health Information Technology**

**(Date)**

(a) *Definitions.* As used in this clause—

*Health information technology (health IT)* means hardware, software, integrated technologies or related licenses, intellectual property, upgrades, or packaged solutions sold as services that are designed for or support the use by health care entities or patients for the electronic creation, maintenance, access, or exchange of health information. (42 U.S.C. 300jj(5))

*Individually identifiable health information* means any information, including demographic information collected from an individual, that—

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) Identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (42 U.S.C. 300jj(8), 1320d(6))

*ONC Health Information Technology Certification Program* means the voluntary certification program administered by the HHS Office of the National Coordinator for Health Information Technology (ONC) using a third-party conformity assessment program for health IT. Certification criteria for the Program are found in 45 CFR part 170, subpart C, and incorporate standards and implementation specifications in 45 CFR part 170, subpart B.

(b) Pursuant to the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Public Law 111–5, title XIII, sections 13111 and 13112, and HHS policy, by submission of an offer (or a quote) and execution of a contract, the offeror/quoter/Contractor agrees that—

(1) For any work performed under the contract that involves implementing, acquiring, or upgrading health IT procured by or on behalf of HHS entities used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, the offeror/quoter/Contractor shall utilize health IT that—

(i) Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support the work performed under the contract; or

(ii) Is certified under the ONC Health Information Technology Certification Program, if certified technology can support the work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the Contractor is—

(A) An eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act; or

(B) Implementing, acquiring, or upgrading technology to be used by an eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act.

(2) If the Contractor is a health care provider, health plan, or health insurance issuer, or, to perform the contract, is establishing an agreement with a health care provider, health plan, or health insurance issuer, for any work performed under the contract that involves implementing, acquiring, or upgrading health IT, the offeror/quoter/Contractor shall utilize health IT that—

(i) Meets standards and implementation specifications adopted in 45 CFR part 170, subpart B, if such standards and implementation specifications can support the work performed under the contract; or

(ii) Is certified under the ONC Health Information Technology Certification Program, if certified technology can support the work performed under the contract (see certification criteria in 45 CFR part 170, subpart C), when the Contractor is—

(A) An eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act; or

(B) Implementing, acquiring, or upgrading technology to be used by an

eligible professional in an ambulatory setting, or a hospital, eligible under sections 4101, 4102 and 4201 of the HITECH Act.

(c) If standards and implementation specifications adopted in 45 CFR part 170, subpart B, cannot support the work as specified in the contract, the Contractor is encouraged to use health IT that meets non-proprietary standards and implementation specifications developed by consensus-based standards development organizations. This may include standards identified in the ONC Interoperability Standards Advisory, available at *https://www.healthit.gov/isa/.*

(End of clause)

[FR Doc. 2024–17096 Filed 8–8–24; 8:45 am]

BILLING CODE 4151–19–P

# Notices

Federal Register
Vol. 89, No. 154
Friday, August 9, 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–2021–0049]**

### Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact for Release of Lophodiplosis indentata for Biological Control of Melaleuca quinquenervia (Myrtaceae) in the Contiguous United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that we have prepared a final environmental assessment and finding of no significant impact relative to permitting the release of the insect *Lophodiplosis indentata* for the biological control of *Melaleuca quinquenervia* (Myrtaceae) in the contiguous United States. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert S. Pfannenstiel, Ph.D., Senior Entomologist, Biological Control, Pests, Pathogens and Biocontrol Permitting, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2198; email: *bob.pfannenstiel@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS) is issuing permits for the release of the insect, a fly, *Lophodiplosis indentata* in the contiguous United States for the biological control of *Melaleuca quinquenervia* (Myrtaceae), hereinafter referred to as melaleuca.

Melaleuca, a large tree native to Australia, New Caledonia, and Papua New Guinea, was imported into Florida in the late 19th century. It was planted extensively in Palm Beach, Broward, Collier, and Miami-Dade Counties. Unsuccessful treatment campaigns during the 1970s and 1980s culminated in Federal and State listing of melaleuca as a noxious weed. By the 1990s, melaleuca covered more than 200,000 hectares of wetlands in south Florida. It dramatically disrupted normal water cycles, fire cycles, disturbance recovery cycles, nutrient cycling, light availability, and tree canopy.

Permitting the release of the fly, *Lophodiplosis indentata,* a gall-forming melaleuca specialist that lays eggs on new foliage of the tree, will add to the impact of three previously released biological control agents in reducing severity of melaleuca infestations. When the eggs of *L. indentata* hatch, the emerging larva bore into leaf tissue, instigating the gall (an abnormal growth) to form around them. These galls distort young foliage and result in reduced sapling height.

On December 16, 2021, we published in the **Federal Register** (86 FR 71417, Docket No. APHIS–2021–0049) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the release of *L. indentata* in the contiguous United States for the biological control of melaleuca. Comments on the notice were required to be received on or before January 18, 2022. We received five comments on the EA by that date, as noted on page 6 of the final EA. Four comments were in favor of the environmental release of *L. indentata,* and one comment was neither for nor against it and raised no concerns.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the field release of the fly, *L. indentata,* for biological control of melaleuca in the contiguous United States. Our finding, which is based on the EA, reflects our determination that release of *L. indentata* for the biological control of melaleuca in the contiguous United States will not have a significant impact on the quality of the human environment. Based on this finding, we have issued a permit for the release of *L. indentata* for the biological control of melaleuca in the contiguous United States.

The final EA and FONSI may be viewed on the *Regulations.gov* website (see footnote 1). Copies of the final EA and FONSI are also available for public inspection in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The final EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 29th day of July 2024.

**Michael Watson,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2024–17674 Filed 8–8–24; 8:45 am]

**BILLING CODE 3410–34–P**

[1] To view the notice, supporting documents, and the comments we received, go to *http://www.regulations.gov* and enter APHIS–2021–0049 in the Search field.

## DEPARTMENT OF AGRICULTURE

### U.S. Codex Office

### Codex Alimentarius Commission: Meeting of the Codex Committee on Food Labelling

**AGENCY:** U.S. Codex Office, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The U.S. Codex Office is sponsoring a public meeting on October 9, 2024. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 48th Session of the Codex Committee on Food Labelling (CCFL48) of the Codex Alimentarius

Commission (CAC). CCFL48 will be held in Quebec City, Canada, from October 27–November 1, 2024. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 48th Session of the CCFL and to address items on the agenda.

**DATES:** The public meeting is scheduled for October 9, 2024, from 1–4 p.m. ET.

**ADDRESSES:** The public meeting will take place via Video Teleconference only. Documents related to the 48th Session of the CCFL will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFL&session=48.*

Dr. Douglas Balentine, U.S. Delegate to the 48th Session of the CCFL, invites interested U.S. parties to submit their comments electronically to the following email address: *douglas.balentine@fda.hhs.gov.*

*Registration:* Attendees may register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJItdeGspz4sGTffT2fy17VYU0VHQWyD2eg.* After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 48th Session of the CCFL, contact U.S. Delegate, Dr. Douglas Balentine, Senior Science Advisor, International Nutrition Policy, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5001 Campus Drive (HFS–830), College Park, MD 20740; phone: +1 (240) 672–7292; email: *douglas.balentine@fda.hhs.gov.* For further information about the public meeting, contact the U.S. Codex Office by email at: *uscodex@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Food Labelling (CCFL) are:

(a) to draft provisions on labeling applicable to all foods;

(b) to consider, amend if necessary, and endorse draft specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice and guidelines;

(c) to study specific labeling problems assigned to it by the Commission; and

(d) to study problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The CCFL is hosted by Canada. The United States attends the CCFL as a member country of Codex.

## Issues To Be Discussed at the Public Meeting

The following items from the agenda for the 48th Session of the CCFL will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or its subsidiary bodies
- Matters of interest from FAO and WHO
- Consideration of labeling provisions in draft Codex Standards (endorsement)
- Food allergen labeling
- Revision to the *General Standard for the Labelling of Pre-packaged Foods* (CXS 1–1985): Provisions relevant to allergen labeling
- Guidelines on the use of precautionary allergen labeling
- Guidelines on the provision of food information for pre-packaged foods to be offered via e-commerce
- Guidelines on the use of technology to provide food information in food labeling
- Amendments to the *General Standard for the Labelling of Pre-packaged Foods* (CXS 1–1985): Provisions relevant to joint presentation and multipack formats
- Discussion Papers on the following:
  - Labeling of alcoholic beverages
  - Application of food labeling provisions in emergencies
  - Trans fatty acids (TFAs)
  - Sustainability labeling claims
  - Sugar Labeling—definition for ''added sugars''
- Future work and emerging issues
- Approach and criteria for evaluation and prioritization of the work of CCFL
- Other business

## Public Meeting

At the October 9, 2024, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Douglas Balentine, U.S. Delegate to the 48th Session of the CCFL, at *douglas.balentine@fda.hhs.gov.* Written comments should state that they relate to activities of the 48th Session of the CCFL.

## Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

## USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

## How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; Fax: (202) 690–7442; Email: *program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on August 6, 2024.

**Julie A. Chao,**

*Deputy U.S. Manager for Codex Alimentarius.*

[FR Doc. 2024–17772 Filed 8–8–24; 8:45 am]

**BILLING CODE 3420–3F–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–082]**

### Certain Steel Wheels From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain steel wheels (steel wheels) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margin likely to prevail is indicated in the ''Final Results of Sunset Review'' section of this notice.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 24, 2019, Commerce published the AD Order on steel wheels from China.[1] On April 1, 2024, Commerce published the notice of initiation of the first five-year sunset review of the *Order*.[2] On May 24, 2024, Commerce received a timely notice of intent to participate from Accuride Corporation (Accuride) and Maxion Wheels USA LLC (Maxion),[3] domestic interested parties (the petitioners), within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] On May 1, 2024, Commerce received adequate substantive responses from the petitioners within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[5] The petitioners claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act).[6] We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order,* which was due on July 30, 2024. On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[7] The deadline for the preliminary results is now August 6, 2024.

#### Scope of the Order

The scope of the *Order* covers certain on the road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.[8]

#### Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are listed as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

#### Final Results of Sunset Review

Pursuant to sections 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* on steel wheels from China would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail if the *Order* is revoked for steel wheels from China is up to 231.70 percent.

#### Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing the final results of this expedited sunset review in accordance with sections 751(c), 752(c), and 777(i) of the Act, and 19 CFR 351.218.

Dated: August 5, 2024.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

#### Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**



[FR Doc. 2024–17759 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–523–812]**

### Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that Al Jazeera Steel Products Co. SAOG (Al Jazeera) sold subject merchandise at prices below normal value (NV) during the period of review (POR) December 1, 2021, through November 30, 2022. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 9, 2024.

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[1] *See Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 84 FR 24098 (May 24, 2019) (*Order*).

[2] *See Initiation of Five-Year* (*Sunset*) *Reviews,* 89 FR 22373 (April 1, 2024).

[3] Maxion was a previously petitioner under the corporate name Maxion Wheels Akron LLC.

[4] *See* Petitioners' Letter, ''Notice of Intent to Participate in the First Five-Year Review,'' dated April 16, 2024.

[5] *See* Petitioners' Letter, ''Petitioners' Substantive Response to the Notice of Initiation,'' dated May 1, 2024.

[6] *Id.*

[7] See Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[8] *See* Memorandum, ''Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Certain Steel Wheels from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

**FOR FURTHER INFORMATION CONTACT:** Noah Wetzel or Dennis McClure, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7466 or (202) 482–5973, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 1, 2022, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on circular welded carbon-quality steel pipe (CWP) from the Sultanate of Oman (Oman) for the 2021–2022 POR.[1] Pursuant to 19 CFR 351.213(c), Commerce received a request from Al Jazeera to defer the 2021–2022 administrative review with respect to itself for one year.[2] Commerce did not receive any objections to the deferral within 15 days after the end of the December 2022 anniversary month. As such, we deferred the initiation of the administrative review for the 2021–2022 POR with respect to Al Jazeera to the month immediately following the next anniversary month.[3] On February 8, 2024, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published its initiation of an administrative review of the *Order* for the 2021–2022 POR with respect to Al Jazeera.[4] Commerce did not receive a request for review for the 2022–2023 POR. On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[5] The deadline for the preliminary results is now September 9, 2024.

For a complete description of the events that occurred that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

## Scope of the Order

The merchandise subject to the *Order* is CWP from Oman. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the *Order* is dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

## Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice.

## Preliminary Results

We preliminarily determine that the following estimated weighted-average dumping margin exists for the period December 1, 2021, through November 30, 2022:

| Exporter/Producer | Weighted-average dumping margin (percent) |
|---|---|
| Al Jazeera Steel Products Co. SAOG | 0.61 |

## Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed for these preliminary results to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[8] Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[10] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 87 FR 73752 (December 1, 2022); *see also Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders*, 81 FR 91906 (December 19, 2016) (*Order*).

[2] *See* Al Jazeera's Letter, ''Al Jazeera request for administrative review and request for deferral of 2021/22 review,'' dated December 31, 2022.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 7060 (February 2, 2023).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 89 FR 8641 (February 8, 2024).

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* 19 CFR 351.309(c); see also 19 CFR 351.303 (for general filing requirements).

[8] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[9] *See* 19 351.309(c)(2) and (d)(2).

[10] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.[12]

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce intends to determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If Al Jazeera's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific antidumping duty assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[13] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If the weighted-average dumping margin for Al Jazeera is zero or *de minimis,* or an importer specific assessment rate is zero or *de minimis,* we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

For entries of subject merchandise during the POR produced by Al Jazeera for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.[16]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Al Jazeera will be equal to the weighted average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed in the final results of this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 7.36 percent that was established in the less-than-fair-value investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Final Results of the Review**

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: August 5, 2024.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

**Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2024–17748 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] See APO and Service Final Rule.

[12] *See* 19 CFR 351.310(d).

[13] *See* 19 CFR 351.212(b)(1).

[14] See 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See* section 751(a)(2)(C) of the Act.

[17] *See Order,* 81 FR at 91908.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–862]**

# Certain Glass Wine Bottles From Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain glass wine bottles (wine bottles) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2022, through September 30, 2023. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bremer or Maria Teresa Aymerich, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–0499, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 25, 2024.[1] On May 15, 2024, Commerce postponed the preliminary determination of this investigation to July 26, 2024.[2] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[3] The deadline for the preliminary determination is now August 2, 2024.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

## Scope of the Investigation

The products covered by this investigation are wine bottles from Mexico. For a complete description of the scope of this investigation, *see* Appendix I.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences for Glass & Glass S.A. de C.V., JOCOGLASS, and Pavisa Group. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

## Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for Fevisa Industrial S.A. de C.V. (Fevisa), Owens América S. de R.L. de C.V. (Owens América), and the non-individually investigated companies. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

## All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Fevisa and Owens América that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

[1] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 89 FR 4911 (January 25, 2024) (*Initiation Notice*).

[2] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 42426 (May 15, 2024).

[3] See Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Glass Wine Bottles from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice.*

[7] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 28, 2024 (Preliminary Scope Decision Memorandum).

[8] *See* Memorandum, ''All-Others Rate Calculation,'' dated concurrently with this notice (All-Others Rate Calculation Memorandum). With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and*

Continued

**Preliminary Determination**

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter and/or producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Fevisa Industrial S.A. de C.V./Fevisa Comercial S.A. de C.V./Fábrica de Envases de Vidrio S.A. de C.V./Fábrica de Envases de Vidrio del Potosi, S.A. de C.V.[9] | 14.96 |
| Glass & Glass S.A. de C.V. | *96.95 |
| JOCOGLASS | *96.95 |
| Owens América S. de R.L. de C.V | 18.08 |
| Pavisa Group | *96.95 |
| All Others | 15.96 |

* Rate based on adverse facts available.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date

*Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

[9] Commerce preliminarily determines that the following companies are a single entity: Fevisa Industrial S.A. de C.V.; Fevisa Comercial S.A. de C.V.; Fabrica de Envases de Vidrio S.A. de C.V.; and Fabrica de Envases de Vidrio del Potosi, S.A. de C.V. *See* the Preliminary Decision Memorandum.

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule.*

of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On July 24, 2024, pursuant to 19 CFR 351.210(e), Fevisa and Owens América requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[14] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter(s) account(s) for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

**U.S. International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 2, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigation**

The merchandise covered by this investigation is certain narrow neck glass bottles, with a nominal capacity of 740 milliliters (25.02 ounces) to 760 milliliters (25.70 ounces); a nominal total height between 24.8 centimeters (9.75 inches) to 35.6 centimeters (14 inches); a nominal base diameter between 4.6 centimeters (1.8 inches) to 11.4 centimeters (4.5 inches); and a mouth with an outer diameter of between 25 millimeters (.98 inches) to 37.9 millimeters (1.5 inches); frequently referred to as a ''wine bottle.'' In scope merchandise may include but is not limited to the following shapes: Bordeaux (also known as ''Claret''), Burgundy, Hock, Champagne, Sparkling, Port, Provence, or Alsace (also known as ''Germanic''). In scope glass bottles generally have an approximately round base and have shapes including but not limited to, straight-sided, a tapered slope from shoulder (*i.e.,* the sloping part of the bottle between the neck and the body) to base, or a long neck with sloping shoulders to a wider base. The scope includes glass bottles, whether or not clear, whether or not colored, with or without a punt (*i.e.,* an indentation on the underside of the bottle), and with or without design or functional enhancements (including, but not limited to, embossing, labeling, or etching). In scope merchandise is made of non-''free blown'' glass, *i.e.,* in scope merchandise is produced with the use of a mold and is distinguished by mold seams, joint marks, or parting lines. In scope merchandise is unfilled and may be imported with or without a closure, including a cork, stelvin (screw cap), crown cap, or wire cage and cork closure.

Excluded from the scope of this investigation are: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; and (2) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure, including but not limited to a cork, stelvin (screw cap), crown cap, or wire cage and cork closure).

Glass bottles subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7010.90.5019. The HTSUS subheading is provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

## Appendix II

**List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2024–17755 Filed 8–8–24; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See* Fevisa's Letter, ''Request for Postponement of Final Determination,'' dated July 24, 2024; and Owens América's Letter, ''Glass Wine Bottles from Mexico—Owens América, S. de R.L. de C.V.'s Request to Extend the Final Determination,'' dated July 24, 2024.

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–570–083]**

## Certain Steel Wheels From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain steel wheels (steel wheels) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailing subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 24, 2019, Commerce published in the **Federal Register** the

CVD order on Steel Wheels from China.[1] On April 1, 2024, Commerce initiated the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On April 16, 2024, Commerce received timely filed notices of intent to participate from Accuride and Maxion [3] (the petitioners) within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] The petitioners claimed interested party status under section 771(9)(C) of the Act as a producer and importer of the domestic like product.

On May 1, 2024, Commerce received an adequate substantive response to the *Initiation Notice* from the petitioners within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] We received no substantive responses from any other interested parties, including the Government of China. On May 22, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)–(C), Commerce conducted an expedited (120-day) sunset review of the *Order,* which made the deadline July 30, 2024. On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[7] The deadline for these expedited final results of sunset review is now August 6, 2024.

## Scope of the Order

The scope of the *Order* covers certain on the road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[8]

## Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are listed as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

## Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidy at the rates listed below.

| Exporter/producer | Net subsidy rate (percent) |
|---|---|
| Xiamen Sunrise Wheel Group Co., Ltd | 457.10 |
| Zhejiang Jingu Company Limited | 457.10 |
| All-Others | 457.10 |

## Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

## Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: August 5, 2024.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**



[FR Doc. 2024–17761 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–842]**

### Passenger Vehicle and Light Truck Tires From Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2023

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that passenger vehicle and light truck tires (PVLT) from Thailand were sold in the United States at less than normal value during the period of review (POR) July 1, 2022, through June 30, 2023. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–0981, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 3, 2023, Commerce published in the **Federal Register** a notice of opportunity [1] to request an

[1] *See Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 84 FR 24098 (May 24, 2019) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 89 FR 22373 (April 1, 2024) (*Initiation Notice*).

[3] Maxion was a petitioner under the corporate name Maxion Wheels Akron LLC. (Maxion ceased U.S. production of 22.5″ and 24.5″ wheels in 2020 when it closed its Akron plant.)

[4] *See* Petitioners' Letter, ''Notice of Intent to Participate in the First Five-Year Review, dated April 16, 2024.

[5] *See* Petitioners' Letter, ''Petitioners' Substantive Response to the Notice of Initiation,'' dated May 1, 2024.

[6] *See* Commerce's Letter, ''Sunset Reviews for April 2024,'' dated May 22, 2024.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[8] *See* Memorandum, ''Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Steel Wheels from China,'' dated concurrently with and adopted by this notice (Issues and Decision Memorandum).

[1] *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to*

administrative review of the antidumping duty order on PVLT from Thailand.[2] On September 11, 2023, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of an administrative review of the *Order*.[3] On March 20, 2024, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results until July 30, 2024.[4] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[5] The deadline for the preliminary results is now August 6, 2024.

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] A list of the topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

## Scope of the Order

The products covered by the *Order* are PVLT from Thailand. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

## Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

## Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Requests for review were timely withdrawn for the companies identified in Appendix II. Because the requests for review were timely withdrawn and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding the review with respect to these companies.[7]

## Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Prinx Chengshan Tire (Thailand) Co., Ltd | 4.95 |
| Sumitomo Rubber (Thailand) Co., Ltd | 3.82 |
| **Review-Specific Rate for Non-Examined Companies:** | |
| Bridgestone Company, Ltd | 3.93 |
| Bridgestone Tire Manufacturing (Thailand) Co., Ltd | 3.93 |
| S.R. Tyres Co., Ltd | 3.93 |
| Thai Bridgestone Co., Ltd | 3.93 |
| Vee Tyre & Rubber Co., Ltd | 3.93 |

## Rate for Companies Not Individually Examined

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding rates that are zero, *de minimis* (*i.e.,* less than 0.50 percent), or determined entirely on the basis of facts available.

Where the dumping margin for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

Because Commerce preliminarily calculated weighted-average dumping margins for Prinx Chengshan Tire (Thailand) Co., Ltd. (Prinx) and Sumitomo Rubber (Thailand) Co., Ltd. (SRT) that are not zero or *de minimis,* or based entirely on facts available, we

*Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 42693 (July 3, 2023).

[2] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand,* 86 FR 38011 (July 19, 2021) (*Order*).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322 (September 11, 2023).

[4] *See* Memorandum, ''Passenger Vehicle and Light Truck Tires from Thailand: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2022–2023,'' dated March 20, 2024.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from Thailand; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* Omni's Letter, ''Withdrawal of Request for Administrative Review,'' dated December 11, 2023; *see also* Sentury's Letter, ''Sentury Withdrawal of Request for Antidumping Administrative Review,'' dated December 11, 2023; *see also* Deestone's Letter, ''Withdrawal of Request for Administrative Review,'' dated December 11, 2023.

have preliminarily assigned the companies that were not selecting for individual examination, a weighted-average dumping margin equal to the weighted average of the estimated weighted-average dumping margins calculated for Prinx and SRT, weighted by the mandatory respondents' publicly ranged total sales values, consistent with guidance in section 735(c)(5)(A) of the Act.[8]

**Disclosure and Public Comment**

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Commerce will notify interested parties of the deadline for submission of case briefs.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS.[14] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs.[15] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. A hearing request must be filed electronically using ACCESS and received in its entirety by 5:00 p.m. Eastern Time within 30 days after the publication of this notice.

Unless otherwise, extended, commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If Prinx or SRT's weighted-average dumping margins are not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[16] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If Prinx or SRT's weighted-average dumping margins are zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Prinx or SRT for which it did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value investigation if there is no rate for the intermediate company(ies) involved in the transaction.[18]

For companies for which we are rescinding this administrative review (*see* Appendix II) antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period of review, in accordance with 19 CFR 351.212(c)(1)(i). For these companies, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these preliminary results in the **Federal Register**.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the

[8] *See* Memorandum, ''Calculation of the Rate for Non-Examined Companies for the Preliminary Results,'' dated concurrently with this notice.

[9] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

[11] *See* 19 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Procedures.*

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310.

[16] *See* 19 CFR 351.212(b)(1).

[17] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

weighted-average dumping margin established in the final results of this review (except, if that rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), then the cash deposit rate will be zero); (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 17.06 percent, the all-others rate established in the less-than-fair-value investigation.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(2) and 351.221(b)(4).

Dated: August 5, 2024.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

**Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

**Appendix II—Companies Rescinded From Review**

1. Deestone Corporation Ltd./Deestone Corporation Public Company Limited;
2. General Rubber (Thailand) Co., Ltd.;
3. LLIT (Thailand) Co., Ltd.;
4. Maxxis International (Thailand) Co., Ltd.;
5. Otani Radial Company Limited;
6. Sentury Tire (Thailand) Co., Ltd.;
7. Zhongce Rubber (Thailand) Co., Ltd.

[19] *See Order,* 86 FR at 38012.

[FR Doc. 2024–17760 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### State University of New York at Stony Brook University, et al.; Application(s)for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 29, 2024. Address written comments to Statutory Import Programs Staff, Room41006, U.S. Department of Commerce, Washington, DC 20230. Please also email a copy of those comments to *Dianne.Hanshaw@trade.gov.*

*Docket Number:* 24–020. Applicant: State University of New York at Stony Brook University, 100 Nicolls Road, Stony Brook, NY 11794–5230. Instrument: Miniature 2-Photon Microscope System. Manufacturer: Nanjing Transcend Vivoscope Bio-Technology Co., Ltd., China. Intended Use: The instrument is intended to be used for neuroscientists to enable them to study brain activity with unprecedented detail and flexibility. Acquiring a miniature two-photon scope for campus use would significantly advance neuroscience research at Stony Brook. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 20, 2024.

*Docket Number:* 24–021. Applicant: Washington State University, Procurement and Contract Services, French Administration Building 240, P. O. Box 64120, Pullman, WA 99164–1020. *Instrument:* Optical Lens, Polarized Beamsplitter, Broadband Dielectric Mirror, Non-polorizing Beamsplitter, Zero-order half and quarter. Manufacturer: Fuzhou Sunlight Technology, Co., Ltd., People's Republic of China. Intended Use: The instrument is intended to be used to study quantum phenomena, such as: Quantum memory, quantum computing, and quantum networking, and to investigate the quantum properties of such neutral atom array. This device could also be used for educational purposes. For graduate students' education (Physics 800 Doctoral Research) and undergraduate students' educations (Physics 499 Special Projects), students can learn how to operate lasers and MOT system to trap neutral atoms and form atom arrays and design optical layout. These tools will be commonly used in most quantum optics labs. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 16, 2024.

*Docket Number:* 24–022. Applicant: Columbia University, Department of Physics, Pupin Hall, 538 W 120 Street, New York, NY 10027. Instrument: Fiber Laser. Manufacturer: PreciLasers, China. Intended Use: The instrument is intended to be used for the production of an ultracold and trapped gas of Strontium-88 atoms for a $Sr_2$ molecular clock experiment. This molecular clock will be used to perform precise measurements of molecular vibrational energies, enabling the study of physics beyond the standard model. Learning to use lasers is an important part of the training of graduate students pursuing Ph.D.s—through using the lasers; they learn laser physics and practical aspects of operating and maintaining lasers. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 16, 2024.

*Docket Number:* 24–023. Applicant: University of Colorado JILA Department, 3300 Walnut Street, Unit B, JILA Building, Room S/175, Boulder CO 80301. Instrument: Fiber Laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China. Intended Use: The instrument is intended to be used for the JILA eEDM Generation III experiment designed to explore physics beyond the Standard Model by precisely measuring the electron electric dipole moment (eEDM) using a tabletop setup.

The approach involves measuring the eEDM within a molecular ion, which enhances the eEDM effect for better accuracy. The fiber laser we intend to acquire will provide the necessary 300 mW power output for both transitions. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 2, 2024.

*Docket Number:* 24–024. Applicant: Columbia University, Department of Physics, Pupin Hall, 538 W 120th Street, New York, NY 10027. Instrument: Fiber Laser. Manufacturer: PreciLasers, China. Intended Use: The instrument is intended to be used for the production of an ultracold and trapped gas of Strontium-88 atoms for a $SR_2$ molecular clock experiment. This molecular clock will be used to perform precise measurements of molecular vibrational energies, enabling the study of physics beyond the Standard Model. Also, the instrument will be used to make sensitive measurements of the properties of the $SR_2$ molecule in an optical lattice. In particular, looking for evidence of non-Newtonian gravity at Angstrom range, a possible indication of new physics required to explain the nature of dark matter in the universe.

*Justification for Duty-Free Entry:* According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 16, 2024.

*Docket Number:* 24–025. Applicant: Trustees of Boston College, 140 Commonwealth Avenue, Higgins Hall 335, Chestnut Hill, MA 02467. Instrument: Atomic Force Microscope Tip Containing Single Nitrogen Vacancy Centers. Manufacturer: QZabre Limited, Switzerland. Intended Use: The instrument is intended to be used in research projects in quantum information science and quantum materials. The diamond atomic force microscope tip (AFM) tip with single nitrogen vacancy (NV) centers will allow us to obtain the highest spatial resolution imaging of magnetic stray fields and current distributions. The instruments will be conducted by graduate students enrolled in doctoral program at Boston College. This will significantly benefit their training on cutting-edge quantum sensing techniques and allow them to join the US STEM workforce upon graduation. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 11, 2024.

Dated: August 5, 2024.

**Gregory W. Campbell,**

*Director, Subsidies and Economic Analysis, Enforcement and Compliance.*

[FR Doc. 2024–17756 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–469–817, C–469–818]**

### Ripe Olives From Spain: Continuation of Antidumping and Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order and countervailing duty (CVD) order on ripe olives from Spain would likely lead to the continuation or recurrence of dumping and net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

**DATES:** Applicable July 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 1, 2018, Commerce published in the **Federal Register** the AD and CVD orders on ripe olives from Spain.[1] On July 3, 2023, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and net countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.[4]

On July 31, 2024, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

#### Scope of the Orders

The merchandise covered by the *Orders* is ripe olives from Spain. For a complete description of the scope of the *Orders, see* the appendix to this notice.

#### Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and net countervailable subsidy rates, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* is July 31, 2024.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

#### Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to

[1] *See Ripe Olives from Spain: Notice of Antidumping Order,* 83 FR 37465 (August 1, 2018), as corrected in *Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order,* 83 FR 39291 (August 10, 2018); *see also Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 37469 (August 1, 2018) (collectively, *Orders*).

[2] *See Ripe Olives from Spain; Institution of Five-Year Reviews,* 88 FR 42751 (July 3, 2023).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 42688 (July 3, 2023).

[4] *See Ripe Olives from Spain: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 88 FR 75559 (November 3, 2023), and accompanying Issues and Decision Memorandum (IDM); *see also Ripe Olives from Spain: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 88 FR 75554 (November 3, 2023).

[5] *See Ripe Olives from Spain,* 89 FR 61497 (July 31, 2024).

[6] *Id.*

judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

### Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: August 2, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix

### Scope of the Orders

The products covered by the *Orders* are certain processed olives, usually referred to as ''ripe olives.'' The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multilayered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in Spain.

Subject merchandise includes ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (*e.g.,* can, pouch, jar, *etc.*) of any such product—regardless of whether the smallest unit of packaging is included in a larger packaging unit (*e.g.,* display case, *etc.*)—contains a majority (*i.e.,* more than 50 percent) of ripe olives by net drained weight. The scope does not include the non-subject components of such product.

Excluded from the scope are: (1) specialty olives [7] (including ''Spanish-style,'' ''Sicilian-style,'' and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to the *Orders* is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and U.S. Customs purposes, they do not define the scope of the *Orders;* rather, the written description of the subject merchandise is dispositive.

[FR Doc. 2024–17659 Filed 8–8–24; 8:45 am]

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[7] Some of the major types of specialty olives and their curing methods are:

• ''Spanish-style'' green olives: Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.

• ''Sicilian-style'' green olives: Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for four to nine months. These olives may be sold whole unpitted, pitted, or stuffed.

• ''Kalamata'' olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olives is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over four to nine months in a salt brine.

• Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for three months or more.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–337–808]**

## Certain Glass Wine Bottles From Chile: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain glass wine bottles (wine bottles) from Chile are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2022, through September 30, 2023. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Dusten Hom or Joshua Weiner, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–3902, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation in the **Federal Register** on January 25, 2024.[1] On May 15, 2024, Commerce postponed the preliminary determination of this investigation to July 26, 2024.[2] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[3] The deadline for this preliminary determination is now August 2, 2024.

[1] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 89 FR 4911 (January 25, 2024) (*Initiation Notice*).

[2] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 42426 (May 15, 2024).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

**Scope of the Investigation**

The products covered by this investigation are wine bottles from Chile. For a complete description of the scope of this investigation, *see* Appendix I.

**Scope Comments**

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

**Methodology**

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences for Cristalerías Toro SAIC (Cristoro). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

**All-Others Rate**

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Cristoro but calculated estimated weighted-average dumping margins for Cristalerias de Chile S.A. (Cristalchile) and Verallia Chile S.A. (Verallia) that are not zero, *de minimis,* or based entirely on facts otherwise available. Consequently, Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for Cristalchile and Verallia using each company's publicly ranged values for the merchandise under consideration.[8]

**Preliminary Determination**

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Cristalerias de Chile S.A. | 34.46 |
| Cristalerias Toro SAIC | * 173.91 |
| Verallia Chile S.A. | 6.64 |
| All Others | 29.97 |

* Rate based on adverse facts available.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose the calculations performed in this preliminary determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Glass Wine Bottles from Chile,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice,* 89 FR at 4912.

[7] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 28, 2024 (Preliminary Scope Decision Memorandum).

[8] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

issues raised in the case briefs or other written comments.

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify certain information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On July 22, 2024, pursuant to 19 CFR 351.210(e), the U.S. Glass Producers Coalition (the petitioner) [14] and Cristalchile requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15] Verallia also submitted a postponement request on July 24, 2024.[16] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

**U.S. International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 2, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix I—Scope of the Investigation**

The merchandise covered by the investigation is certain narrow neck glass bottles, with a nominal capacity of 740 milliliters (25.02 ounces) to 760 milliliters (25.70 ounces); a nominal total height between 24.8 centimeters (9.75 inches) to 35.6 centimeters (14 inches); a nominal base diameter between 4.6 centimeters (1.8 inches) to 11.4 centimeters (4.5 inches); and a mouth with an outer diameter of between 25 millimeters (.98 inches) to 37.9 millimeters (1.5 inches); frequently referred to as a ''wine bottle.'' In scope merchandise may include but is not limited to the following shapes: Bordeaux (also known as ''Claret''), Burgundy, Hock, Champagne, Sparkling, Port, Provence, or Alsace (also known as ''Germanic''). In scope glass bottles generally have an approximately round base and have shapes including but not limited to, straight-sided, a tapered slope from shoulder (*i.e.,* the sloping part of the bottle between the neck and the body) to base, or a long neck with sloping shoulders to a wider base. The scope includes glass bottles, whether or not clear, whether or not colored, with or without a punt (*i.e.,* an indentation on the underside of the bottle), and with or without design or functional enhancements (including, but not limited to, embossing, labeling, or etching). In scope merchandise is made of non-''free blown'' glass, *i.e.,* in scope merchandise is produced with the use of a mold and is distinguished by mold seams, joint marks, or parting lines. In scope merchandise is unfilled and may be imported

[9] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule.*

[14] The members of the U.S. Glass Producers Coalition are Ardagh Glass Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. *See* Petitioner's Letter, ''Postponement of Final Determination,'' dated July 22, 2024.

[15] *See* Cristalchile's Letter, ''Request to Postpone Final Determination'' dated July 22, 2024.

[16] *See* Verallia's Letter, ''Request for Postponement of Final Determination,'' dated July 24, 2024.

with or without a closure, including a cork, stelvin (screw cap), crown cap, or wire cage and cork closure.

Excluded from the scope of the investigation are: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; and (2) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure, including but not limited to a cork, stelvin (screw cap), crown cap, or wire cage and cork closure).

Glass bottles subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7010.90.5019. The HTSUS subheading is provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

### Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2024–17753 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–893–002, A–487–001, A–546–001, A–475–845, A–565–804, A–455–807, A–856–002, A–583–873]**

### Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan: Antidumping Duty Orders; Correction

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of July 11, 2024, containing the antidumping duty (AD) orders on mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan. This notice incorrectly listed the name of an exporter/producer subject to the AD order on mattresses from Italy as Gruppo Buoninfante Industriale S.P.A. in the section entitled ''Estimated Dumping Margins.''

**FOR FURTHER INFORMATION CONTACT:** Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 11, 2024, Commerce published in the **Federal Register** its AD orders on mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan.[1] In this notice, Commerce incorrectly listed the name of one of the producers/exporters subject to the AD order on mattresses from Italy as Gruppo Buoninfante Industriale S.P.A. in the section entitled ''Estimated Dumping Margins.''

#### Correction

In the **Federal Register** of July 11, 2024, in FR Doc 2024–15261, on page 56853, in the first column, in the section entitled ''Estimated Dumping Margins'' in the table applicable to Italy, correct the name Gruppo Buoninfante Industriale S.P.A. to be Gruppo Industriale Buoninfante S.P.A.

#### Notification to Interested Parties

This notice is issued and published in accordance with section 736(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.211(b).

Dated: August 5, 2024.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2024–17750 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–908]**

### Passenger Vehicle and Light Truck Tires From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminary determines that Hankook Tire & Technology Co. Ltd. (Hankook) and Nexen Tire Corporation (Nexen) made sales of passenger vehicle and light truck tires (passenger tires) from the Republic of Korea (Korea) at prices below normal value (NV) during the period of review (POR), July 1, 2022, through June 30, 2023. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Charles DeFilippo and Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797 and (202) 482–1396, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 19, 2021, Commerce published in the **Federal Register** the antidumping duty order on passenger tires from Korea.[1] On July 3, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On September 11, 2023, based on timely requests for review and in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order*.[3]

On March 22, 2024, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results until July 30, 2024.[4] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[5] The deadline for the preliminary results is now August 6, 2024.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] A list of the

[1] *See Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan: Antidumping Duty Orders,* 89 FR 56851 (July 11, 2024).

[1] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand,* 86 FR 38011 (July 19, 2021) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 42693 (July 3, 2023).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 88 FR 42322 (September 11, 2023).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 22, 2024.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the Republic of Korea; 2022–2023,'' dated concurrently

topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

**Scope of the Order**

The products covered by the *Order* are passenger tires from Korea. The products covered by this *Order* are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.1010, 4011.10.1020, 4011.10.1030, 4011.10.1040, 4011.10.1050, 4011.10.1060, 4011.10.1070, 4011.10.5000, 4011.20.1005, and 4011.20.5010. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.1010, 4011.90.1050, 4011.90.2010, 4011.90.2050, 4011.90.8010, 4011.90.8050, 8708.70.4530, 8708.70.4546, 8708.70.4548, 8708.70.4560, 8708.70.6030, 8708.70.6045, and 8708.70.6060. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

**Rate for Non-Examined Companies**

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review.

Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate on the weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the estimated weighted-average dumping margin for each of the individually examined companies is zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

In this review, the preliminary weighted-average dumping margins for Hankook and Nexen are not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, we have preliminarily assigned to the non-examined company, Kumho Tire Co., Inc., a rate equal to the weighted average of the weighted-average dumping margins calculated for Hankook and Nexen, consistent with the guidance in section 735(c)(5)(A) of the Act.[7]

**Preliminary Results of Review**

As a result of this review, Commerce preliminarily determines that the following weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

| Producer or exporter | Weighted-average dumping margin (percent) |
|---|---|
| Hankook Tire Mfg Co. Ltd | 4.75 |
| Nexen Tire Corporation | 3.63 |
| Kumho Tire Co., Inc | 4.19 |

**Disclosure and Public Comment**

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results under administrative protective order within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs or other written comments to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[8] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[9]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[10] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the

with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] We used publicly ranged U.S. sales values to weight average the weighted-average dumping margins of the mandatory respondents. *See* Memorandum, ''Preliminary Results of the Antidumping Duty Administrative Review of Passenger Vehicles and Light Truck Tires from the Republic of Korea: Rate for Non-Examined Companies,'' dated concurrently with this notice. With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the weighted-average dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for the non-individually-examined respondents. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[8] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[9] *See* 19 351.309(c)(2) and (d)(2).

[10] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[11]

## Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

## Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b). If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[12] If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or an importer-specific assessment rate is zero or *de minimis,* then we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by an individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate (*i.e.,* 21.74 percent) [13] if there is no rate for the intermediate company(ies) involved in the transaction.[14]

For non-individually-examined companies, the assessment rate for antidumping duties will be equal to the weighted-average dumping margin in the final results of review. If the weighted-average dumping margin is zero or *de minimis* in the final results of review, then we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

## Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporters listed above will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* then no cash deposit will be required); (2) for previously reviewed or investigated exporters not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 21.74 percent, the all-others rate established in the less-than-fair value investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

## Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 5, 2024.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2024–17749 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] *See APO and Service Final Rule.*

[12] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[13] *See Order,* 86 FR at 38012.

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order,* 86 FR at 38012.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–162]**

# Certain Glass Wine Bottles From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain glass wine bottles (wine bottles) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2023, through September 30, 2023. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Frank Schmitt, Carolyn Adie, or Jacob Waddell, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880, (202) 482–6250, or (202) 482–1369, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation in the **Federal Register** on January 25, 2024.[1] On May 15, 2024, Commerce postponed the preliminary determination of this investigation to July 26, 2024.[2] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[3] The deadline for the preliminary determination is now August 2, 2024.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

## Scope of the Investigation

The products covered by this investigation are wine bottles from China. For a complete description of the scope of this investigation, *see* Appendix I.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity, which includes Aohui Packaging Products Co., Ltd.; Boliva International Ltd.; Easy Factory Limited; Shandong Dingxin Electronic; Shandong Huapeng Glass Co., Ltd.; Wendeng Wensheng Glass Co., Ltd.; Xuzhou Colors Trading Co Ltd.; Xuzhou Huajing Glass Products Co Ltd.; Xuzhou QLT Glass Co.; Yantai Prime Packaging Co., Ltd.; and Zibo Regal Glass Products Co Ltd. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

## Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of wine bottles from China for the China-wide entity, but that critical circumstances do not exist for Qinhuangdao Ruiquan Glassware Co., Ltd. (Ruiquan), Shandong Changyu Glass Co., Ltd. (Shandong Changyu), and the non-selected companies eligible for a separate rate. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

## Combination Rates

In the *Initiation Notice,*[8] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9]

## Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[1] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 89 FR 4911 (January 25, 2024) (*Initiation Notice*).

[2] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 42426 (May 15, 2024).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Glass Wine Bottles from the Peoples Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice.*

[7] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 28, 2024 (Preliminary Scope Decision Memorandum).

[8] *See Initiation Notice,* 89 FR at 4915.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

| Producer | Exporter | Weighted-average dumping margin (percent) | Cash deposit rate (adjusted for subsidy offsets) (percent) |
|---|---|---|---|
| Guangdong Huaxing Glass Co., Ltd | Qinhuangdao Ruiquan Glassware Co., Ltd | 27.97 | 17.34 |
| Foshan Huaxing Glass Co., Ltd | Qinhuangdao Ruiquan Glassware Co., Ltd | 27.97 | 17.34 |
| Qinhuangdao Fangyuan Packaging Glass Co., Ltd | Qinhuangdao Ruiquan Glassware Co., Ltd | 27.97 | 17.34 |
| Qinhuangdao Suokun Glassware Co., Ltd | Qinhuangdao Ruiquan Glassware Co., Ltd | 27.97 | 17.34 |
| Shandong Changyu Glass Co., Ltd./Yantai Changyu Glass Co., Ltd./Yantai Changyu Glass Printing Co., Ltd[10]. | Shandong Changyu Glass Co., Ltd./Yantai Changyu Glass Co., Ltd./Yantai Changyu Glass Printing Co., Ltd. | 21.77 | 11.14 |
| Chongqing Lanya Glass Co., Limited | Chongqing Jewhui Packaging Co., Ltd | 22.59 | 11.96 |
| Chongqing Hoson Glass Packaging Co., Ltd | Chongqing Hoson Glass Packaging Co., Ltd | 22.59 | 11.96 |
| Xuzhou Huihe International Trade Co., Ltd | Xuzhou Huihe International Trade Co., Ltd | 22.59 | 11.96 |
| Shandong Huapeng Shidao Glass Products Co., Ltd. | Zibo Creative International Trade Co., Ltd | 22.59 | 11.96 |
| Shandong Jingbo Group Co., Ltd | Zibo Creative International Trade Co., Ltd | 22.59 | 11.96 |
| Yantai NBC Glass Packaging Co., Ltd | Zibo Creative International Trade Co., Ltd | 22.59 | 11.96 |
| Shandong Jingbo Group Co., Ltd | Zibo Sunfect International Trade Co., Ltd | 22.59 | 11.96 |
| Yantai NBC Glass Packaging Co., Ltd | Zibo Sunfect International Trade Co., Ltd | 22.59 | 11.96 |
| China-Wide Entity | | *218.15 | 207.52 |

* Rate based on adverse facts available.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which NV exceeds U.S. price, as indicated in the chart above as follows: (1) for the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for any of the producer/exporter combinations identified above, entries of merchandise from the producer/exporter combination will be excluded from the order. Such exclusion will not be applicable to merchandise exported to the United States by any other producer/exporter combinations or by third country exporters that sourced from the excluded producer/exporter combination.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from the producer/exporter combinations identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the ''Preliminary Determination'' section chart of estimated weighted-average dumping margins, above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that

[10] Commerce preliminarily determines that Shandong Changyu Glass Co., Ltd.; Yantai Changyu Glass Co., Ltd.; Yantai Changyu Glass Printing Co., Ltd. comprise a single entity. *See* Preliminary Decision Memorandum.

do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On July 17, and July 18, 2024, pursuant to 19 CFR 351.210(e), Shandong Changyu and Ruiquan requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15] On July 22, 2024, pursuant to 19 CFR 351.210(e), the U.S. Glass Producers Coalition (the petitioner) requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[16] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

**U.S. International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 2, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigation**

The merchandise covered by this investigation is certain narrow neck glass bottles, with a nominal capacity of 740 milliliters (25.02 ounces) to 760 milliliters (25.70 ounces); a nominal total height between 24.8 centimeters (9.75 inches) to 35.6 centimeters (14 inches); a nominal base diameter between 4.6 centimeters (1.8 inches) to 11.4 centimeters (4.5 inches); and a mouth with an outer diameter of between 25 millimeters (.98 inches) to 37.9 millimeters (1.5 inches); frequently referred to as a ''wine bottle.'' In scope merchandise may include but is not limited to the following shapes: Bordeaux (also known as ''Claret''), Burgundy, Hock, Champagne, Sparkling, Port, Provence, or Alsace (also known as ''Germanic''). In scope glass bottles generally have an approximately round base and have shapes including but not limited to, straight-sided, a tapered slope from shoulder (*i.e.,* the sloping part of the bottle between the neck and the body) to base, or a long neck with sloping shoulders to a wider base. The scope includes glass bottles, whether or not clear, whether or not colored, with or

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

[15] *See* Shandong Changyu's Letter, ''Request for Postponement of the Final Determination,'' dated July 17, 2024; *see also* Ruiquan's Letter, ''Request to Extend Final Determination,'' dated July 18, 2024.

[16] The members of the U.S. Glass Producers Coalition are Ardagh Glass Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. *See* Petitioner's Letter, ''Postponement of Final Determination,'' dated July 22, 2024.

without a punt (*i.e.,* an indentation on the underside of the bottle), and with or without design or functional enhancements (including, but not limited to, embossing, labeling, or etching). In scope merchandise is made of non-''free blown'' glass, *i.e.,* in scope merchandise is produced with the use of a mold and is distinguished by mold seams, joint marks, or parting lines. In scope merchandise is unfilled and may be imported with or without a closure, including a cork, stelvin (screw cap), crown cap, or wire cage and cork closure.

Excluded from the scope of this investigation is: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; and (2) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure, including but not limited to a cork, stelvin (screw cap), crown cap, or wire cage and cork closure).

Glass bottles subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7010.90.5019. The HTSUS subheading is provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

## Appendix II

**List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2024–17754 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; U.S. Caribbean Commercial Fishermen Census

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before October 8, 2024.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0716 in the subject line of your comments. All comments received are part of the public record and will generally be posted on *https://www.regulations.gov* without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Dr. Juan J. Agar, Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, 305–361–4218, *Juan.Agar@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This is a request for renewal of an approved information collection. The National Marine Fisheries Service (NMFS) proposes to conduct a census of small-scale fishers operating in the United States (U.S.) Caribbean. This data collection applies Puerto Rico and the U.S. Virgin Islands. The proposed socio-economic study will collect information on demographics, capital investment in fishing gear, equipment and vessels, fishing and marketing practices, economic performance, crew dynamics, and miscellaneous attitudinal questions. The data gathered will be used for the development of amendments to fishery management plans, which require descriptions of the human and economic environment and socio-economic analyses of regulatory proposals. The information collected will also be used to strengthen fishery management decision-making and satisfy various legal mandates under the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.;* MSA), Executive Order 12866, Regulatory Flexibility Act, Endangered Species Act (ESA), and National Environmental Policy Act (NEPA), and other pertinent statues.

### II. Method of Collection

Voluntary, in-person and phone interviews will be used to collect the above-described information.

### III. Data

*OMB Control Number:* 0648–0716.

*Form Number(s):* None.

*Type of Review:* Regular submission [extension of a current information collection].

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,500.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 750 hours.

*Estimated Total Annual Cost to Public:* $0.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* NEPA and MSA.

### 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. 2024–17726 Filed 8–8–24; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Deletions

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

**ACTION:** Proposed deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to delete product(s) 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:* September 8, 2024.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, 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) are proposed for deletion from the Procurement List:

*Product(s)*

NSN(s)—Product Name(s):
7530–01–346–4295—Folder, File, Admin Record, ''COUNSELLING/EVALUATION/REHABILITATION'', Heavy Duty, Kraft Brown, Letter
*Authorized Source of Supply:* LC Industries, Inc., Durham, NC
*Authorized Source of Supply:* CLOVERNOOK CENTER FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
*Contracting Activity:* STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA
NSN(s)—Product Name(s):
8415–00–NIB–1374—Face Covering/Mask, Universally Sized, Olive Green, PG/5
8415–00–NIB–1375—Face Covering/Mask, Universally Sized, Brown, PG/5
8415–00–NIB–1376—Face Covering/Mask, Universally Sized, Tan, PG/5
8415–00–NIB–1378—Face Covering/Mask, Universally Sized, Camo, PG/5
8415–00–NIB–1379—Face Covering/Mask, Universally Sized, Black, PG/5
8415–00–NIB–1380—Face Covering/Mask, Universally Sized, Olive Green, PG/50
8415–00–NIB–1381—Face Covering/Mask, Universally Sized, Brown, PG/50
8415–00–NIB–1382—Face Covering/Mask, Universally Sized, Tan, PG/50
8415–00–NIB–1383—Face Covering/Mask, Universally Sized, Camo, PG/50
8415–00–NIB–1384—Face Covering/Mask, Universally Sized, Black, PG/50
*Authorized Source of Supply:* Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY
*Authorized Source of Supply:* Blind Industries & Services of Maryland, Baltimore, MD
*Authorized Source of Supply:* Alphapointe, Kansas City, MO
*Authorized Source of Supply:* INDUSTRIES OF THE BLIND, INC, Greensboro, NC
*Authorized Source of Supply:* Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
*Contracting Activity:* COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED, ARLINGTON, VA

**Michael R. Jurkowski,**

*Director, Business Operations.*

[FR Doc. 2024–17732 Filed 8–8–24; 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 service(s) from the Procurement List previously furnished by such agencies.

**DATES:** *Date added to and deleted from the Procurement List:* September 8, 2024.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, 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:**

### Additions

On 5/10/2024, 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 40473). The Committee determined that the service listed below is suitable for procurement by the Federal Government and has added this service to the Procurement List as a mandatory purchase for contracting activity listed. In accordance with 41 CFR 51–5.3(b), the mandatory purchase requirement is limited to the contracting activity at location listed, and in accordance with 41 CFR 51–5.2, the Committee has authorized the nonprofit agency listed 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 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:* Custodial and Related Services
*Mandatory for:* US Air Force, Maxwell AFB (including Gunter Annex and Vigilant Warrior Training Site), Montgomery, AL
*Authorized Source of Supply:* Global Connections to Employment, Inc., Pensacola, FL
*Contracting Activity:* DEPT OF THE AIR FORCE, FA3300 42 CONS CC

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the U.S. Air Force Custodial Service, Maxwell Air Force Base, Montgomery, AL contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the U.S. Air Force will refer its business elsewhere, this addition must be effective on 8/25/2024, ensuring timely execution for a 9/1/2024 start date while still allowing 16 days for comment. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on 5/10/2024 and did not receive any comments from any interested persons. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

**Deletions**

On 7/5/2024 (89 FR 55590), 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 service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the 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) deleted from the Procurement List.

**End of Certification**

Accordingly, the following service(s) are deleted from the Procurement List

*Service(s)*

*Service Type:* Janitorial/Custodial
*Mandatory for:* BLM, Billings Dispatch Center, Billings, MT, 1299 Rimtop Drive, Billings, MT
*Mandatory for:* BLM, Fire Cache Office Facilities, Billings, MT, 551 Northview Drive, Billings, MT
*Authorized Source of Supply:* Community Option Resource Enterprises, Inc. (COR Enterprises), Billings, MT
*Contracting Activity:* BUREAU OF LAND MANAGEMENT, MT–MONTANA STATE OFFICE

*Service Type:* Document Destruction
*Mandatory for:* NARA, Denver Federal Record Center (Rocky Mtn Reg): Building 48, 6th and Kipling, Denver, CO
*Authorized Source of Supply:* Bayaud Enterprises, Inc., Denver, CO
*Contracting Activity:* NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, NARA FACILITIES

*Service Type:* Courier Service
*Mandatory for:* Department of Veterans Affairs, Michael E. DeBakey VA Medical Center, Houston, TX, 2002 Holcombe Boulevard, Houston, TX
*Contracting Activity:* VETERANS AFFAIRS, DEPARTMENT OF, 256–NETWORK CONTRACT OFC 16(00256)

*Service Type:* Grounds Maintenance
*Mandatory for:* Federal Aviation Administration, Norfolk Air Traffic Control Tower, Virginia Beach, VA and Patrick Henry Field Air Traffic Control Tower, Newport News, VA, 1245 Miller Store Road, Virginia Beach, VA
*Authorized Source of Supply:* Portco, Inc., Portsmouth, VA
*Contracting Activity:* FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

**Michael R. Jurkowski,**

*Director, Business Operations.*

[FR Doc. 2024–17731 Filed 8–8–24; 8:45 am]

**BILLING CODE 6353–01–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Meetings

**AGENCY:** Election Assistance Commission.

**ACTION:** Sunshine Act notice; notice of public meeting agenda.

**SUMMARY:** Public Meeting: U.S. Election Assistance Commission.

**DATES:** August 28, 1:00 p.m. EST.

**ADDRESSES:** The Election Assistance Commission hearing room at 633 3rd St. NW, Washington, DC 20001. The meeting is open to the public and will be live streamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

**FOR FURTHER INFORMATION CONTACT:** Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will hold a public meeting on ''Closing the Accessibility Gap: Voting in 2024 and Beyond.''

*Agenda:* The EAC will host a public meeting to discuss progress made on serving voters with disabilities and new advances in technology, best practices, and funding opportunities to support accessibility efforts. The agenda includes panel discussions with representatives from the EAC, election administrators, and subject matter experts. Panelists will give remarks and respond to questions from the EAC Commissioners.

The full agenda will be posted in advance on the events page of the EAC website: *https://www.eac.gov/events/2024/08/28/closing-accessibility-gap-voting-2024-and-beyond.*

*Background:* Through the Help America Vote Act of 2002 (HAVA), the EAC is tasked with maintaining a clearinghouse of election administration information. HAVA also ensures there is at least one accessible voting machine per polling place and created additional rights related to ballot casting for voters with disabilities. To fulfill this mission, the EAC provides best practices recommendations, training materials, and other resources for election officials. By enhancing the agency's work with voters with disabilities and the election officials who serve them, the EAC aims to improve accessibility and ensure an independent and private vote for all.

*Status:* This meeting will be open to the public.

**Camden Kelliher,**

*Acting General Counsel, U.S. Election Assistance Commission.*

[FR Doc. 2024–17851 Filed 8–7–24; 11:15 am]

**BILLING CODE 4810–71–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC24–91–000.
*Applicants:* Tenaska Virginia Partners, L.P.
*Description:* Amendment to 06/21/2024 Application for Authorization Under Section 203 of the Federal Power Act of Tenaska Virginia Partners, L.P.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5168.
*Comment Date:* 5 p.m. ET 8/12/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–310–007; ER10–2414–021; ER11–113–017; ER11–4694–013; ER12–1680–014; ER17–2084–007; ER20–967–005; ER21–44–007; ER22–937–004; ER22–938–004; ER23–618–003; ER23–1829–002; ER24–1687–001.
*Applicants:* Carvers Creek LLC, Shady Oaks Wind 2, LLC, Sandy Ridge Wind 2, LLC, New Market Solar ProjectCo 2, LLC, New Market Solar ProjectCo 1, LLC, Altavista Solar, LLC, Great Bay Solar II, LLC, Great Bay Solar 1, LLC, Minonk Wind, LLC, GSG 6, LLC, Sandy Ridge Wind, LLC, Old Trail Wind Farm, LLC, Algonquin Energy Services Inc.
*Description:* Notice of Non-Material Change in Status of Algonquin Energy Services Inc., et al.
*Filed Date:* 7/31/24.
*Accession Number:* 20240731–5270.
*Comment Date:* 5 p.m. ET 8/21/24.
*Docket Numbers:* ER10–1852–096; ER11–4462–094; ER10–1951–070; ER17–838–068; ER18–807–013; ER20–2380–009; ER23–853–002; ER23–854–003; ER23–884–003; ER24–817–002.
*Applicants:* Babbitt Ranch Energy Center, LLC, Sonoran Solar Energy, LLC, Storey Energy Center, LLC, Saint Energy Storage II, LLC, Saint Solar, LLC, Pinal Central Energy Center, LLC, NextEra Energy Marketing, LLC, NextEra Energy Services Massachusetts, LLC, NEPM II, LLC, Florida Power & Light Company.
*Description:* Notice of Change in Status of Florida Power & Light Company, et al.
*Filed Date:* 7/30/24.
*Accession Number:* 20240730–5209.
*Comment Date:* 5 p.m. ET 8/20/24.
*Docket Numbers:* ER22–2190–003; ER13–1816–023; ER14–1594–008; ER14–1596–008; ER14–1934–009; ER14–1935–009; ER15–1020–007; ER20–242–006; ER20–245–006; ER20–246–006; ER22–2191–003; ER22–2192–003.
*Applicants:* EDPR Scarlet I LLC, EDPR CA Solar Park II LLC, Windhub Solar A, LLC, Sun Streams, LLC, Sunshine Valley Solar, LLC, Rising Tree Wind Farm III LLC, Rising Tree Wind Farm II LLC, Rising Tree Wind Farm LLC, Lone Valley Solar Park II LLC, Lone Valley Solar Park I LLC, Sustaining Power Solutions LLC, EDPR CA Solar Park LLC.
*Description:* Notice of Change in Status of EDPR CA Solar Park LLC et al.
*Filed Date:* 7/30/24.
*Accession Number:* 20240730–5206.
*Comment Date:* 5 p.m. ET 8/20/24.
*Docket Numbers:* ER24–2694–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amended ISA, Service Agreement No. 6812; AE1–146 to be effective 10/2/2024.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5132.
*Comment Date:* 5 p.m. ET 8/23/24.
*Docket Numbers:* ER24–2695–000.
*Applicants:* NSTAR Electric Company.
*Description:* Tariff Amendment: Cancellation—Hingham Municipal Lighting Plant Design and Engineering Agreement to be effective 8/5/2024.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5139.
*Comment Date:* 5 p.m. ET 8/23/24.
*Docket Numbers:* ER24–2696–000.
*Applicants:* Idaho Power Company.
*Description:* § 205(d) Rate Filing: RS 177—Kuna BESS LLC—Procurement Agreement to be effective 10/18/2023.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5154.
*Comment Date:* 5 p.m. ET 8/23/24.
*Docket Numbers:* ER24–2697–000.
*Applicants:* Maple Analytics, LLC.
*Description:* Notice of Cancellation of Market Based Rate Tariff of Maple Analytics, LLC.
*Filed Date:* 7/31/24.
*Accession Number:* 20240731–5272.
*Comment Date:* 5 p.m. ET 8/21/24.
*Docket Numbers:* ER24–2698–000.
*Applicants:* Big Shoulders Storage, LLC.
*Description:* Petition for Limited Waiver of Big Shoulders Storage, LLC.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5170.
*Comment Date:* 5 p.m. ET 8/23/24.
*Docket Numbers:* ER24–2700–000.
*Applicants:* Antelope Valley BESS, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 8/6/2024.
*Filed Date:* 8/5/24.
*Accession Number:* 20240805–5070.
*Comment Date:* 5 p.m. ET 8/26/24.
*Docket Numbers:* ER24–2701–000.
*Applicants:* LRE Energy Services, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 8/6/2024.
*Filed Date:* 8/5/24.
*Accession Number:* 20240805–5072.
*Comment Date:* 5 p.m. ET 8/26/24.
*Docket Numbers:* ER24–2702–000.
*Applicants:* White Wing Ranch North, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 8/6/2024.
*Filed Date:* 8/5/24.
*Accession Number:* 20240805–5076.
*Comment Date:* 5 p.m. ET 8/26/24.
*Docket Numbers:* ER24–2703–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original GIA, Service Agreement No. 7315; AE2–259 to be effective 7/5/2024.
*Filed Date:* 8/5/24.
*Accession Number:* 20240805–5121.
*Comment Date:* 5 p.m. ET 8/26/24.
*Docket Numbers:* ER24–2704–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original NSA, Service Agreement No. 7328; AE2–029 to be effective 10/7/2024.
*Filed Date:* 8/5/24.
*Accession Number:* 20240805–5141.
*Comment Date:* 5 p.m. ET 8/26/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in

Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 5, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17743 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC24–27–000]**

## Commission Information Collection Activities (FERC–516G); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–516G, Electric Rates Schedules and Tariff Filings. There are no changes to the information collection.

**DATES:** Comments on the collection of information are due October 8, 2024.

**ADDRESSES:** You may submit comments (identified by Docket No. IC24–27–000) by any of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at: *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at: *http://www.ferc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–516G, Electric Rates Schedules and Tariff Filings.

*OMB Control No.:* 1902–0295.

*Type of Request:* Three-year renewal of FERC–516G.

*Abstract:* In accordance with section 206 of the Federal Power Act (FPA) [1] and 18 CFR 35.28(g)(10), each Independent System Operator (ISO) and Regional Transmission Organization (RTO) must report:

(1) On a monthly basis, total uplift payments for each transmission zone, broken out by day and uplift category;

(2) On a monthly basis, total uplift payments for each resource; and

(3) On a monthly basis, each operator-initiated commitment, the size of the commitment, transmission zone, commitment reason, and commitment start time.

The Commission has determined that these information collection activities provide for transparency that is necessary for just and reasonable rates.

*Type of Respondents:* ISOs and RTOs.

*Estimate of Annual Burden:* [2] The estimated burden and cost [3] are as follows:

FERC–516G Annual Burden Estimates in Docket No. IC24–27–000

| A. Type of response | B. Number of respondents | C. Annual number of responses per respondent | D. Total number of responses (Column B × Column C) | E. Average burden hours & cost per response | F. Total annual burden hours & cost (Column D × Column E) | G. Cost per respondent (Column F ÷ Column B) |
|---|---|---|---|---|---|---|
| Preparing and Posting of 3 reports on company website each month ..... | 6 | 12 | 72 | 3 hrs.; $300 | 216 hrs.; $21,600 | $ 3,600 |

*Comments:* Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 5, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17745 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 16 U.S.C. 824e.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[3] The Commission staff estimates that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's 2024 annual average of $207,786 (for salary plus benefits), the average hourly cost is $100/hour.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER24–2664–000]**

### Cedar Springs Wind IV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cedar Springs Wind IV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 26, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 5, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17744 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER24–2669–000]**

### CleanChoice Power Solutions, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CleanChoice Power Solutions, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 2, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17658 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP24–506–000]**

## Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 26, 2024, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] for authorization to abandon one injection/withdrawal well, connecting pipeline, and appurtenant facilities located in its Lucas Storage Field in Ashland County, Ohio (Lucas Well 8864 Abandonment Project). Columbia states the project's purpose is to limit integrity risk in alignment with the guidance of the Pipeline and Hazardous Materials Safety Administration Storage Final Rule. Columbia affirms that the Lucas Well 8864 Abandonment Project will have no impact on the Lucas Storage Field's physical parameters, including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity resulting in no abandonment or decrease in service to Columbia's customers. The estimated cost for the project is $634,290, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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Any questions concerning this request should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, by phone at: (832) 320–5477, or by email at: *david_alonzo@tcenergy.com.*

### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 4, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

### Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is October 4, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

### Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is October 4, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for

[1] *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Comments**

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 4, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

**How To File Protests, Interventions, and Comments**

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–506–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–506–000.

*To file via USPS:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*To file via any other method:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300 Houston, Texas 77002–2700, or by email at: *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17741 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER24–2662–000]**

### Duane Arnold Solar II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Duane Arnold Solar II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 26, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *https://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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Dated: August 5, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17740 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No.: AD24–11–000]**

### Notice of Commissioner-Led Technical Conference; Large Loads Co-Located at Generating Facilities

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding. The purpose of this technical conference is to discuss generic issues related to the co-location of large loads at generating facilities. The Commission does not intend to discuss at this technical conference any specific proceeding before the Commission.

The technical conference will be held in Fall 2024. The technical conference will be held in the Commission Meeting Room at Commission headquarters, 888 First Street NE, Washington, DC 20426.

The technical conference will be open to the public. Advance registration is not required, and there is no fee for attendance. A supplemental notice will be issued with the date and time of the technical conference, as well as further details regarding the agenda and any changes in logistics. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The technical conference will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Commission provides technical support for the free webcasts. Please call 202–502–8680 or email *customer@ferc.gov* if you have any questions.

Commission technical conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY) or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact Scotia Bennett at *Scotiana.Bennett@ferc.gov* or 202–502–6237. For legal information, please contact Helen Dyson at *Helen.Dyson@ferc.gov* or 202–502–8856.

Dated: August 2, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17653 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER24–2661–000]**

### Rpower, LLC ; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Rpower, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 2, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17656 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI24–9–000]**

### Brad Hilton; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI24–9–000.

c. *Date Filed:* April 19, 2024.

d. *Applicant:* Brad Hilton.

e. *Name of Project:* Purgatory Hydro Power Project.

f. *Location:* The proposed Purgatory Hydro Power Project would be located near the town of Litchfield, in Kennebec County, Maine.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Brad Hilton; 1669 Hallowell Rd., Litchfield; ME 04350; email: *BradfordHilton@aol.com;* phone: (207) 268–5130.

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, or *Jennifer.Polardino@ferc.gov*.

j. *Deadline for filing comments, protests, and motions to intervene is:* September 3, 2024.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number DI24–9–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed Purgatory Hydro Power Project would consist of: (1) a preexisting dam and earth structure; (2) a 4-foot by 10-foot dock assembly and support pipes; (3) a powerhouse/shed containing three 700-watt turbines for a total installed capacity of approximately 2 kilowatts connected to an 8-inch-polyvinyl chloride turbine system; and (4) appurtenant facilities. The applicant proposes to sell power to Central Maine Power Company.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 2, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17654 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP24–505–000]**

### Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 26, 2024, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Route 56, Owensboro, Kentucky 42301, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Southern Star's blanket certificate issued in Docket No. CP82–479–000, for authorization to abandon approximately seven miles of 16-inch-diameter Line VO and complete certain system modifications in Carter and Garvin Counties, Oklahoma. Southern Star affirms that the proposed abandonment will eliminate integrity risks and maintenance costs on the stagnant line and will not result in termination or reduction of firm transportation service to any of Southern Star's existing customers. The estimated cost for the project is $546,004, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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Any questions concerning this request should be directed to Jennifer Matthews, Manager, Regulatory, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, by phone at (270) 852–4668 or by email to *Jennifer.Matthews@southernstar.com*.

**Public Participation**

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 4, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

**Protests**

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is October 4, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

**Interventions**

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is October 4, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Comments**

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 4, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

**How To File Protests, Interventions, and Comments**

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–505–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–505–000.

*To file via USPS:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*To file via any other method:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Jennifer Matthews, Manager, Regulatory, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, or *Jennifer.Matthews@southernstar.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 5, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17742 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP24–949–000.
*Applicants:* LA Storage, LLC.
*Description:* 4(d) Rate Filing: Filing of Negotiated Rate, Conforming Rate Schedule FT Agrmt to be effective 8/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5155.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–950–000.
*Applicants:* Equitrans, L.P.
*Description:* 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—08/01/2024 to be effective 8/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5165.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–951–000.
*Applicants:* Gulf Run Transmission, LLC.
*Description:* 4(d) Rate Filing: Updates Related to Transporter's Use to be effective 9/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5171.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–952–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree 610670 Aug 5 2024) to be effective 8/5/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5203.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–953–000.
*Applicants:* Gulf South Pipeline Company, LLC.
*Description:* 4(d) Rate Filing: Amendment to Neg Rate Agmt (Aethon III 53154) to be effective 8/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5206.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–954–000.
*Applicants:* Gulf South Pipeline Company, LLC.
*Description:* 4(d) Rate Filing: Amendment to Neg Rate Agmt (Aethon United 52454) (8/1/2024) to be effective 8/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5209.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–955–000.
*Applicants:* Gulf South Pipeline Company, LLC.
*Description:* 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46429 to Spotlight 58414) to be effective 8/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5219.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–956–000.
*Applicants:* MoGas Pipeline LLC.
*Description:* 4(d) Rate Filing: Spire MoGas Pipeline Name Change n Cap Award Filing to be effective 9/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5224.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–957–000.
*Applicants:* Wyoming Interstate Company, L.L.C.
*Description:* 4(d) Rate Filing: Fuel_LU Quarterly Update Filing Eff Sept 2024 to be effective 9/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5226.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–958–000.
*Applicants:* Anthony Forest Products Company, LLC, Resolute El Dorado, Inc.
*Description:* Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Resolute El Dorado Inc., et al.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5250.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–959–000.
*Applicants:* NEXUS Gas Transmission, LLC.
*Description:* 4(d) Rate Filing: Negotiated Rates—Castleton 860576 eff 8–1–24 to be effective 8/1/2024.
*Filed Date:* 8/1/24.
*Accession Number:* 20240801–5256.
*Comment Date:* 5 p.m. ET 8/13/24.

*Docket Numbers:* RP24–960–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* 4(d) Rate Filing: Negotiated Rates—Eversource to Emera Energy eff 8–2–24 to be effective 8/2/2024.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5025.
*Comment Date:* 5 p.m. ET 8/14/24.

*Docket Numbers:* RP24–961–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* 4(d) Rate Filing: Negotiated Rate Agreement Update (AEPCO Aug-Sept 2024) to be effective 8/5/2024.
*Filed Date:* 8/2/24.
*Accession Number:* 20240802–5061.
*Comment Date:* 5 p.m. ET 8/14/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: August 2, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17657 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER24–2663–000]**

### Anticline Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Anticline Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 26, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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Dated: August 5, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17746 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG24–249–000.

*Applicants:* Troutdale Grid, LLC.

*Description:* Troutdale Grid, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5124.

*Comment Date:* 5 p.m. ET 8/23/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1852–095; ER10–1890–027; ER10–1951–069; ER10–1962–027; ER19–1076–012; ER11–2160–027; ER19–1073–011; ER11–4462–093; ER11–4677–028; ER11–4678–027; ER12–199–023; ER12–631–028; ER12–2444–026; ER13–1991–031; ER13–1992–031; ER13–2112–022; ER15–1016–020; ER15–1375–021; ER15–1418–021; ER15–1883–021; ER15–2243–018; ER15–2477–020; ER16–90–020; ER16–91–020; ER16–632–020; ER16–2443–017; ER17–582–019; ER17–583–019; ER17–838–067; ER17–2340–017; ER20–819–014; ER20–820–013; ER20–2695–012; ER21–1580–009; ER21–2294–010; ER21–2304–009; ER22–415–008; ER22–1370–008; ER22–2552–004; ER22–2824–007; ER23–147–004; ER23–148–004; ER23–1208–002; ER23–1541–002; ER23–1542–002; ER23–1543–002; ER24–34–003; ER24–136–003; ER24–359–002; ER24–818–001; ER24–827–001.

*Applicants:* Grace Orchard Energy Center, LLC, Yellow Pine Solar II, LLC, Crow Creek Solar, LLC, Sunlight Storage II, LLC, Proxima Solar, LLC, Desert Peak Energy Storage II, LLC, Desert Peak Energy Storage I, LLC, Desert Peak Energy Center, LLC, North Central Valley Energy Storage, LLC, Resurgence Solar II, LLC, Resurgence Solar I, LLC, Yellow Pine Solar, LLC, Java Solar, LLC, Sunlight Storage, LLC, Arlington Energy Center III, LLC, Arlington Solar, LLC, Arlington Energy Center II, LLC, Sky River Wind, LLC, Mohave County Wind Farm LLC, Blythe Solar IV, LLC, Blythe Solar III, LLC, Golden Hills North Wind, LLC, NextEra Energy Marketing, LLC, Whitney Point Solar, LLC, Westside Solar, LLC, NextEra Blythe Solar Energy Center, LLC, Blythe Solar II, LLC, Blythe Solar 110, LLC, Golden Hills Interconnection, LLC, Golden Hills Wind, LLC, Silver State Solar Power South, LLC, Adelanto Solar, LLC,

Adelanto Solar II, LLC, McCoy Solar, LLC, Shafter Solar, LLC, Genesis Solar, LLC, Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, North Sky River Energy, LLC, Windpower Partners 1993, LLC, Coram California Develop.m.ent, L.P., Vasco Winds, LLC, NextEra Energy Montezuma II Wind, LLC, NEPM II, LLC, Alta Wind VIII, LLC, FPL Energy Montezuma Wind, LLC, Windstar Energy, LLC, High Winds, LLC, NextEra Energy Services Massachusetts, LLC, FPL Energy Green Power Wind, LLC, Florida Power & Light Company.

*Description:* Notice of Change in Status of Adelanto Solar II, LLC et al.

*Filed Date:* 7/30/24.

*Accession Number:* 20240730–5207.

*Comment Date:* 5 p.m. ET 8/20/24.

*Docket Numbers:* ER20–1042–001.

*Applicants:* Nevada Gold Energy LLC.

*Description:* Compliance filing: Nevada Gold Energy Non Material Change in Status to be effective 8/3/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5086.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2248–001.

*Applicants:* Consolidated Edison Company of New York, Inc.

*Description:* Tariff Amendment: WDS tariff 2nd Amendment 8–2–2024 in Docket No. ER24–2248 to be effective 6/11/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5092.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2679–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 205(d) Rate Filing: 3746R2 Tenaska Power Services Co. Attachment AO to be effective 10/1/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5013.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2680–000.

*Applicants:* Chief Keystone Power, LLC.

*Description:* 205(d) Rate Filing: Informational & Ministerial Revisions to Reactive Rate Schedule to be effective 12/31/9998.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5017.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2681–000.

*Applicants:* Chief Conemaugh Power, LLC.

*Description:* 205(d) Rate Filing: Informational & Ministerial Revisions to Reactive Rate Schedule to be effective 12/31/9998.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5021.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2683–000.

*Applicants:* Interstate Power and Light Company.

*Description:* 205(d) Rate Filing: IPL and DAS II SFA to be effective 10/1/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5053.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2684–000.

*Applicants:* Nevada Gold Energy LLC.

*Description:* Compliance filing: Nevada Gas Energy Non-Material Change in Status to be effective 8/3/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5062.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2685–000.

*Applicants:* Atlas Solar, III, LLC.

*Description:* Tariff Amendment: Atlas Solar III Request to Cancel MBR to be effective 8/5/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5065.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2686–000.

*Applicants:* Greenidge Generation LLC.

*Description:* 205(d) Rate Filing: Updated MBR Tariff—Change in Category Status to be effective 10/1/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5066.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2687–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* 205(d) Rate Filing: 2024–08–02 Tariff Clarifications Filing—2024 to be effective 8/3/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5068.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2688–000.

*Applicants:* Consolidated Edison Company of New York, Inc.

*Description:* 205(d) Rate Filing: WDS tariff 2nd Amendment 8–2–2024 to be effective 6/11/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5074.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2689–000.

*Applicants:* Upper Missouri G. & T. Electric Cooperative, Inc.

*Description:* 205(d) Rate Filing: UMPC Exhibit A Revision to WPC to be effective 9/1/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5079.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2690–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing: Compliance Filing to be effective 12/31/9998.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5089.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2691–000.

*Applicants:* Tucson Electric Power Company.

*Description:* 205(d) Rate Filing: Service Agreement No. 548, Large Interconnection Agreement to be effective 7/17/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5096.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2692–000.

*Applicants:* Interstate Power and Light Company.

*Description:* 205(d) Rate Filing: IPL Depreciation Filing 2024 to be effective 10/1/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5099.

*Comment Date:* 5 p.m. ET 8/23/24.

*Docket Numbers:* ER24–2693–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* 205(d) Rate Filing: Original GIA, Service Agreement No. 7319; AF1–129 to be effective 7/3/2024.

*Filed Date:* 8/2/24.

*Accession Number:* 20240802–5111.

*Comment Date:* 5 p.m. ET 8/23/24.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF11–511–000.

*Applicants:* Carleton College.

*Description:* Refund Report of Carleton College.

*Filed Date:* 7/31/24.

*Accession Number:* 20240731–5268.

*Comment Date:* 5 p.m. ET 8/21/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful

public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: August 2, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–17655 Filed 8–8–24; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2024–0159; FRL–11684–06–OCSPP]**

## Certain New Chemicals or Significant New Uses; Statements of Findings for June 2024

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

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from June 1, 2024, to June 30, 2024.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0159, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667 email address: *edelstein.rebecca@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. Does this action apply to me?*

This action provides information that is directed to the public in general.

*B. What action is the Agency taking?*

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

*C. What is the Agency's authority for taking this action?*

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

*D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

### II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- P–22–0182, Poly(ethylene terephthalate)-co-poly(propyl trimethylol alkanoate); polymer exemption flag (Generic Name).
- P–24–0131, Alkanoic acid, 2-alkylalkyl ester (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely.*

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: August 6, 2024.

**Shari Z. Barash,**

*Director, New Chemicals Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2024–17724 Filed 8–8–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL OP–OFA–138]**

### 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 29, 2024 10 a.m. EST Through August 5, 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. 20240140, Draft, USAF, AZ,* Regional Special Use Airspace Optimization to Support Air Force Missions in Arizona, Comment Period Ends: 10/09/2024, Contact: Grace Keesling 210–925–4534.

*EIS No. 20240141, Draft, GSA, WA,* Lynden and Sumas LPOE Modernization and Expansion Projects, Comment Period Ends: 09/23/2024, Contact: Pat Manning 253–931–7183.

*EIS No. 20240143, Final, BLM, ND,* North Dakota Resource Management Plan Revision, Review Period Ends: 09/09/2024, Contact: Kristine Braun 701–690–8799.

*EIS No. 20240144, Final, BLM, NM,* Rio Puerco Field Office Resource Management Plan, Review Period Ends: 09/09/2024, Contact: Adam Lujan 505–761–8734.

*EIS No. 20240145, Final, USFS, MT,* Stillwater Mining Company, East Boulder Mine Amendment 004 Expansion EIS, Review Period Ends: 09/10/2024, Contact: Robert Grosvenor 406–848–7375.

*EIS No. 20240146, Draft, BLM, WY,* Dry Creek Trona Mine Project, Comment Period Ends: 09/23/2024, Contact: Kelly Lamborn 307–828–4505.

Dated: August 5, 2024.

**Nancy Abrams,**

*Associate Director, Office of Federal Activities.*

[FR Doc. 2024–17716 Filed 8–8–24; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP089523XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before September 3, 2024 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

**ADDRESSES:** Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter AP089523XX under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and AP089523XX on any attached document.

**SUPPLEMENTARY INFORMATION:**

*Reference:* AP089523XX

*Purpose and Use:*

Brief description of the purpose of the transaction: The generation of power through the recovery of waste heat via the conversion of the existing Kirkuk simple cycle power plant to a combined cycle power plant.

Brief non-proprietary description of the anticipated use of the items being exported: Provide power via waste heat recovery to increase the availability and reliability of power for the Iraqi people. Once completed, the combined cycle power plant will increase the production of power by 285 MW or 50% and increase plant fuel efficiency by 17%. Because of the increased production of electricity, the project will result in a 31.2% reduction in greenhouse gas emissions per MWh of electricity generated.

*Parties:*

*Principal Supplier:* Stellar Energy Americas, Inc., of Jacksonville, Florida.

*Lender:* J.P. Morgan Chase Bank N.A.-London Branch, London, United Kingdom.

*Obligor:* Ministry of Finance of the Republic of Iraq.

*Guarantor(s):* None.

*Description of Items Being Exported:* Engineering, procurement, construction, design, and training services.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

*Authority:* Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

**Deidre Hodge,**

*Assistant Corporate Secretary.*

[FR Doc. 2024–17747 Filed 8–8–24; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*https://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 201364–001.

*Agreement Name:* Agreement Between the City of Los Angeles, the City of Long Beach, PortCheck, LLC, and Marine Terminal Operators.

*Parties:* APM Terminals Pacific LLC; City of Los Angeles; Everport Terminal Services Inc.; International Transportation Service, Inc.; LBCT LLC; LONG BEACH, PORT OF; Pacific Maritime Services, L.L.C.; SSA Terminals (Pier A), LLC; SSA Terminals, LLC; Total Terminals

International, LLC; TraPac LLC; West Basin Container Terminal LLC; Yusen Terminals LLC.

*Synopsis:* The amendment extends the duration of the Agreement, revises the compensation provisions accordingly, and expands the truck-related data to be provided to the ports. The parties have requested expedited review. The parties have requested expedited review.

*Proposed Effective Date:* 09/16/2024.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/47525.*

Dated: August 6, 2024.

**Alanna Beck,**

*Federal Register Alternate Liaison Officer.*

[FR Doc. 2024–17769 Filed 8–8–24; 8:45 am]

**BILLING CODE 6730–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the extension without change of the information collection project ''Nursing Home Survey on Patient Safety Culture Database,'' OMB No. 0935–0195.

**DATES:** Comments on this notice must be received by October 8, 2024.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *REPORTSCLEARANCEOFFICER@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *REPORTSCLEARANCEOFFICER@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*Nursing Home Survey on Patient Safety Culture Database*

In 1999, the Institute of Medicine called for healthcare organizations to develop a safer health system. To respond to the need for tools to assess patient safety culture in healthcare, AHRQ developed and pilot tested the Surveys on Patient Safety Culture® (SOPS®) Nursing Home Survey with OMB approval (OMB No. 0935–0132). The survey is designed to enable nursing homes to assess provider and staff perspectives about patient safety issues, medical error, and error reporting. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in November 2008 on the AHRQ website.

The AHRQ SOPS Nursing Home Database consists of data from the AHRQ Nursing Home Survey on Patient Safety Culture and may include reportable, non-required supplemental items. Nursing homes in the U.S. can voluntarily submit data from the survey to AHRQ through its contractor, Westat. The SOPS Nursing Home Database was developed by AHRQ in 2011 in response to requests from nursing homes interested in viewing their organizations' patient safety culture survey results. Organizations submitting data receive a feedback report, as well as a report on the aggregated, de-identified findings of the other nursing homes submitting data. These reports are used to assist nursing home staff in their efforts to improve patient safety culture in their organizations.

Rationale for the information collection. The SOPS Nursing Home Survey and SOPS Nursing Home Database support AHRQ's goals of promoting improvements in the quality and safety of healthcare in nursing home settings. The survey, toolkit materials, and database results are all made publicly available on AHRQ's website. Technical assistance is provided by AHRQ through its contractor at no charge to nursing homes, to facilitate the use of these materials for nursing home patient safety and quality improvement.

*This research has the following goals:*

- Present results from nursing homes that voluntarily submit their data,
- Provide data to nursing homes to facilitate internal assessment and learning in the patient safety improvement process, and
- Provide supplemental information to help nursing homes identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and database development. 42 U.S.C 299a(a)(1), (2), and (8).

**Method of Collection**

To achieve the goal of this project the following activities and data collections will be implemented:

(1) Eligibility and Registration Form—The nursing home (or parent organization) point-of-contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the nursing home and initiate the registration process.

(2) Nursing Home Site Information—The purpose of the site information form, completed by the nursing home POC, is to collect background characteristics of the nursing home. This information will be used to analyze data collected with the SOPS Nursing Home Survey.

(3) Data Use Agreement—The purpose of the data use agreement, completed by the nursing home POC, is to state how data submitted by nursing homes will be used and provides confidentiality assurances.

(4) Data File(s) Submission—POCs upload their data file(s) using the data file specifications, to ensure that users submit their data in a standardized way (*e.g.,* variable names, order, coding, formatting). The number of submissions to the database is likely to vary from submission period to submission period because nursing homes do not administer the survey and submit data every database year. Data submission is typically handled by one POC who is either a corporate level healthcare manager for a Quality Improvement Organization (QIO), a survey vendor who contracts with a nursing home to collect their data, or a nursing home Director of Nursing or nurse manager. POCs submit data on behalf of 1 nursing home, on average, because many nursing homes are part of a QIO or larger nursing home or health system that includes many nursing home sites, or the POC is a vendor that is submitting data for multiple nursing homes.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 50 POCs, each representing an average of 1 individual nursing home each, will complete the database submission steps and forms. Each POC will submit the following:

1. Eligibility and registration form (completion is estimated to take about 3 minutes).

2. Data Use Agreement (completion is estimated to take about 3 minutes).

3. Nursing Home Site Information Form (completion is estimated to take about 5 minutes).

4. Survey data submission will take an average of one hour.

The total annual burden hours are estimated to be 61 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $3,853 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents/ POCs | Number of responses per POC | Hours per response | Total burden hours |
|---|---|---|---|---|
| 1. Eligibility/Registration Form | 50 | 1 | 3/60 | 3 |
| 2. Data Use Agreement | 50 | 1 | 3/60 | 3 |
| 3. Nursing Home Site Information Form | 50 | 1 | 5/60 | 5 |
| 4. Data Files Submission | 50 | 1 | 1 | 50 |
| Total | NA | NA | NA | 61 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|
| 1. Eligibility/Registration Forms | 3 | $64.64 | $194 |
| 2. Data Use Agreement | 3 | 64.64 | 194 |
| 3. Nursing Home Site Information Form | 5 | 64.64 | 233 |
| 4. Data Files Submission | 50 | 64.64 | 3,232 |
| Total | 61 | NA | 3,853 |

* Mean hourly wage rate of $64.64 for Medical and Health Services Managers (SOC code 11–9111) was obtained from the May 2023 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 623000—Nursing and Residential Care Facilities located at *https://www.bls.gov/oes/current/naics3_623000.htm.*

**Request for Comments**

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

**Mamatha Pancholi,**

*Deputy Director.*

[FR Doc. 2024–17737 Filed 8–8–24; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–24–24BJ]**

### 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 ''CDC–RFA–DP–23–0002 Healthy Schools Program Evaluation'' 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 December 11, 2023 to obtain comments from the public and affected agencies. CDC received three 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**

CDC–RFA–DP–23–0002 Healthy Schools Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The proposed project aims to evaluate processes and outcomes of the programs of 20 state entities funded by CDC's Division of Adolescent and School Health to improve health, academic achievement, and well-being of students in K–12 schools nationwide. CDC awarded funds through cooperative agreement DP23–0002 (2302 Program) to 20 funding recipients (states, universities, and a tribal nation) to improve health, academic achievement, and well-being of students in K–12 schools. A portion of the funding within each state is allocated to one priority local education agency (LEA) and its corresponding schools to support the implementation of policies, practices, and programs to increase physical activity, healthy dietary behaviors, and management of chronic health conditions among students. CDC is conducting a mixed-methods multi-level evaluation of the 2302 Program and associated outcomes. Evaluation findings will allow CDC to help recipients improve their programs as they progress over the five-year funding period. A CDC evaluation contractor will collect information from relevant funded recipients, priority LEAs, schools, and students. Program monitoring information will be collected from recipients via a monthly reporting tool. Descriptions of the implementation of the program's two strategies and nine activities will be collected in years two and four via semi-structured, virtual key informant interviews with program leaders among funded recipients and priority LEA school health personnel to understand successes, barriers, and lessons learned. Additionally, two electronic questionnaires will be administered annually, starting in year two of the program. One of the questionnaires is for school-level leaders in participating schools in the 20 priority LEAs focusing on implementation of healthy school policies, practices, and programs. The other questionnaire is for students in elementary, middle, and high schools (Grades 4–12) in the priority LEA's schools focusing on physical activity, dietary behaviors, management of chronic health conditions, and wellbeing and academic attainment. The evaluation results will help recipients improve their programs and aid CDC in understanding and communicating the impact of its funding.

CDC requests OMB approval for an estimated 6,900 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Recipient personnel | Recipient Monthly Reporting 2024, 2025, 2026. | 20 | 12 | 30/60 |
| Recipient personnel | Interviews in 2025, 2027 | 40 | 1 | 60/60 |
| Priority LEA personnel | Interviews in 2025, 2027 | 40 | 1 | 60/60 |
| School personnel | Healthy Schools Questionnaire in 2025, 2026, 2027. | 250 | 1 | 30/60 |
| Students | Healthy Students Questionnaire in 2025, 2026, 2027. | 13,150 | 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. 2024–17762 Filed 8–8–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–24–1322]**

### 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 ''Capacity Building Assistance Program Data Management, Monitoring, and Evaluation'' 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 5, 2024, to obtain comments from the public and affected agencies. CDC received no public 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**

Capacity Building Assistance Program Data Management, Monitoring, and Evaluation (OMB Control No. 0920–1322, Exp. 2/29/2024)—Reinstatement—National Center for HIV, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The Centers for Disease Control and Prevention (CDC) partners with the national HIV prevention workforce to: (1) ensure that persons with HIV (PWH) are aware of their infection and successfully linked to medical care and treatment to achieve viral suppression; and (2) expand access to pre-exposure prophylaxis (PrEP), condoms, and other proven strategies for communities over-represented in the HIV epidemic. CDC funds state and local health departments and community-based organizations (CBOs) to optimally plan, integrate, implement, and sustain comprehensive HIV prevention programs and services for communities over-represented in the HIV epidemic, including Blacks/African Americans; Hispanics/Latinos; all races/ethnicities of gay, bisexual, and other men who have sex with men (collectively referred to as MSM); people who inject drugs (PWID); and transgender persons.

Through the CDC cooperative agreement program entitled CDC–RFA–PS19–1904: Capacity Building Assistance (CBA) for High Impact HIV Prevention Program Integration, the CDC Division of HIV Prevention (DHP) funds the CBA Provider Network (CPN) to deliver CBA to CDC-funded health departments and CBOs. CBA provided by the CPN include trainings and technical assistance (TA) that enable the HIV prevention workforce to optimally plan, implement, integrate, and sustain high-impact prevention interventions and strategies to reduce HIV infections and HIV related morbidity, mortality, and health disparities across the United States and its territories.

This information collection evaluates CDC–RFA–PS19–1904. Specifically, the CDC is requesting the Office of Management and Budget (OMB) to grant a three-year Extension to collect data through the use of four web-based instruments that will be administered to recipients of CBA services and their program managers: (1) Learning Group Registration (LGR); (2) Post-Training Evaluation (PTE); (3) Post-Technical Assistance Evaluation (PTAE); and (4) Training and Technical Assistance Follow-up Survey (TTAFS).

CBA training participants will complete the Learning Group Registration Form as part of the process for enrolling in a CBA training. The Learning Group Registration Form collects demographic information about training participants including: (1) business contact information (*e.g.,* email and telephone number); (2) primary [employment] functional role; (3) employment setting; and (4) programmatic and population areas of focus. After an online or in-person training event is completed, training participants are invited to complete the PTE. The PTE is designed to elicit information from training participants about their satisfaction with the training delivery method and course content. Similar to the PTE, the PTAE consists of questions designed to elicit information from TA participants about their satisfaction with aspects of TA such as the relevance of the materials provided or created, responsiveness of the TA provider, TA participants' changes in knowledge or skills as a result of the TA, and barriers and facilitators to implementation of interventions/public health strategies. The TTAFS collects organizational-level data every six months from the program managers within CDC-funded programs. Program managers provide information about the implementation status of the intervention/public health strategy for which their staff received training and/or TA. Program managers are also asked to describe how their organization applied the training and TA (*e.g.,* planning or adapting an intervention/public health strategy).

The Learning Group Registration Form, PTE, and PTAE will be administered to CDC-funded program staff who participate in a training or TA event offered by a CBA provider funded under PS19–1904. The TTAFS will be administered to the program managers of state and local health department staff and CBO staff who participate in a CBA training or TA event. Respondents will provide information electronically through an online survey. The option to complete surveys via a telephone interview will be offered to respondents who do not complete the online survey within seven days. The number of respondents is calculated based on an average of the number of health professionals, including doctors, nurses, health educators, and disease intervention specialists, trained by CBA providers during the years 2016–2022. CDC estimates 3,800 health professionals will provide one response for the LGR; 3,800 health professionals will provide a response for the PTE for each training episode; 3,650 health professionals will provide a response for the PTAE for each TA episode; and 189 program managers will provide two responses to the TTAFS in the web-based or telephone survey per year. CDC requests OMB approval for an estimated 1,671 annualized burden hours. There are no other costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| | | | | |
|---|---|---|---|---|
| Healthcare Professionals | Learning Group Registration | 3,800 | 1 | 5/60 |
| Healthcare Professionals | Post-Training Evaluation | 3,800 | 2 | 5/60 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| | | | | |
|---|---|---|---|---|
| Healthcare Professionals | Post-Technical Assistance Evaluation | 3,650 | 2 | 5/60 |
| Program Managers | Training and TA Follow-up Survey | 139 | 2 | 18/60 |
| Program Managers | Training and TA Telephone Script | 50 | 2 | 18/60 |

**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. 2024–17763 Filed 8–8–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–24–1348]**

### 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 ''The National Firefighter Registry for Cancer'' 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 March 22, 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**

National Firefighter Registry for Cancer (OMB Control No. 0920–1348, Exp. 9/30/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

In order to accurately monitor trends in cancer incidence and evaluate control measures among the U.S. fire service, Congress passed the Firefighter Cancer Registry Act of 2018. Under this legislation, CDC/NIOSH was directed to create a registry of U.S. firefighters for the purpose of monitoring cancer incidence and risk factors among the current U.S. fire service. Funding of the project was authorized through this legislation for five years as of fiscal year 2019.

According the Firefighter Cancer Registry Act of 2018, the main goal of the National Firefighter Registry for Cancer (NFR) is ''to develop and maintain . . . a voluntary registry of firefighters to collect relevant health and occupational information of such firefighters for purposes of determining cancer incidence.'' Results from the NFR will provide information for decision makers within the fire service and medical or public health community to devise and implement policies and procedures to lessen cancer risk and/or improve early detection of cancer among firefighters. NIOSH seeks a three-year renewal. The below table outlines the estimated time burden for participants enrolling in the NFR. There are three corresponding documents to be completed as part of the enrollment process: the Informed Consent, User Profile, and Enrollment Questionnaire. Select fire departments may have an additional Records Request. The estimated time burden for the Informed Consent and User Profile are five minutes each. There is an estimated 20 minute burden for the Enrollment Questionnaire, and 16 hours for the Records Request (applicable to an estimated 34 firefighters). CDC requests OMB approval for a total estimated annual burden of 44,987 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) |
|---|---|---|---|---|
| U.S. Firefighters | Informed Consent | 66,666 | 1 | 5/60 |
| U.S. Firefighters | NFR User Profile (web-portal registration) | 66,666 | 1 | 5/60 |
| U.S. Firefighters | NFR Enrollment Questionnaire | 66,666 | 1 | 30/60 |
| U.S. Firefighters | Records request | 34 | 1 | 960/60 |

**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. 2024–17736 Filed 8–8–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–24–1061; Docket No. CDC–2024–0059]**

### 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Behavioral Risk Factor Surveillance System (BRFSS). BRFSS is an annual state-based health survey that produces information on health risk behaviors, health conditions, and preventive health practices that are associated with chronic diseases, infectious diseases, and injury.

**DATES:** CDC must receive written comments on or before October 8, 2024.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2024–0059 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**

Behavioral Risk Factor Surveillance System (BRFSS) (OMB Control No. 0920–1061, Exp. 12/31/2024)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

CDC is requesting OMB approval to revise the information collection for the Behavioral Risk Factor Surveillance System (BRFSS) for the period of 2025–2027. The BRFSS is a nationwide system of cross-sectional surveys using random digit dialed (RDD) samples administered by health departments in states, territories, and the District of Columbia (collectively referred to here as states) in collaboration with the CDC. Traditionally, subject recruitment and interviews have been conducted by telephone. In 2025–2027, the BRFSS will expand the option to allow participants to voluntarily complete online surveys, after telephone recruitment. The BRFSS produces state-level information primarily on health risk behaviors, health conditions, and preventive health practices that are associated with chronic diseases, infectious diseases, and injury. Designed to meet the data needs of individual states and territories, the CDC sponsors the BRFSS information collection project under a cooperative agreement with states and territories. Under this partnership, BRFSS state coordinators determine questionnaire content with technical and methodological assistance provided by CDC.

For most states and territories, the BRFSS provides the only sources of data amenable to state and local level health and health risk indicator uses. Over time, it has also developed into an important data collection system that federal agencies rely on for state and local health information and to track national health objectives such as Healthy People. CDC bases the BRFSS questionnaire on modular design principles to accommodate a variety of state-specific needs within a common framework. All participating states are required to administer a standardized core questionnaire, which provides a set of shared health indicators for all BRFSS partners. The BRFSS core questionnaire consists of fixed core, rotating core, and emerging core questions. Fixed core questions are asked every year. Rotating core questions cycle on and off the core questionnaire in two- or three-year cycles, depending on the question. Emerging core questions are included in the core questionnaire as needed to collect data on urgent or emerging health topics such as infectious disease. In addition, the BRFSS includes a series of optional modules on a variety of topics. In off years, when the rotating questions are not included in the core questionnaire, they are offered to states as optional modules. This framework allows each state to produce a customized BRFSS survey by appending selected optional modules to the core

survey. States may select which, if any, optional modules to administer. As needed, CDC provides technical and methodological assistance to state BRFSS coordinators in the construction of their state-specific surveys. Each state administers its BRFSS questionnaire throughout the calendar year.

CDC periodically updates the BRFSS core survey and optional modules. The purpose of this Revision request is to add the following topics to the questionnaires: COVID vaccination, impact of the COVID pandemic, periodontal disease, additional questions on heart attack and stroke, disaster/pandemic preparedness, veterans' health, and the use of newly available tobacco products. In addition, this request seeks approval for reinstating topics which have been included in BRFSS in the past, dependent upon state interest and funding.

Participation in BRFSS is voluntary, and there is no cost to participate. The average time burden per response will be 22 minutes. OMB approval is requested for three years. The total time burden requested is for 274,632 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| U.S. General Population | Landline Screener | 173,000 | 1 | 1/60 | 2,883 |
| | Cell Phone Screener | 694,000 | 1 | 1/60 | 11,567 |
| | Field Test Screener | 900 | 1 | 1/60 | 15 |
| Annual Survey Respondents (Adults >18 Years). | BRFSS Core Survey by Phone Interview. | 480,000 | 1 | 15/60 | 120,000 |
| | BRFSS Optional Modules by Phone Interview. | 440,000 | 1 | 15/60 | 110,000 |
| | BRFSS Core Survey by Online Survey. | 100,000 | 1 | 10/60 | 16,667 |
| | BRFSS Optional Modules by Online Survey. | 80,000 | 1 | 10/60 | 13,333 |
| Field Test Respondents (Adults >18 Years). | Field Test Survey by Phone Interview. | 500 | 1 | 20/60 | 167 |
| Total | | | | | 274,632 |

**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. 2024–17766 Filed 8–8–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–24–0792; Docket No. CDC–2024–0058]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled the Environmental Health Specialists Network (EHS-Net) Program. The goal of this food safety research program is to collect data in retail food establishments that will identify and address environmental factors associated with retail-related foodborne illness and outbreaks.

**DATES:** CDC must receive written comments on or before October 8, 2024.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2024–0058 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**

Environmental Health Specialists Network (EHS-Net) Program (OMB Control No. 0920–0792, Exp. 1/31/2025)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), is requesting a three-year Paperwork Reduction Act (PRA) approval for a Revision of this Generic Clearance for data collections to support research focused on identifying and addressing environmental factors associated with foodborne illness outbreaks and other food safety issues. These data are essential to environmental public health regulators' efforts to respond more effectively to and prevent future outbreaks and food safety-associated events.

An estimated 47.8 million foodborne illnesses occur annually in the United States, resulting in 127,839 hospitalizations, and 3,037 deaths annually. These figures indicate that foodborne illness is a significant problem in the U.S. Reducing foodborne illness requires identification and understanding of the environmental factors that cause these illnesses—CDC needs to know how and why food becomes contaminated with foodborne illness pathogens. This information can then be used to determine effective food safety prevention methods. Ultimately, these actions can lead to increased regulatory program effectiveness and decreased foodborne illness. The purpose of this food safety research program is to identify and understand environmental factors associated with foodborne illness and outbreaks. This program is conducted by the Environmental Health Specialists Network (EHS-Net), a collaborative project of CDC, FDA, USDA, and local and state sites.

Environmental factors associated with foodborne illness include both food safety practices (*e.g.,* inadequate cleaning practices) and the factors in the environment associated with those practices (*e.g.,* worker and retail food establishment characteristics). To understand these factors, we need to collect data from those who prepare food (*i.e.,* food workers) and on the environments in which the food is prepared (*i.e.,* retail food establishment kitchens). Thus, data collection methods for this generic package include: (1) manager and worker interviews/information collection instruments; and (2) observation of kitchen environments. Both methods allow data collection on food safety practices and environmental factors associated with those practices.

To date, EHS-Net has conducted six studies under this generic clearance. The data from these studies have been disseminated to environmental public health/food safety regulatory programs and the food industry in the form of presentations at conferences and meetings, scientific journal publications, and website postings. Data from these studies have been presented in thirteen articles in peer-reviewed scientific journals, in multiple presentations at national food safety conferences, and on CDC's website.

The current package is a Revision of the previous PRA clearance from 2021. This package includes the potential for sites to offer incentives to participants in EHS-Net data collection activities. This will not result in an increased cost to the federal government because the cost of incentives is included in the existing EHS-Net cooperative agreement. CDC requests OMB approval for an estimated 844 annual burden hours. There is no change in the estimated annualized burden hours from the previous PRA clearance and 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) | Total burden (in hours) |
|---|---|---|---|---|---|
| Retail managers | Manager Telephone Recruiting Script. | 889 | 1 | 3/60 | 44 |
| | Manager Interview/Assessment | 400 | 1 | 30/60 | 200 |
| | Observation | 400 | 1 | 30/60 | 200 |
| Retail food workers | Worker Recruiting/Informed Consent Script. | 2,000 | 1 | 2/60 | 67 |
| | Worker Interview/Assessment | 2,000 | 1 | 10/60 | 333 |
| Total | | | | | 844 |

**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. 2024–17765 Filed 8–8–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–24–24HD; Docket No. CDC–2024–0054]**

### 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 Adverse Health Outcomes Associated with Medical Tourism Surveillance System. This information collection project will help CDC detect outbreaks and trends in cases to identify prevention measures and improve awareness of risks associated with medical tourism.

**DATES:** CDC must receive written comments on or before October 8, 2024.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2024–0054 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**

Adverse Health Outcomes Associated with Medical Tourism Surveillance System—New—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Millions of Americans travel abroad each year to get medical care. This practice of medical tourism is increasing, with even some U.S.-based health insurance companies sending patients abroad for medical care. Medical tourism has been associated with a variety of adverse health outcomes including serious infection, importation of antibiotic-resistant pathogens to the United States, and death. Outbreaks among medical tourists can be difficult to identify for many reasons. Complications from treatment(s) and procedure(s) obtained abroad are underreported by U.S. healthcare facilities. Jurisdictions throughout the United States have varying policies on reporting medical tourism-related adverse health events to CDC that can lead to underreporting from some jurisdictions. Infections acquired from health care abroad may not be locally or nationally reportable. Currently, there is no national surveillance system or mechanism for states to link cases between jurisdictions for medical tourism-related adverse health outcomes. This makes it difficult to identify patients with exposures linked to the same clinic or provider abroad since they will be returning to different parts of the United States.

Collaboration with state and local health departments is essential to detect outbreaks, and as a federal entity, CDC can fulfill this role. The information collected through this surveillance system will help CDC detect outbreaks and trends in cases to identify prevention measures and improve awareness of risks associated with medical tourism. State and local health departments will conduct surveys and send them electronically to CDC. Data collected will be stored in an electronic database and will be extracted for further analysis.

CDC requests OMB approval for an estimated 438 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| State/Local Health department staff | Form 1 Medical Tourism Case Intake Form (Part B-Medical Chart Abstraction). | 50 | 15 | 5/60 | 63 |
| Ill persons who have experienced an adverse health outcome related to medical tourism. | Form 1 Medical Tourism Case Intake Form (Part A-Interviews). | 750 | 1 | 10/60 | 125 |
| Ill persons who have experienced an adverse health outcome related to medical tourism. | Form 2 Medical Tourism Enhanced Surveillance Form. | 500 | 1 | 30/60 | 250 |
| Total | | | | | 438 |

**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. 2024–17764 Filed 8–8–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–10147 and CMS–10905]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send 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 October 8, 2024.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. 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: Document Identifier/OMB Control Number: ____, 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/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10147 Medicare Drug Coverage and Your Rights

CMS–10905 Service Level Data Collection for Initial Determinations and Appeals

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

### Information Collections

1. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Medicare Drug Coverage and Your Rights; *Use:* Section 423.562(a)(3) and an associated regulatory provision at § 423.128(b)(7)(iii) require that Part D plan sponsors' network pharmacies provide Part D enrollees with a printed copy of our standardized pharmacy notice ''Medicare Drug Coverage and Your Rights'' (hereafter, ''notice'') if an enrollee's prescription cannot be filled.

The purpose of this notice is to provide enrollees with information about how to contact their Part D plans to request a coverage determination, including a request for an exception to the Part D plan's formulary. The notice reminds enrollees about certain rights

and protections related to their Medicare prescription drug benefits, including the right to receive a written explanation from the drug plan about why a prescription drug is not covered. Through delivery of this standardized notice, a Part D plan sponsor's network pharmacies are in the best position to inform enrollees at point of sale about how to contact their Part D plan if the prescription cannot be filled. *Form Number:* CMS–10147 (OMB control number: 0938–0975); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits, Not for-profits; *Number of Respondents:* 72,900; *Number of Responses:* 55,215,940; *Total Annual Hours:* 919,898. (For policy questions regarding this collection contact Sabrina Edmonston at 410–786–3209 or *Sabrina.edmonston@cms.hhs.gov*).

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Service Level Data Collection for Initial Determinations and Appeals; *Use:* The Part C and D Reporting Requirements, as set forth in §§ 422.516(a) and 423.514(a), provide CMS with the ability to collect more granular data related to all plan activities regarding adjudicating requests for coverage and plan procedures related to making service utilization decisions. This includes collecting more timely data with greater frequency or closer in real-time. The proposed data elements listed in the Technical Specifications document in this proposed PRA would provide key data to CMS on the utilization of benefits, enhance audit activities to ensure plans are operating in accordance with CMS guidelines, and ensure appropriate access to covered services and benefits.

CMS staff will use this information to monitor health plans and to hold them accountable for their performance. CMS users include group managers, division managers, branch managers, account managers, and researchers. Health plans can use this information to measure and benchmark their performance. CMS receives inquiries from the industry and other interested stakeholders about beneficiary access to the items, services, and drugs, including service level data for initial determinations and appeals, and other factors pertaining to use of government funds, as well the performance of MA plans. *Form Number:* CMS–10905 (OMB control number: 0938-New); *Frequency:* Quarterly; *Affected Public:* Private Sector, Business or other for-profits, Not for-profits and Federal Government State, Local; *Number of Respondents:* 728; *Number of Responses:* 2,912; *Total Annual Hours:* 728. (For policy questions regarding this collection contact Sabrina Edmonston at 410–786–3209 or *sabrina.edmonston@cms.hhs.gov*).

**William N. Parham, III,**

*Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2024–17773 Filed 8–8–24; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Child Abuse and Neglect Background Checks for Child Care and Early Education Project (New Collection)

**AGENCY:** Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF) is proposing an information collection activity for the Child Abuse and Neglect Background Checks for Child Care and Early Education (CAN Checks for CCEE) Project. The goal of the project is to better understand how states and territories use findings from CAN registry background checks, as required by the Child Care and Development Block Grant Act of 2014 (CCDBG), to make child care employment eligibility determinations. The study will also be used to understand state and territory variation, facilitators, and challenges in implementing CAN registry background checks; and explore any resulting within- or across-state/territory equity implications.

**DATES:** *Comments due within 30 days of publication. The Office of Management and Budget (*OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* All emailed requests should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The proposed information collections for the CAN Checks for CCEE Project is designed to explore how states and territories implement CAN registry background checks for child care employment eligibility decisions. While the CCDBG Act of 2014 clearly describes procedures and exclusionary criteria pertaining to the use of criminal and sexual offender registry background checks to inform child care employment eligibility decisions, requirements for the use of CAN registry background checks are less clear. The findings will be of interest to ACF, and, in particular, to OPRE and the Office of Child Care, who are interested in the effective and equitable implementation of CAN registry background checks for prospective and current child care staff. Findings will also be of interest to Child Care and Development Fund (CCDF) state/territory lead agencies that oversee the CCDF program in their states/territories and the state/territory offices that oversee early care and education. The results of this study also have implications for child care programs and staff. Further, given the U.S. Congress' interest in prior exploratory work on this topic, it may also be informative to federal lawmakers.

CCDF lead agency staff that participate in this information collection will be asked to complete a voluntary, one-time web-based survey. The survey will focus on the practices and policies related both to in-state/territory and interstate CAN registry checks, including what data they request and receive, as well as how they use it in making child care employment eligibility decisions.

*Respondents:* Each state, territory, and the District of Columbia will be invited to complete one web-based survey. Given that each agency may have multiple staff members with relevant knowledge of different survey topics and no one staff member may possess all of the knowledge to complete the survey, CCDF Lead Agencies may have multiple staff members work together to complete the survey. For burden estimates, we are assuming up to 3 respondents may work on the survey

per state/territory (up to 168 total individuals). Only one survey will be submitted for each state/territory.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents (total over request period) | Number of responses per respondent (total over request period) | Avg. burden per response (in hours) | Total/annual burden (in hours) |
|---|---|---|---|---|
| Instrument 1: CCDF Lead Agency Survey | 168 | 1 | *0.75 | 126 |

*Note that this is the estimated time to complete the full survey, which could be completed by one individual or multiple individuals. Surveys completed by multiple individuals will take less time for each individual to provide a response.

*Authority:* Research funding set-aside authorized by the CCDBG Act of 2014 and funded by CCDF. Section 658O(a)(5) of CCDBG (as codified at 42 U.S.C. 9857 et seq) grants the Secretary of HHS the authority to reserve up to ½ percent of the total Discretionary and Mandatory CCDF funding ''to conduct research and demonstration activities, as well as periodic external, independent evaluations of the impact of the program described by this subchapter on increasing access to child care services and improving the safety and quality of child care services, using scientifically valid research methodologies, and to disseminate the key findings of those evaluations widely and on a timely basis.''

**Mary C. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2024–17723 Filed 8–8–24; 8:45 am]

**BILLING CODE 4184–23–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–D–0342]**

### Bacillus Calmette-Guérin-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drug and Biological Products for Treatment; Revised 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 ''Bacillus Calmette-Guérin-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drug and Biological Products for Treatment.'' The purpose of this guidance is to assist sponsors in the development of drug and biological products for the treatment of patients with bacillus Calmette-Guérin (BCG)-unresponsive nonmuscle invasive bladder cancer (NMIBC). This draft guidance reflects proposed revisions to the final guidance entitled ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment,'' published in February 2018, and incorporates changes based on review experience as well as the evolving landscape of drug development in bladder cancer, as noted by external experts.

**DATES:** Submit either electronic or written comments on the draft guidance by October 8, 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–2018–D–0342 for ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drug and Biological Products 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.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Sundeep Agrawal, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–348–3914; or James Myers, Center of Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm., 7301, Silver Spring, MD 20993, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drug and Biological Products for Treatment.'' The purpose of this guidance is to assist sponsors in the development of drugs and biologics for the treatment of patients with BCG-unresponsive NMIBC. This guidance addresses select statistical and clinical trial design issues specific to BCG-unresponsive NMIBC. These topics are further addressed in the International Council for Harmonisation guidances for industry entitled ''E9 Statistical Principles for Clinical Trials'' (September 1998) and ''E10 Choice of Control Group and Related Issues in Clinical Trials'' (May 2001), respectively.

This draft guidance reflects proposed changes to FDA's guidance entitled ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment,'' published in February 2018, and incorporates FDA's current recommendations based on the Agency's experience as well as the evolving landscape of drug development in this space, as noted by external experts. This guidance, when finalized, will replace the final guidance titled BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment published in February 2018.

Key changes include the following: (1) clarification on use of BCG substrains, (2) considerations for trial design and conduct in the setting of a recent worldwide shortage of BCG, (3) clarification on use of single arm vs. randomized trial designs (with more emphasis on randomized control trials), and (4) clarifications on assessing and reporting responses and assessing endpoints for trials.

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 ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drug and Biological Products 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 parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information pertaining to submission of a biologics license application under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)) have been approved under OMB control number 0910–0718.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 6, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17733 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2018–N–0073; FDA–2023–N–5656; FDA–2024–N–0802; FDA–2023–N–3848; FDA–2023–N–5746]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information

collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

| Title of collection | OMB control No. | Date approval expires |
|---|---|---|
| Irradiation in the Production, Processing and Handling of Food | 0910–0186 | 7/31/2027 |
| State Enforcement Notifications | 0910–0275 | 7/31/2027 |
| Veterinary Feed Directive | 0910–0363 | 7/31/2027 |
| Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring | 0910–0409 | 7/31/2027 |
| Record Retention Requirements for the Soy Protein and Reduced Risk of Coronary Heart Disease Health Claim | 0910–0428 | 7/31/2027 |

Dated: August 5, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17661 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2024–N–2979]**

## Pre-Market Animal Food Ingredient Review Programs; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is soliciting comments from the public regarding the Food Additive Petition and Generally Recognized as Safe (GRAS) Notification programs to determine if changes are needed to promote their efficiency. Specific questions and information requests are included in this notice to help guide input from stakeholders and other members of the public.

**DATES:** Submit either electronic or written comments on the notice by December 9, 2024.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 9, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2024–N–2979 for ''Pre-Market Animal Food Ingredient Review Programs, Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

**FOR FURTHER INFORMATION CONTACT:** Charlotte Conway, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6768, *charlotte.conway@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Food, Drug, and Cosmetic Act (FD&C Act) gives FDA the authority to regulate substances used in animal food. Section 201(s) of the FD&C Act (21 U.S.C. 321(s)) defines a food additive, in part, as any substance whose intended use results or may reasonably be expected to result, directly or indirectly, in it becoming a component or otherwise affecting the characteristics of any food . . . if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety . . . to be safe under the conditions of its intended use. Substances that are ''generally recognized as safe'' (GRAS) [1] for their intended uses in food are not food additives.

Section 409(b) of the FD&C Act (21 U.S.C. 348(b)) and FDA's implementing regulations at title 21 of the Code of Federal Regulations (21 CFR) part 571 describe the animal food additive petition process and the data and information that must be submitted to FDA as part of an animal food additive petition to support premarket approval. In general, to be legally marketed and used, a food additive must be approved, covered by an FDA regulation, and used as described in the FDA regulation. Otherwise, the food additive is considered unsafe under section 409(a)(2) of the FD&C Act, and the food additive and any food that bears or contains it is adulterated under section 402(a)(2)(C)(i) of the FD&C Act. Approved food additives for animal food use are found in 21 CFR parts 573 and 579.

FDA has affirmed certain substances as GRAS for their intended use in animal food and these are listed in 21 CFR parts 582 and 584. Importantly, these lists are not all-inclusive. FDA's Animal Food GRAS Notification Program allows individuals and firms to voluntarily notify FDA that they have concluded that an animal food substance is GRAS under the conditions of its intended use. FDA evaluates the notifier's supporting data and responds to the notifier with a letter stating whether FDA has questions about the notifier's conclusion. If FDA does not have questions, it issues a ''no questions'' letter. A ''no questions'' letter is not a legal determination by FDA that the use of a substance is GRAS. These notices are posted on FDA's website under ''Current Animal Food GRAS Notices Inventory,'' along with FDA's letter to the notifier regarding its evaluation of the notice.[2] FDA encourages any person who intends to market a food substance on the basis of a conclusion of GRAS status to submit a GRAS notice to FDA.

The Association of American Feed Control Officials (AAFCO) is an independent organization with voluntary membership of State and Federal regulatory officials in the United States, as well as officials from government agencies in other countries, that are responsible for the execution of laws and regulations in their jurisdictions pertaining to the production, labeling, distribution, use, or sale of animal food (including ingredients). FDA is a member of AAFCO and provides scientific and technical expertise to the organization.

Since 1920, AAFCO has maintained the AAFCO Official Publication, which contains, among other things, a comprehensive list of animal food ingredients, many of which include definitions established through the AAFCO ingredient definition request process. In 2007, FDA entered into a memorandum of understanding (MOU) with AAFCO that outlines how FDA would provide its scientific and technical expertise to AAFCO in reviewing requested ingredient definitions. This MOU has been renewed and revised several times. The current MOU 225–07–7001 expires on October 1, 2024, and will not be renewed. See *https://www.fda.gov/animal-veterinary/animal-food-feeds/fda-letter-stakeholders-acknowledgment-expiring-fda-aafco-mou.*

Elsewhere in this issue of the **Federal Register**, we are publishing a notice of availability for a draft guidance for industry #293, ''FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients.'' This draft guidance, when finalized, will communicate FDA's current thinking on an enforcement policy regarding certain ingredients listed in chapter six of the 2024 AAFCO OP after the expiration of the Agency's MOU with AAFCO.

Elsewhere in this issue of the **Federal Register**, we also are publishing a notice of availability for a draft guidance on our new Animal Food Ingredient Consultation (AFIC) process to provide an additional way for firms developing animal food ingredients to consult with CVM following the expiration of the MOU with AAFCO while FDA evaluates the Food Additive Petition and GRAS Notification programs to determine if changes are needed to promote their efficiency.

## II. Questions for Consideration

We seek input on the following questions regarding the oversight of animal food ingredients:

1. What do you perceive as barriers and/or benefits to pursuing a Food Additive Petition or GRAS Notification?
2. Are there changes that could make the Food Additive Petition and GRAS Notification programs more feasible, such as regulatory changes, changes to guidance, or changes to FDA policy or processes?
3. Is there information that is currently required to be submitted in a Food Additive Petition or GRAS Notification that you do not think is necessary for evaluating the ingredient?
4. Is there information that is not currently required to be submitted in a Food Additive Petition or GRAS Notification, but should be to better enable FDA's evaluation?
5. What review process for proposed animal food ingredients would best enable FDA to review their safety?
6. If you have submitted a request for an ingredient definition through the AAFCO ingredient definition process, what was your reason for doing so instead of filing a Food Additive Petition or submitting a GRAS Notification with FDA?

Dated: August 6, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17779 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

[1] See 21 CFR part 570, subpart E.

[2] *https://www.fda.gov/food/generally-recognized-safe-gras/gras-notice-inventory.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2024–N–3617]**

### Joint Meeting of the Drug Safety and Risk Management Advisory Committee and the Psychopharmacologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Clozapine Risk Evaluation and Mitigation Strategy

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Drug Safety and Risk Management Advisory Committee and the Psychopharmacologic Drugs Advisory Committee (the Committees). The general function of the Committees is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on November 19, 2024, from 8:30 a.m. to 4:30 p.m. Eastern Time.

**ADDRESSES:** The public may attend the meeting at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. The public will have the option to participate, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–3617. The docket will close on November 18, 2024. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 18, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before November 4, 2024, will be provided to the Committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–N–3617 for ''Joint Meeting of the Drug Safety and Risk Management Advisory Committee and the Psychopharmacologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Clozapine Risk Evaluation and Mitigation Strategy (REMS).'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

**FOR FURTHER INFORMATION CONTACT:** Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, email: *DSaRM@fda.hhs.gov,* 301–796–7973, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The Committees will discuss the reevaluation of the Clozapine Risk Evaluation and Mitigation Strategy (REMS) and possible changes to minimize burden on patients,

pharmacies, and prescribers while maintaining safe use of clozapine.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at the location of the advisory committee meeting and at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting presentations will also be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The online presentation of materials will include slide presentations with audio and video components in a manner that most closely resembles an in-person advisory committee meeting.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committees. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before November 4, 2024, will be provided to the Committees. Oral presentations from the public will be scheduled between approximately 1:20 p.m. and 2:20 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, whether they would like to present online or in-person, and an indication of the approximate time requested to make their presentation on or before October 25, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. Similarly, room for interested persons to participate in-person may be limited. If the number of registrants requesting to speak in-person during the open public hearing is greater than can be reasonably accommodated in the venue for the in-person portion of the advisory committee meeting, FDA may conduct a lottery to determine the speakers who will be invited to participate in-person. The contact person will notify interested persons regarding their request to speak by October 28, 2024. Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform in conjunction with the physical meeting room (see location). This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: August 6, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17752 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2022–D–2827]**

### Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Diseases; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Diseases.'' This guidance is intended to assist sponsors in identifying an optimized dosage(s) for human prescription drugs or biological products for the treatment of oncologic diseases during clinical development prior to submitting an application for approval for a new indication and usage. This guidance does not address selection of the starting dosage for first-in-human trials. In addition, this guidance does not address dosage optimization for radiopharmaceuticals, cellular and gene therapy products, oncolytics, microbiota, or cancer vaccines, nor does it specifically address pediatric drug development. However, some of the principles outlined may be applicable to these therapeutic modalities or to dosage optimization for pediatric patients. This guidance finalizes the draft guidance of the same title ''Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Diseases'' issued on January 23, 2023.

**DATES:** The announcement of the guidance is published in the **Federal Register** on August 9, 2024.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2022–D–2827 for ''Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Diseases.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Mirat Shah, Center for Drug Evaluation and Research (HFD–150), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8547; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7910.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Diseases.'' Dose-finding trials (*i.e.,* trials that include dose-escalation and dose-expansion portions with the primary objective of selecting the recommended phase II dose) for oncology drugs have historically been designed to determine the maximum tolerated dose (MTD). This paradigm was developed for cytotoxic chemotherapies based on their observed steep dose-response relationships, their limited drug target specificity, and the willingness of patients and providers to accept substantial toxicity due to the lack of effective alternatives for this serious, life-threatening disease. Most modern oncology drugs, such as kinase inhibitors and antibodies, are designed to interact with a molecular pathway critical to an oncologic disease(s) (*i.e.,* targeted therapies). These drugs demonstrate different dose-response relationships compared to cytotoxic chemotherapy, such that doses below the MTD may have similar activity to the MTD but with fewer toxicities or the MTD may never be reached.

This guidance finalizes the draft guidance entitled ''Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Disease'' issued on January 23, 2023 (88 FR 2932). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include emphasis on FDA's availability to provide product-specific advice since there is not a one size fits all approach and clarity on the collection and analysis of key pharmacologic data. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Optimizing the Dosage of Human Prescription Drugs and Biological Products for the Treatment of Oncologic Disease.'' 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 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/*

*guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 6, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17771 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2024–D–2978]**

### Animal Food Ingredient Consultation; 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 draft guidance for industry #294 entitled ''Animal Food Ingredient Consultation (AFIC).'' This draft guidance describes FDA's interim AFIC process and explains one way FDA intends to work with firms that are developing animal food ingredients after the Memorandum of Understanding (MOU) with the Association of American Feed Control Officials (AAFCO) expires on October 1, 2024, and while FDA evaluates the animal Food Additive Petition and generally recognized as safe (GRAS) Notification programs. The new AFIC process will provide an additional way for engagement with FDA regarding ingredients for which firms may otherwise have used the AAFCO ingredient definition process. AFIC will help FDA identify any potential safety concerns associated with such ingredients. The AFIC process will also allow for public awareness of and input on such ingredients. In addition, this draft guidance describes FDA's enforcement policy for certain ingredients assessed using the AFIC process.

**DATES:** Submit either electronic or written comments on the draft guidance by September 9, 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–2978 for ''Animal Food Ingredient Consultation (AFIC).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Conway, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6768, *Charlotte.Conway@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of draft guidance for industry #294 entitled ''Animal Food Ingredient Consultation (AFIC).'' This draft guidance describes FDA's interim AFIC process and explains one way FDA intends to work with firms that are developing animal

food ingredients after the MOU with AAFCO expires on October 1, 2024, and while FDA evaluates the animal Food Additive Petition and GRAS Notification programs. In addition, this draft guidance describes FDA's enforcement policy for certain ingredients reviewed using the AFIC process.

The Food, Drug, and Cosmetic Act (FD&C Act) gives FDA the authority to regulate substances used in animal food, including substances that are food additives and substances that are GRAS for their intended uses in food.[1]

Since 1920, AAFCO has maintained the AAFCO Official Publication (OP), which contains, among other things, a comprehensive list of animal food ingredients, including FDA-approved food additives, substances that are GRAS for one or more intended uses, and animal food ingredient definitions established through the AAFCO Ingredient Definition Request Process. In 2007, FDA entered into an MOU, 225–07–7001, with AAFCO that outlines how FDA would provide its scientific and technical expertise to AAFCO in reviewing requested ingredient definitions requested by industry or AAFCO. This MOU has been renewed and revised several times. The current MOU 225–07–7001 expires in October 2024 and will not be renewed. See *https://www.fda.gov/animal-veterinary/animal-food-feeds/fda-letter-stakeholders-acknowledgment-expiring-fda-aafco-mou.*

Following the expiration of the MOU, FDA plans to evaluate its animal Food Additive Petition and GRAS Notification programs to determine if changes are needed to promote the efficient development and review of new animal food ingredients.

We are issuing this draft guidance to announce the creation of the AFIC process to provide an additional way for engagement with FDA regarding animal food ingredients following the expiration of the MOU with AAFCO and during this interim evaluation period. AFIC will provide a process that will help FDA be aware of new ingredients that are marketed in interstate commerce and any potential safety concerns associated with such ingredients. AFIC will serve to provide a baseline of safety information available about such an ingredient, making it easier to compare developments that might occur during marketing. AFIC also will give FDA an opportunity to discuss any potential safety concerns with the developer, ideally before the ingredient is marketed.

AFIC also will allow for public awareness of and input on ingredients for which FDA is providing consultation. Our goal is to support innovation in animal food technologies while maintaining as our priority the production of safe animal food.

FDA generally does not intend to initiate enforcement action with respect to the food additive approval requirements of the FD&C Act for an ingredient, or animal food containing such ingredient, if such an ingredient has been reviewed and is the subject of a ''consultation complete'' letter under the AFIC process, and is used in accordance with the ''consultation complete'' letter, as long as there continues to be no questions or concerns about the safety of the ingredient.

Elsewhere in this issue of the **Federal Register**, we are publishing a notice of availability for a draft guidance #293, ''FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients.'' This draft guidance communicates FDA's enforcement policy regarding certain ingredients listed in chapter 6 of the 2024 AAFCO OP (or recommended by FDA for inclusion in the AAFCO OP) after the expiration of the Agency's MOU with AAFCO.

Elsewhere in this issue of the **Federal Register**, we also are publishing a notice seeking stakeholder input regarding our current Food Additive Petition and GRAS Notification review processes for animal food ingredients. Additionally, we intend to hold listening sessions and will later provide scheduling information for those listening sessions.

This level 1 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 ''Animal Food Ingredient Consultation (AFIC).'' 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

FDA tentatively concludes that this draft guidance contains no collection of information subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), as at this time we believe that fewer than 10 persons will avail themselves of this process in any given year. The draft guidance does refer to previously approved FDA collections of information. The collections of information in 21 CFR 570 have been approved under 0910–0342; the collections of information in 21 CFR 571 have been approved under 0910–0546.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 6, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–17778 Filed 8–8–24; 8:45 am]

**BILLING CODE 4164–01–P**

[1] See 21 CFR part 570, subpart E.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Notice of Supplemental Award; Infant-Toddler Court Program—National Resource Center

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice of supplemental award.

**SUMMARY:** HRSA is providing up to $1,750,000 in supplemental award funds in federal fiscal year (FY) 2024 to the current recipient of the Infant-Toddler Court Program (ITCP)—National Resource Center (NRC) award, to expand activities to help lead nationwide improvements to child welfare and early childhood systems.

**FOR FURTHER INFORMATION CONTACT:** Kateryna Zoubak, Early Childhood Systems Analyst, Division of Home Visiting and Early Childhood Systems, Maternal and Child Health Bureau, HRSA, at *ezoubak@hrsa.gov* or 240–475–8014.

**SUPPLEMENTARY INFORMATION:**

*Intended Recipient of the Award:* ZERO TO THREE National Center for Infant, Toddler and Families, Inc.

*Amount of Non-Competitive Award(s):* One award of up to $1,750,000.

*Project Period:* September 30, 2022, to September 29, 2027.

*Assistance Listing (CFDA) Number:* 93.110.

*Award Instrument:* Non-competitive supplemental funding to the existing Cooperative Agreement.

*Authority:* 42 U.S.C. 701(a)(2) (title V, sec. 501(a)(2) of the Social Security Act)

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

| Grant number | Award recipient name | City, state | Award amount |
|---|---|---|---|
| U2DMC32394 ..... | ZERO TO THREE National Center for Infant, Toddler and Families, Inc. ..... | Washington, DC .... | Up to $1,750,000. |

*Justification:* The FY 2023 and 2024 appropriations for Maternal and Child Health Block Grant Special Projects of Regional and National Significance increased funding for the ITCP, compared to the FY 2022 enacted level when the most recent new awards were made. A Congressional Report accompanying the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47) indicated the funding would ''continue and expand research-based Infant-Toddler Court Teams to change child welfare practices to improve wellbeing for infants, toddlers, and their families'' (Senate Report 118–84). Consistent with this language, HRSA plans to use this funding to continue work initiated in FY 2023 by the ITCP NRC to expand subawards and technical assistance to ITCP teams and advance reach and impact of the program. Activities included financial and technical support for infant-toddler court sites that previously received funding under announcement number HRSA–18–123, but that do not currently receive HRSA funding under announcement number HRSA–22–073/074.

The planned supplemental award to the ITCP NRC will be used for project activities within the scope of the most recent funding opportunity (HRSA–22–074), to continue and expand current technical assistance, evaluation and evidence-building activities, and implementation support to local ITCP sites. Supplemental funding for similar activities may be considered in future years, subject to the availability of funding for the activity and satisfactory performance.

**Carole Johnson,**

*Administrator.*

[FR Doc. 2024–17663 Filed 8–8–24; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Notice of Supplemental Award; Early Childhood Developmental Health Systems Program

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice of supplemental award.

**SUMMARY:** HRSA is providing supplemental award funds in federal fiscal year (FY) 2024 to the current recipient of the Early Childhood Developmental Health Systems Program (ECDHS) cooperative agreement (HRSA–22–091), to support existing activities relating to early childhood developmental health services.

**FOR FURTHER INFORMATION CONTACT:** Lynlee Tanner Stapleton, Ph.D.; Lead Public Health Analyst, Division of Home Visiting and Early Childhood Systems, Maternal and Child Health Bureau. Telephone: (301) 443–5764; Email: *lstapleton@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Intended Recipient of the Award:* ZERO TO THREE National Center for Infant, Toddler and Families, Inc.

*Amount of Non-Competitive Award:* One combined award of up to $1,000,000 (consisting of a $600,000 supplement and a $400,000 supplement).

*Supplement Project Period:* September 30, 2024, to September 29, 2025.

*Assistance Listing (CFDA) Numbers:* 93.110/93.129.

*Award Instrument:* Non-competitive supplemental funding to the existing Cooperative Agreement.

*Authorities:* Social Security Act, section 501(a)(2) (42 U.S.C. 701(a)(2)) supplement part A; and Public Health Service Act section 330(l) (42 U.S.C. 254b(l)) supplement part B.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

| Grant number | Award recipient name | City, state | FY23 supplement award amount |
|---|---|---|---|
| UK2MC46349 ..... | Zero to Three National Center for Infant, Toddler, and Families, Inc.. | Washington, DC ..... | $1,000,000 |

*Justification:* The Consolidated Appropriations Act, 2023 (Pub. L.117–328) and the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47) made available additional funding beyond the original FY 2022 enacted level to ''expand placements of early childhood development experts in pediatrician offices with a high percentage of Medicaid and Children's Health Insurance Program patients'' (per Senate Report 118–84). To implement this increase, HRSA funds an additional four Transforming Pediatrics for Early Childhood (TPEC) recipients beyond the original four (for a total of eight) and will continue to provide a supplement of $600,000 to the current ECDHS recipient to provide technical assistance to these additional TPEC recipients and support national ECD integration in pediatric care.

The Further Consolidated Appropriations Act, 2024, also provided funding to HRSA's Bureau of Primary Health Care to support health centers, including ''to further integrate early childhood development services and expertise'' (as described in Senate Report 118–84). To implement this funding, HRSA will provide an additional supplement of $400,000 to the ECDHS recipient to continue their current technical assistance support, which began in FY 2023, to HRSA funded Health Centers expanding their early childhood development services with funds awarded under HRSA–23–028.

Supplemental funding for similar activities may be considered in future years, depending on the availability of funding for the activity and satisfactory performance.

**Carole Johnson,**

*Administrator.*

[FR Doc. 2024–17662 Filed 8–8–24; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Advancing Translational Sciences Special Emphasis Panel; RDCRN DMCC Peer Review Meeting.

*Date:* September 18, 2024.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Suite 1E504, Bethesda, MD 20892, (301) 594–7319, *khanr2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 5, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17681 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Developing Digital Therapeutics for Substance Use Disorders.

*Date:* September 16, 2024.

*Time:* 1:00 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shareen Amina Iqbal, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *shareen.iqbal@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Development of Clinical Outcome Assessments as New FDA-Qualified Drug Development Tools To Accelerate Therapeutics Development for Opioid and Stimulant Use Disorders.

*Date:* September 18, 2024.

*Time:* 12:00 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shareen Amina Iqbal, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *shareen.iqbal@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 5, 2024

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17695 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP–10: NCI Clinical and Translational Cancer Research.

*Date:* September 26, 2024.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, 240–276–5122, *hasan.siddiqui@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Discovery and Development of Natural Products for Cancer Interception and Prevention (UG3/UH3 Clinical Trial Not Allowed).

*Date:* September 27, 2024.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–7869, *robert.gahl@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Assay Validation of High-Quality Markers for Clinical Studies.

*Date:* October 9, 2024.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room

7W246, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240–276–5460, *jfang@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–C.

*Date:* October 16–17, 2024.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850, *mike.lindquist@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Informatics Technologies for Cancer Research.

*Date:* October 23–24, 2024.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W106, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Eduardo Emilio Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Rockville, Maryland 20850, 240–276–7975, *chufanee@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP–7: NCI Clinical and Translational Cancer Research.

*Date:* October 24, 2024.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850, 240–276–5256, *shuli.xia@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP–6: NCI Clinical and Translational Cancer Research.

*Date:* November 8, 2024.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–7869, *robert.gahl@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Cancer Immunoprevention Network.

*Date:* November 14, 2024.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Virtual Meeting).

*Contact Person:* Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 5, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17679 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 on Aging Special Emphasis Panel; Measurement and Managing Network for Non-Pharmacological Alzheimer's Disease (AD) and AD-Related Dementias (ADRD) Prevention.

*Date:* October 23, 2024.

*Time:* 11:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, 5601 Fishers Ln, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Nesar Uddin Akanda, M.D., Ph.D., Scientific Review Officer, National Institute of Aging, National Institute of Health, 7201 Wisconsin Ave, Rm 2E405, Bethesda, MD 20892, (301) 594–8984, *nesar.akanda@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 5, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17691 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The 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 on Aging Special Emphasis Panel; Precision Monitoring and Assessment in the Framingham Study.

*Date:* September 5, 2024.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, 5601 Fishers Ln., Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Rajasri Roy, Ph.D., MPH, Scientific Review Officer, National Institute of Aging, National Institute of Health, 7201 Wisconsin Ave., Rm. 100, Bethesda, MD 20892, (301) 496–9666, *rajasri.roy@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 5, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17692 Filed 8–8–24; 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; Advanced Institutional Training Grant (T32) review.

*Date:* September 19–20, 2024.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852 (In-person and Virtual Meeting).

*Contact Person:* Abhignya Subedi, 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, *abhi.subedi@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: August 5, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17682 Filed 8–8–24; 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; R13 Conference Grant Applications.

*Date:* September 26, 2024.

*Time:* 10:00 a.m. to 1:30 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:* Jian Yang, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Blvd., Rm 7011, Bethesda, MD 20892, (301) 594–7799, *yangj@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: August 5, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17689 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The 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 on Aging Special Emphasis Panel; Multi-Site Clinical Trial Execution.

*Date:* November 6, 2024

*Time:* 11:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, 5601 Fishers Ln., Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Nesar Uddin Akanda, M.D., Ph.D., Scientific Review Officer, National Institute of Aging, National Institute of Health, 7201 Wisconsin Ave., Rm 2E405, Bethesda, MD 20892, (301) 594–8984, *nesar.akanda@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 5, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17690 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 on Aging Special Emphasis Panel; Aging Bone.

*Date:* September 20, 2024.

*Time:* 9:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* National Institute on Aging, 5601 Fishers Ln, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Nijaguna Prasad, Ph.D., Scientific Research Officer, National Institute of Health, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2W200 Bethesda, MD 20892, (301) 496–9667 *prasadnb@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17694 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The 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 on Aging Special Emphasis Panel; The Long Life Family Study.

*Date:* September 12, 2024.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, 5601 Fishers Ln, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Rajasri Roy, Ph.D., MPH, Scientific Review Officer, National Institute of Aging, National Institute of Health, 7201 Wisconsin Ave, Rm 100, Bethesda, MD 20892, (301) 496–9666, *rajasri.roy@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 5, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–17693 Filed 8–8–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[CBP Dec. 24–14]**

### Tuna Tariff-Rate Quota for Calendar Year 2024 for Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Announcement of the quota quantity for tuna in airtight containers for calendar year 2024.

**SUMMARY:** Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is calculated as a percentage of the tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the preceding calendar year. This document sets forth the tariff-rate quota for Calendar Year 2024.

**DATES:** The 2024 tariff-rate quota is applicable to tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the period January 1, 2024 through December 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Julia Peterson, Chief, Quota and Agricultural Branch, Interagency Collaboration Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, Washington, DC 20229–1155, at (202) 384–8905 or by email at *HQQUOTA@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

It has been determined that 15,226,726 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during Calendar Year 2024, at the rate of 6.0 percent *ad valorem,* under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem,* under subheading 1604.14.30, HTSUS.

Dated: August 6, 2024.

**AnnMarie R. Highsmith,**

*Executive Assistant Commissioner, Office of Trade.*

[FR Doc. 2024–17728 Filed 8–8–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Notice Regarding the Uyghur Forced Labor Prevention Act Entity List

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Homeland Security (DHS), as the Chair of the Forced Labor Enforcement Task Force (FLETF), announces the publication and availability of the updated Uyghur Forced Labor Prevention Act (UFLPA) Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA, on the DHS UFLPA website. The updated UFLPA Entity List is also published as an appendix to this notice. This update adds five entities to the UFLPA Entity List: two as entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region; two as entities that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the ''poverty alleviation'' program or the ''pairing-assistance'' program or any other government labor scheme that uses forced labor; and one entity that qualifies as both. Details related to the process for revising the UFLPA Entity List are included in this **Federal Register** notice.

**DATES:** This notice announces the publication and availability of the UFLPA Entity List updated as of August 9, 2024, included as an appendix to this notice.

**ADDRESSES:** Persons seeking additional information on the UFLPA Entity List should email the FLETF at *FLETF.UFLPA.EntityList@hq.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** LeRoy Potts, Director, Entity List Office, Trade and Economic Security, Office of Strategy, Policy, and Plans, DHS. Phone: (202) 891–2331, Email: *FLETF.UFLPA.EntityList@hq.dhs.gov*

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Homeland Security (DHS), on behalf of the Forced Labor Enforcement Task Force (FLETF), is announcing the publication of the updated UFLPA Entity List, a consolidated register of the four lists required to be developed and

maintained pursuant to section 2(d)(2)(B) of the Uyghur Forced Labor Prevention Act (Pub. L. 117–78) (UFLPA), to *https://www.dhs.gov/uflpa-entity-list.* The UFLPA Entity List is available as an appendix to this notice. This update adds three entities to the section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. This update also adds three entities (including one of the entities mentioned above) to the section 2(d)(2)(B)(v) list of the UFLPA, which identifies facilities and entities that source material from Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the ''poverty alleviation'' program or the ''pairing-assistance'' program or any other government labor scheme that uses forced labor. Future revisions to the UFLPA Entity List, which may include additions, removals or technical corrections, will be published to *https://www.dhs.gov/uflpa-entitylist* and in the appendices of future **Federal Register** notices. *See* appendix 1.

Beginning on June 21, 2022, the UFLPA requires the Commissioner of U.S. Customs and Border Protection to apply a rebuttable presumption that goods mined, produced, or manufactured by entities on the UFLPA Entity List are made with forced labor, and therefore, prohibited from importation into the United States under 19 U.S.C. 1307. *See* section 3(a) of the UFLPA. As the FLETF revises the UFLPA Entity List, including by making additions, removals, or technical corrections, DHS, on its behalf, will post such revisions to the DHS UFLPA website (*https://www.dhs.gov/uflpa-entity-list*) and also publish the revised UFLPA Entity List as an appendix to a **Federal Register** notice.

## Background

### *A. The Forced Labor Enforcement Task Force*

Section 741 of the United States-Mexico-Canada Agreement Implementation Act established the FLETF to monitor United States enforcement of the prohibition under section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307). *See* 19 U.S.C. 4681. Pursuant to DHS Delegation Order No. 23034, the DHS Under Secretary for Strategy, Policy, and Plans serves as Chair of the FLETF, an interagency task force that includes the Department of Homeland Security, the Office of the U.S. Trade Representative, and the Departments of Labor, State, Justice, the Treasury, and Commerce (member agencies).[1] *See* 19 U.S.C. 4681; Executive Order 13923 (May 15, 2020). In addition, the FLETF includes six observer agencies: the Departments of Energy and Agriculture, the U.S. Agency for International Development, the National Security Council, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement Homeland Security Investigations.

### *B. The Uyghur Forced Labor Prevention Act: Preventing Goods Made With Forced Labor in the People's Republic of China From Being Imported Into the United States*

The UFLPA requires, among other things, that the FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, develop a strategy (UFLPA section 2(c)) for supporting enforcement of section 307 of the Tariff Act of 1930, to prevent the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China. As required by the UFLPA, the *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China,* which was published on the DHS website on June 17, 2022 (*see https://www.dhs.gov/uflpa-strategy*), includes the initial UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA. *See* UFLPA Section 2(d)(2)(B).

### *C. UFLPA Entity List*

The UFLPA Entity List addresses distinct requirements set forth in clauses (i), (ii), (iv), and (v) of section 2(d)(2)(B) of the UFLPA that the FLETF identify and publish the following four lists:

(1) a list of entities in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor;

(2) a list of entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region;

(3) a list of entities that exported products made by entities in lists 1 and 2 from the People's Republic of China into the United States; and

(4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the ''poverty alleviation'' program or the ''pairing-assistance'' program or any other government-labor scheme that uses forced labor.

The UFLPA Entity List is a consolidated register of the above four lists. In accordance with section 3(e) of the UFLPA, effective June 21, 2022, entities on the UFLPA Entity List (listed entities) are subject to the UFLPA's rebuttable presumption that products they produce, wholly or in part, are prohibited from entry into the United States under 19 U.S.C. 1307. The UFLPA Entity List is described in appendix 1 to this notice. The UFLPA Entity List should not be interpreted as an exhaustive list of entities engaged in the practices described in clauses (i), (ii), (iv), or (v) of section 2(d)(2)(B) of the UFLPA.

Revisions to the UFLPA Entity List, including all additions, removals, and technical corrections, will be published on the DHS UFLPA website (*https://www.dhs.gov/uflpa-entity-list*) and as an appendix to a notice that will be published in the **Federal Register**. *See* appendix 1. The FLETF will consider future additions to, or removals from, the UFLPA Entity List based on criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation(s) to add, remove or make technical corrections to an entry on the UFLPA Entity List. FLETF member agencies will review and vote on revisions to the UFLPA Entity List accordingly.

### Additions to the Entity List

The FLETF will consider future additions to the UFLPA Entity List based on the criteria described in clauses (i), (ii), (iv), or (v) of section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation to the FLETF Chair to add an entity to the UFLPA Entity List. Following review of the recommendation by the FLETF member

[1] The U.S. Department of Homeland Security, as the FLETF Chair, has the authority to invite representatives from other executive departments and agencies, as appropriate. *See* Executive Order 13923 (May 15, 2020). The U.S. Department of Commerce is a member of the FLETF as invited by the Chair.

agencies, the decision to add an entity to the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Requests for Removal From the Entity List

Any listed entity may submit a request for removal (removal request) from the UFLPA Entity List along with supporting information to the FLETF Chair at *FLETF.UFLPA.EntityList@hq.dhs.gov.* In the removal request, the entity (or its designated representative) should provide information that demonstrates that the entity no longer meets or does not meet the criteria described in the applicable clause ((i), (ii), (iv), or (v)) of section 2(d)(2)(B) of the UFLPA. The FLETF Chair will refer all such removal requests and supporting information to FLETF member agencies. Upon receipt of the removal request, the FLETF Chair or the Chair's designated representative may contact the entity on behalf of the FLETF regarding questions on the removal request and may request additional information. Following review of the removal request by the FLETF member agencies, the decision to remove an entity from the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Listed entities may request a meeting with the FLETF after submitting a removal request in writing to the FLETF Chair at *FLETF.UFLPA.EntityList@hq.dhs.gov.* Following its review of a removal request, the FLETF may accept the meeting request at the conclusion of the review period and, if accepted, will hold the meeting prior to voting on the entity's removal request. The FLETF Chair will advise the entity in writing of the FLETF's decision on its removal request. While the FLETF's decision on a removal request is not appealable, the FLETF will consider new removal requests if accompanied by new information.

**Robert Silvers,**

*Under Secretary, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security.*

## Appendix 1

This notice supersedes the UFLPA Entity List published in the **Federal Register** on June 12, 2024 (89 FR 49894). The UFLPA Entity List as of August 9, 2024 is available in this appendix and is published on *https://www.dhs.gov/uflpa-entity-list.* This update adds three entities to the section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region:

- Kashgar Construction Engineering (Group) Co., Ltd.
- Xinjiang Habahe Ashele Copper Co., Ltd. (also known as Ashele Copper)
- Xinjiang Tengxiang Magnesium Products Co., Ltd.

This update also adds three entities to the section 2(d)(2)(B)(v) list of the UFLPA, which identifies facilities and entities that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the ''poverty alleviation'' program or the ''pairing-assistance'' program or any other government labor scheme that uses forced labor:

- Century Sunshine Group Holdings, Ltd.
- Rare Earth Magnesium Technology Group Holdings, Ltd.
- Xinjiang Tengxiang Magnesium Products Co., Ltd.

Century Sunshine Group Holdings, Ltd. is a company based in Hong Kong that manufactures magnesium fertilizer and magnesium alloys. The United States Government has reasonable cause to believe, based on specific and articulable information, that Century Sunshine Group Holdings, Ltd. sources material, specifically magnesium, from the Xinjiang Uyghur Autonomous Region. The FLETF therefore determined that the activities of Century Sunshine Group Holdings, Ltd. satisfy the criteria for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Kashgar Construction Engineering (Group) Co., Ltd. is a company based in Kashgar, Xinjiang, China, that manufactures structural components and materials for construction, and is also engaged in general construction, construction engineering and operations, and real estate development and operations. The United States Government has reasonable cause to believe, based on specific and articulable information, that Kashgar Construction Engineering (Group) Co., Ltd. works with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor, or receive Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. The FLETF therefore determined that the activities of Kashgar Construction Engineering (Group) Co., Ltd. satisfy the criteria for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

Rare Earth Magnesium Technology Group Holdings, Ltd. is a company based in Hong Kong that manufactures and sells magnesium alloy products. The United States Government has reasonable cause to believe, based on specific and articulable information, that Rare Earth Magnesium Technology Group Holdings, Ltd. sources material, specifically magnesium, from the Xinjiang Uyghur Autonomous Region. The FLETF therefore determined that the activities of Rare Earth Magnesium Technology Group Holdings, Ltd. satisfy the criteria for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Xinjiang Habahe Ashele Copper Co., Ltd. is a company located in the Xinjiang Uyghur Autonomous Region that mines nonferrous metals. The United States Government has reasonable cause to believe, based on specific and articulable information, that indicates that Xinjiang Habahe Ashele Copper Co., Ltd. works with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor, or receive Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. The FLETF therefore determined that the activities of Xinjiang Habahe Ashele Copper Co., Ltd. satisfy the criteria for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

Xinjiang Tengxiang Magnesium Products Co., Ltd. is a company based in Hami, Xinjiang, China, that manufactures magnesium and magnesium alloy products. The United States Government has reasonable cause to believe, based on specific and articulable information, that Xinjiang Tengxiang Magnesium Products Co., Ltd. works with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor, or receive Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. The United States Government also has reasonable cause to believe, based on specific and articulable information, that Xinjiang Tengxiang Magnesium Products Co., Ltd. sources material, specifically the raw materials required to produce magnesium, such as coal and dolomite, from the Xinjiang Uyghur Autonomous Region. The FLETF therefore determined that the activities of Xinjiang Tengxiang Magnesium Products Co., Ltd. satisfy the criteria for addition to the UFLPA Entity List described in sections 2(d)(2)(B)(ii) and 2(d)(2)(B)(v).

No technical corrections or removals are being made to the UFLPA Entity List at this time.

The UFLPA Entity List is a consolidated register of the four lists that are required to be developed and maintained pursuant to section 2(d)(2)(B) of the UFLPA. Seventy-three entities that meet the criteria set forth in the four required lists (*see* sections 2(d)(2)(B)(i), (ii), (iv), and (v) of the UFLPA) are specified on the UFLPA Entity List.

**UFLPA Entity List August 9, 2024**

**UFLPA Section 2(d)(2)(B)(i) A List of Entities in Xinjiang That Mine, Produce, or Manufacture Wholly or in Part Any Goods, Wares, Articles, and Merchandise With Forced Labor**

Baoding LYSZD Trade and Business Co., Ltd.
Changji Esquel Textile Co. Ltd. (and one alias: Changji Yida Textile)
Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
Xinjiang East Hope Nonferrous Metals Co. Ltd. (including one alias: Xinjiang Nonferrous)
Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.)
Xinjiang Junggar Cotton and Linen Co., Ltd.
Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities

**UFLPA Section 2(d)(2)(B)(ii) A List of Entities Working With the Government of Xinjiang To Recruit, Transport, Transfer, Harbor or Receive Forced Labor or Uyghurs, Kazakhs, Kyrgyz, or Members of Other Persecuted Groups Out of Xinjiang**

Aksu Huafu Textiles Co. (including two aliases: Akesu Huafu and Aksu Huafu Dyed Melange Yarn)
Anhui Xinya New Materials Co., Ltd. (formerly known as Chaohu Youngor Color Spinning Technology Co., Ltd.; and Chaohu Xinya Color Spinning Technology Co., Ltd.)
Camel Group Co., Ltd.
COFCO Sugar Holdings Co., Ltd.
Dongguan Oasis Shoes Co., Ltd. (also known as Dongguan Oasis Shoe Industry Co. Ltd.; Dongguan Luzhou Shoes Co., Ltd.; and Dongguan Lvzhou Shoes Co., Ltd.)
Geehy Semiconductor Co., Ltd.
Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)
Hefei Meiling Co. Ltd. (including one alias: Hefei Meiling Group Holdings Limited).
Kashgar Construction Engineering (Group) Co., Ltd.
KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding)
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile).
Ninestar Corporation
No. 4 Vocation Skills Education Training Center (VSETC)
Shandong Meijia Group Co., Ltd. (also known as Rizhao Meijia Group)
Sichuan Jingweida Technology Group Co., Ltd. (also known as Sichuan Mianyang Jingweida Technology Co., Ltd. and JWD Technology; and formerly known as Mianyang High-tech Zone Jingweida Technology Co., Ltd.)
Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development).
Xinjiang Habahe Ashele Copper Co., Ltd. (also known as Ashele Copper)
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
Xinjiang Shenhuo Coal and Electricity Co., Ltd.
Xinjiang Tengxiang Magnesium Products Co., Ltd.
Xinjiang Tianmian Foundation Textile Co., Ltd.
Xinjiang Tianshan Wool Textile Co. Ltd.
Xinjiang Zhongtai Chemical Co. Ltd.
Xinjiang Zhongtai Group Co. Ltd
Zhuhai Apex Microelectronics Co., Ltd.
Zhuhai G&G Digital Technology Co., Ltd.
Zhuhai Ninestar Information Technology Co. Ltd.
Zhuhai Ninestar Management Co., Ltd.
Zhuhai Pantum Electronics Co. Ltd.
Zhuhai Pu-Tech Industrial Co., Ltd.
Zhuhai Seine Printing Technology Co., Ltd.

**UFLPA Section 2(d)(2)(B)(iv) A List of Entities That Exported Products Described in Clause (iii) From the People's Republic of China Into the United States**

Entities identified in sections (i) and (ii) above may serve as both manufacturers and exporters. The FLETF has not identified additional exporters at this time but will continue to investigate and gather information about additional entities that meet the specified criteria.

**UFLPA Section 2(d)(2)(B)(v) A List of Facilities and Entities, Including the Xinjiang Production and Construction Corps, That Source Material From Xinjiang or From Persons Working With the Government of Xinjiang or the Xinjiang Production and Construction Corps for Purposes of the ''Poverty Alleviation'' Program or the ''Pairing-Assistance'' Program or Any Other Government Labor Scheme That Uses Forced Labor**

Baoding LYSZD Trade and Business Co., Ltd.
Binzhou Chinatex Yintai Industrial Co., Ltd.
Century Sunshine Group Holdings, Ltd.
Chenguang Biotech Group Co., Ltd.
Chenguang Biotechnology Group Yanqi Co. Ltd.
China Cotton Group Henan Logistics Park Co., Ltd., Xinye Branch
China Cotton Group Nangong Hongtai Cotton Co., Ltd.
China Cotton Group Shandong Logistics Park Co., Ltd.
China Cotton Group Xinjiang Cotton Co.
Fujian Minlong Warehousing Co., Ltd.
Hefei Bitland Information Technology Co. Ltd.
Henan Yumian Group Industrial Co., Ltd.
Henan Yumian Logistics Co., Ltd. (formerly known as 841 Cotton Transfer Warehouse)
Hengshui Cotton and Linen Corporation Reserve Library
Hetian Haolin Hair Accessories Co. Ltd.
Hetian Taida Apparel Co., Ltd.
Heze Cotton and Linen Co., Ltd.
Heze Cotton and Linen Economic and Trade Development Corporation (also known as Heze Cotton and Linen Trading Development General Company)
Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries
Huangmei Xiaochi Yinfeng Cotton (formerly known as Hubei Provincial

Cotton Corporation's Xiaochi Transfer Reserve)
Hubei Jingtian Cotton Industry Group Co., Ltd.
Hubei Qirun Investment Development Co., Ltd.
Hubei Yinfeng Cotton Co., Ltd.
Hubei Yinfeng Warehousing and Logistics Co., Ltd.
Jiangsu Yinhai Nongjiale Storage Co., Ltd.
Jiangsu Yinlong Warehousing and Logistics Co., Ltd.
Jiangyin Lianyun Co. Ltd. (also known as Jiangyin Intermodal Transport Co. and Jiangyin United Transport Co.)
Jiangyin Xiefeng Cotton and Linen Co., Ltd.
Juye Cotton and Linen Station of the Heze Cotton and Linen Corporation
Lanxi Huachu Logistics Co., Ltd.
Linxi County Fangpei Cotton Buying and Selling Co., Ltd.
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
Nanyang Hongmian Logistics Co., Ltd. (also known as Nanyang Red Cotton Logistics Co., Ltd.)
No. 4 Vocation Skills Education Training Center (VSETC)
Rare Earth Magnesium Technology Group Holdings, Ltd.
Wugang Zhongchang Logistics Co., Ltd.
Xinjiang Junggar Cotton and Linen Co., Ltd.
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
Xinjiang Tengxiang Magnesium Products Co., Ltd.
Xinjiang Yinlong Agricultural International Cooperation Co.
Yili Zhuowan Garment Manufacturing Co., Ltd.

[FR Doc. 2024–17509 Filed 8–8–24; 8:45 am]

**BILLING CODE 9110–9M–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7080–N–36]**

## 30-Day Notice of Proposed Information Collection: Green and Resilient Retrofit Program (GRRP) Supporting Documents and Processing Requirements; OMB Control No.: 2502–NEW

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* September 9, 2024.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email: *PaperworkReductionActOffice@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 3, 2023 at 88 FR 75619.

### A. Overview of Information Collection

*Title of Information Collection:* Green and Resilient Retrofit Program (GRRP) Supporting Documentation.

*OMB Approval Number:* Pending.

*OMB Expiration Date:* TBD.

*Type of Request:* New collection.

*Form Numbers:* TBD. While numbers have not yet been assigned, the covered forms include Transaction Plan Templates, Commitment Templates, Escrow Deposit Agreement template, Use Agreement, Surplus Cash loan agreement, Grant Agreement, Surplus Cash Loan Note, Amortizing Loan Note, Surplus Cash Loan Mortgage, Amortizing Loan Mortgage, Addendum to Assistance Contract template including efficiency add-on, Resilience Survey and Completion Certification.

*Description of the need for the information and proposed use:* The Green and Resilient Retrofit Program (''GRRP'') is funded through Title III of the Inflation Reduction Act of 2022, H.R. 5376 (IRA), in section 30002 titled ''Improving Energy Efficiency or Water Efficiency or Climate Resilience of Affordable Housing'' (the ''IRA''), authorizing HUD to make loans, grants to improve energy or water efficiency; enhance indoor air quality or sustainability; implement the use of zero-emission electricity generation, low-emission building materials or processes, energy storage, or building electrification strategies; or address climate resilience of eligible HUD-assisted multifamily properties. The program leverages significant technological advancements in utility efficiency and adds a focus on preparing for climate hazards—both reducing residents' and properties' exposure to hazards and protecting life, livability, and property when disaster strikes. With its dual focus, GRRP is the first program to consider, at the national scale, how best to approach both green and energy efficiency upgrades simultaneously with investment in climate resilience strategies in multifamily housing. HUD is taking a multi-faceted approach to deploy these funds multiple funding rounds and for properties at different development stages.

Funding under this program will be made through multiple cohorts under one or multiple Notices of Funding Opportunity (NOFOs) that will detail the application process for eligible applicants. This collection is necessary in order to receive applications requesting funding under this program and to complete processing requirements for multifamily owners selected under one of the GRRP cohorts (Elements, Leading Edge & Comprehensive). Documents will include information an owner may need to collect, maintain, or submit to ensure GRRP programmatic and statutory compliance with eligibility requirements and documentation required for HUD approval of any legal and financial obligations including:

- Award eligibility requirements as described in the GRRP Notices.

• Information needed to determine compliance with program requirements.

• Information the Department may require in order to exercise discretionary judgment authorized under the GRRP Notice.

• Demonstration of transaction closing preparedness, including, as applicable:

• Documentation required for HUD approval for any financial information relative to GRRP grants and loans.

• Maintenance of other information that could be requested such as utility and energy consumption and efficiency, and other viable green and retrofitting components.

*Respondents:* HUD-assisted multifamily owners.

*Estimated Number of Respondents:* 583.

*Estimated Number of Responses:* 583.

*Frequency of Response:* Once per application and awardee package.

*Average Hours per Response:* 34.5 hours.

*Total Estimated Burden:* 8,952.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

**Colette Pollard,**

*Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.*

[FR Doc. 2024–17670 Filed 8–8–24; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7080–N–35]**

## 30-Day Notice of Proposed Information Collection: Request for Withdrawals From Replacements Reserves/ Residual Receipts Funds; OMB Control No.: 2502–0555

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* September 9, 2024.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email: *PaperworkReductionActOffice@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 12, 2024 at 89 FR 25894.

**A. Overview of Information Collection**

*Title of Information Collection:* Request for Withdrawals from Replacements Reserves/Residual Receipts Funds.

*OMB Approval Number:* 2502–0555.

*OMB Expiration Date:* 4/30/2024.

*Type of Request:* Reinstatement, with change, of previously approved collection for which approval has expired.

*Form Number:* HUD–9250 Funds Authorization.

*Description of the need for the information and proposed use:* Project owners are required to submit this information and supporting documentation when requesting a withdrawal for funds from the Reserves for Replacement or Residual Receipt escrow accounts. HUD or the lender/servicer reviews this information to ensure that funds are withdrawn and used in accordance with regulatory and administrative policy.

*Respondents:* Not-for-profit and restricted distribution property owners.

*Estimated Number of Respondents:* 30,791.

*Estimated Number of Responses:* 8,314.

*Frequency of Response:* Varies.

*Average Hours per Response:* 1 hour.

*Total Estimated Burden:* 8,314.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

### C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

**Colette Pollard,**

*Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.*

[FR Doc. 2024–17671 Filed 8–8–24; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7080–N–34]**

## 30-Day Notice of Proposed Information Collection: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market) OMB Control No.: 2502–0533

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* September 9, 2024.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 3, 2024 at 89 FR 47583.

### A. Overview of Information Collection

*Title of Information Collection:* Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market).

*OMB Approval Number:* 2502–0533.

*Type of Request:* Reinstatement, with change, of previously approved collection for which approval has expired.

*Form Numbers:* Mark-to-Market (M2M)—HUD–9624, HUD–9625, OPG 3.1, OPG 3.2, OPG 3.3, OPG 3.4, OPG 4.1, OPG 4.2, OPG 4.3, OPG 4.4, OPG 4.7, OPG 4.8, OPG 4.10, OPG 4.11, OPG 4.12, OPG 5.4, OPG 5.5, OPG 6.5, OPG 7.4, OPG 7.6, OPG 7.8, OPG 7.11, OPG 7.12, OPG 7.13, OPG 7.14, OPG 7.16, OPG 7.21, OPG 7.22, OPG 7.23, OPG 7.25, OPG 9.10, OPG 9.11, OPG 11.1.

Post M2M documents—Accommodation Agreement (Debt Assignment), Agreement of Assignment of MRN/CRN from QNP (Acquiring Purchaser), Agreement of Assignment of MRN/CRN to QNP (Acquiring Purchaser), Allonge—CRN Assignment from QNP, Allonge—CRN Assignment to QNP, Allonge—MRN Assignment from QNP, Allonge—MRN Assignment to QNP, Assignment, Assumption and Modification of M2M Use Agreement (QNP-Non-Exception Rents), Assignment, Assumption and Modification of M2M Use Agreement (QNP Exception Rents), Assignment, Assumption, and Modification of M2M Use Agreement (Not QNP), General Guidance Memorandum (GGM) Exhibits (Exhibit 1: Assignment and Assumption of M2M Use Agreement, Exhibit 2: Subordination Agreement Mortgage Loan to M2M Use Agreement, Exhibit 3A: Modification of M2M Use Agreement, Exhibit 3B: Assignment, Assumption and Modification of M2M Use Agreement (Not QNP), Exhibit 4: Release from Land Records of Accommodation Agreement).

*Description of the need for the information and proposed use:* The Mark to Market (M2M) Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997, modified, and extended from time to time, including by the Mark to Market Extension Act of 2001. M2M or the ''FHA-Insured Multifamily Housing Mortgage and Housing Assistance Restructuring Program'' was originally authorized by Title V of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1998 (Pub. L. 105–65, 111 Stat. 1384, October 27, 1997). Title V created a statutory program directed at FHA-insured multifamily projects that have project-based Section 8 contracts with above-market rents.

The information collection is used to determine the eligibility of FHA-insured or formerly insured multifamily properties for participation in the M2M program and the terms on which such participation should occur. The collection is also used to structure the closing of debt restructures that are finalized under the program, to track the post-closing performance of the restructures, to evaluate the performance of the Agency's Participating Administrative Entities (PAEs) in undertaking restructures on the Agency's behalf as the Agency agent, and to facilitate subsequent transactions involving the restructured properties under the Post-M2M program. Post-M2M is an extended component of the M2M program and addresses the processing of owner requests to refinance or to sell a property that has

received the benefits of a debt restructuring under M2M or M2M Program's predecessor program, the Portfolio Reengineering Demonstration Program (Demo Program).

*Respondents:* Owners, Contractors and Tenants.

*Estimated Number of Respondents:* 60.

*Estimated Number of Responses:* 1,591.

*Frequency of Response:* On Occasion.

*Average Hours per Response:* 35.

*Total Estimated Burdens:* 2,079.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| 2502–0533 ..... | 60 | On Occasion .. | 1,591 | 35 | 2,079 | $53 | $108,373.75 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Colette Pollard,**

*Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.*

[FR Doc. 2024–17665 Filed 8–8–24; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[234A2100DD/AAPP003600/ A0T602020.999900]**

### Coquille Indian Tribe; Amendments to Liquor Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes three comprehensive amendments to the Coquille Indian Tribe's Chapter 200, Liquor Control Ordinance. This Ordinance amends and supersedes the existing Coquille Indian Tribe Liquor Ordinance, Ordinance CY0933 enacted by the Coquille Indian Tribe in 2009.

**DATES:** This ordinance shall become effective September 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Jackson, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 Northeast 11st Avenue, Portland, Oregon, 97232, Telephone: (503) 231–6702, Fax: (503) 231–2201.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On May 26, 2023, the Coquille Indian Tribe duly adopted the amendments to the Chapter 200 Liquor Control Ordinance by Ordinance CY23048. On June 14, 2024, the Coquille Indian Tribe duly adopted additional amendments to the Chapter 200 Liquor Control Ordinance by Ordinance No. 24066. This **Federal Register** Notice comprehensively amends and supersedes the existing Coquille Indian Tribe Liquor Control Ordinance, Ordinance CY0933, enacted by the Coquille Indian Tribe, which was published in the **Federal Register** on October 23, 2009.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Coquille Indian Tribe of the Coquille Indian Reservation, duly adopted these amendments to Chapter 200 Liquor Control Ordinance on May 26, 2023, and June 14, 2024.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

**Coquille Indian Tribal Code**

**Chapter 200**

**Part 2—Economic Development Liquor Control**

**200.010 General**

1. Purpose. This Ordinance is for the purpose of regulating the manufacture, sale, distribute on, possession and use of alcoholic beverage on the Coquille Indian Reservation and other lands subject to Tribal jurisdiction. The enactment of this ordinance will increase the ability of the Tribal government to regulate liquor manufacture, sale, distribution and possession on the Coquille Indian Reservation, as defined below.

2. Background.

(a) Subject to certain limitations, Article VI, Section 1 of the Constitution of the Coquille Indian Tribe vests the Coquille Tribal Council with legislative and executive authority, including the authority to adopt this Ordinance.

(b) The Tribal Council hereby specifically finds that the civil penalties referenced in this Ordinance are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on the Reservation and in managing, protecting and developing the natural resources on the Reservation. The Tribal Council further finds that this Ordinance is necessary to preserve and protect the health and welfare of the Tribe, Tribal members, employees and Tribal reservation guests. It is the legislative intent of the Tribal Council that all violations of this Ordinance, whether committed by tribal members, non-member Indians, or non-Indians, be considered civil in nature rather than criminal.

3. Jurisdiction. This Ordinance conforms to all requisite laws as required by 18 U.S.C. 1161. Nothing in this Ordinance is intended to expand

the jurisdiction of the State of Oregon or diminish the jurisdiction of the Tribe.

**200.120 Definitions**

Unless otherwise required by the context or tribal or federal law, the following words and phrases have the meanings designated below:

1. ''Alcohol'' means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

2. ''Alcoholic beverage'' and ''alcoholic liquor'' mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

3. ''Beer'' means any alcoholic beverage containing more than one-half of one percent and not more than sixteen percent of alcohol by volume obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer.

4. ''Brewer'' means a person engaged in the business of producing beer or other alcoholic beverages that would be allowed to be produced under both a state license and federal brewer's permit.

5. ''Brewery'' means a licensed commercial facility used for the production, bottling, canning, kegging, packaging, distribution or retail sales of beer or other alcoholic beverages that would be allowed to be produced under both a state license and federal brewer's permit on Tribal lands.

6. ''Cider'' means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than 8.5 percent of alcohol by volume, including, but not limited to, flavored, sparkling, carbonated or fortified cider.

7. ''Coquille Indian Reservation'' shall have the meaning set forth in 25 U.S.C. 715c(b) or as provided otherwise under applicable law and includes all lands held in trust by the United States for the Tribe or its members and all lands over which the Tribe exercises jurisdiction, wherever located.

8. ''Distilled spirits'' means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof; ''distilled spirits'' does not include beer, wine, or cider. For purposes of this Ordinance, ''distilled spirits'' means ''distilled liquor'' or ''liquor'' and such terms shall be used interchangeably.

9. ''Distiller'' means a person engaged in the business of producing distilled spirits.

10. ''Distillery'' means a licensed commercial facility used for the production, manufacture, distilling, blending, aging, bottling, packaging, branding, distribution or retail sale of distilled spirits on Tribal lands.

11. ''Manufacture'' means any one or more acts of producing, brewing, fermenting, distilling, blending, aging, bottling, or packaging alcoholic beverages and includes the importation of alcoholic beverages for sale or distribution.

12. ''Person'' means an individual, corporation, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality or any other legal or commercial entity.

13. ''Tasting Room'' means a retail outlet owned, leased, or operated by a manufacturer that is the consumer facing area for persons to sample, consume for on-premise consumption, and purchase for off-premise consumption, liquor produced by such operator. Such premises need not be attached to the manufacturing facility.

14. ''Tribally licensed manufacturer'' shall mean a person not wholly owned by the Tribe for the purposes of manufacturing liquor under this Ordinance, but otherwise licensed consistent with this Ordinance and the Tribe for the purposes of manufacturing liquor.

15. ''Tribally owned manufacturer'' shall mean an entity wholly owned by the Tribe for the purposes of manufacturing liquor under this Chapter.

16. ''Wine'' means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a beer, containing more than one-half of one percent of alcohol by volume and not more than twenty-one percent of alcohol by volume. ''Wine'' includes fortified wine. ''Wine'' does not include cider.

17 ''Winemaker'' means the person operating a licensed commercial winery on Tribal lands.

18 ''Winery'' means a facility licensed to produce wine on Tribal lands, including the production, blending, bottling, canning, kegging, packaging, distribution or retail sales of wine or cider on Tribal lands.

19 Whenever the words ''sell'' or ''to sell'' refer to anything forbidden by this Chapter and related to alcoholic beverage, they include:

(a) To solicit or receive an order

(b) To keep or expose for sale

(c) To deliver for value or in any way other than purely gratuitously

(d) To peddle

(e) To keep with intent to sell

(g) To traffic in, or

(h) To engage in a transaction for any consideration or promise obtained directly or indirectly under any pretext or by any means or to procure or allow to be procured for any other person.

20. The word ''sale'' includes every act of selling as defined in subsection (18) of this section.

**200.150 Civil Violation**

In addition to being grounds for revocation of a license and any prosecution under federal law, any of the following shall be a civil violation prosecutable under CITC Chapter 650, unless they are otherwise authorized by this Ordinance:

1. For any person to sell, trade or manufacture any alcoholic beverage on the Coquille Indian Reservation except as provided for in this Ordinance.

2. For any business establishment or person on the Coquille Indian Reservation to possess, transport or keep with intent to sell, barter or trade to another, any liquor, except for those commercial liquor establishments on the Coquille Indian Reservation licensed by the Tribe, provided, however, that a person may transport liquor from a licensed establishment consistent with the terms of the license. The prohibition in this Section 200.150(2) does not prohibit a person over the age of 21 from manufacturing, possessing, or consuming homemade beer, wine, or fermented fruit juice in a household on the Coquille Indian Reservation.

3. For any person to consume alcoholic beverage on a public highway, provided that no such restriction shall apply to the service or consumption of alcoholic beverages by a passenger in a motor vehicle operated by or for a Tribal enterprise carrying consumers of legal drinking age to or from a tribal government or tribal enterprise-operated casino, hotel, restaurant or venue. Any Tribal enterprise operating a motor vehicle under the exception to prohibition provided in this Section 200.150(3) must be a common carrier.

4. For any person to publicly consume any alcoholic beverage at any community function, or at or near any place of business, Indian celebration grounds, recreational areas, including ballparks, and public camping areas, Tribal government facilities, Coquille Indian Housing Authority facilities, and any other public area where minors gather for meetings or recreation, except within a tribally licensed establishment where alcohol is sold. For purposes of

this Section 200.150(4), ''public camping areas'' does not include commercial RV parks.

5. For any person under the age of 21 years to buy, attempt to buy or to misrepresent their age in attempting to buy, alcoholic beverage.

6. For any person under the age of 21 years to transport, possess or consume any alcoholic beverage, or to be under the influence of alcohol or to be at an established commercial liquor establishment, except as authorized under this Ordinance.

7. For any person to sell or furnish alcoholic beverage to any person under 21 years of age.

8. For alcoholic beverages be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

**200.200 Licensing Procedure**

1. Requests for a license under this Ordinance must be presented to the Tribal Council or its authorized designee at least 30 days prior to the requested effective date. The Tribe shall set license conditions at least as strict as those required by federal law, including at a minimum:

(a) Alcoholic beverages may only be served and handled in a manner no less strict than allowed under Oregon Revised Statutes Chapter 471.

(b) Alcoholic beverages may be served only by authorized employees of the licensee; and

(c) Alcoholic beverages may be served in rooms where gambling is taking place if authorized by Tribal Council resolution.

2. Tribal Council action on a license request must be taken at a regular or special meeting.

3. Unless the request is for a special event license, the Tribal Council shall give at least 14 days' notice of the meeting at which the request will be considered. Notice shall be posted at the Tribal government administration building and at the establishment requesting the license, and will be sent by Certified Mail to the Oregon Liquor Control Commission.

4. The Tribal Council may revoke a license for reasonable cause upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

5. Licenses issued by the Tribe shall not be transferable and may only be utilized by the person in whose name it was issued.

6. Notwithstanding Subchapter 200.200(1), the Tribe may include conditions, restrictions, or additional rights in a manufacturer license issued under Section 200.360, including the right to import distilled spirits for manufacture, consistent with the requirements of federal and state law.

**200.300 Sale or Service of Liquor by Licensee's Minor Employees**

1. The holder of a license issued under this Ordinance or Oregon Revised Statutes Chapter 471 may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic beverage in any part of the licensed premises when that activity is incidental to the serving of food except that no employee under the age of 21 may do so in those areas classified by the Oregon Liquor and Cannabis Commission (''OLCC'') as being prohibited to the use of minors. No person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic beverage except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

2. Except as stated in this section, it shall be unlawful to employ any person under the age of 21 years to work in connection with the sale and service of alcoholic beverages in a tribally licensed liquor establishment.

**200.350 Memorandums of Understanding With the State of Oregon Regarding Certain Liquor Licensing and Regulation**

1. Notwithstanding any other provision of this Ordinance, the Tribe hereby authorizes and ratifies the negotiation and execution of the September 1, 2004 document entitled Memorandum of Understanding Governing Liquor Licensing and Regulation (the ''MOU'') between the Tribe and the State of Oregon, as amended or replaced from time to time, and this authorization and ratification shall be retroactive to September 1, 2004. Moreover, with regard to the sale of alcoholic beverage at an establishment described in the MOU any provision of this Ordinance shall yield to a conflicting provision of the MOU.

2. Notwithstanding any other provision of this Ordinance, the sale of alcoholic beverages by the Tribe or an entity owned by the Tribe or a subsidiary thereof at an establishment described in the MOU (or other agreement with the State of Oregon) shall be governed exclusively by the terms of the MOU or other agreement with the State of Oregon, as applicable.

3. Nothing in this Ordinance is intended to limit the authority of the Tribe, from time to time, to enter into agreements with the State of Oregon without further need to authorize or ratify under this Ordinance. Without limiting the foregoing, the Tribe further authorizes and ratifies the negotiation and execution of Intergovernmental Agreement between the Tribe and State of Oregon, as amended from time to time, concerning distilled spirits production and sales.

**200.360 Manufacturing of Alcohol and Related Activities; Licenses**

No Tribal license may be issued for the manufacture of liquor unless the operator provides sufficient evidence demonstrating that the manufacturer and any operator possesses, or is in the process of securing, any federal permit or approval and any State of Oregon agreement and license(s) as required to operate such liquor manufacture. The Tribe shall have sole authority to determine if such are satisfied. Tribally licensed manufacturers may manufacture and distribute liquor in a manner consistent with federal and state laws and applicable agreements between the Tribe and OLCC. The following license types are hereby created and authorized for issuance to manufacturers:

1. Distillery License: required for distilleries to be operated on Tribal land for the purposes of manufacturing distilled spirits, for sales of such spirits to consumers, and for other related purposes consistent with this Ordinance. Such license may authorize on Tribal lands a related Tasting Room, and warehousing space, that may or may not be attached to the manufacturing facility, for the purpose of serving and selling spirits manufactured to consumers.

2. Brewery License: required for breweries to be operated on Tribal land for the purposes of manufacturing beer, for sale to consumers, and for other related purposes. Such license may authorize on Tribal lands a related retail sales outlet or tasting room, and warehousing space, that may or may not be attached to the manufacturing facility, for the purpose of serving and selling beer manufactured to consumers.

3. Winery License: required for wineries to be operated on Tribal land for the purposes of manufacturing wine, mead or cider, for sale to consumers, and for other related purposes. Such license may authorize on Tribal lands a related retail sales outlet or tasting room, and warehousing space, that may or may not be attached to the manufacturing facility, for the purpose of serving and selling wine, mead or cider manufactured to consumers.

**200.400 Warning Signs Required**

1. Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign informing the public of the effects and risks of alcohol consumption during pregnancy as required under this section.

2. The sign shall:

(a) Contain the message: ''Pregnancy and alcohol do not mix. Drinking alcoholic beverages, including wine, coolers and beer, during pregnancy can cause birth defects.''

(b) Be either:

(1) A large sign, no smaller than eight and one-half inches by 11 inches in size with lettering no smaller than five-eighths of an inch in height; or

(2) A reduced sign, five by seven inches in size with lettering of the same proportion as the large sign described in paragraph (1) of this subsection.

(c) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

(d) Be in English unless a significant number of the patrons of the retail premises use a language other than English as a primary language. In such cases, the sign shall be worded both in English and the primary language or languages of the patrons.

(e) Be displayed on the premises of all licensed retail liquor premises as either a large sign at the point of entry, or a reduced sized sign at points of sale.

**200.500 Violations of this Ordinance**

1. Any person who violates the provisions of this Ordinance is deemed to have consented to the jurisdiction of the Tribal Court and may be subject to a civil penalty in Tribal Court for a civil violation. Such civil penalty shall not exceed the sums described in CITC Chapter 650.

2. Such civil violations shall be prosecuted under the procedures set forth in CITC Chapter 650.

**200.550 Administration**

The Tribe's executive director is responsible for the administration of this Ordinance. The executive director may establish reasonable rules and regulations necessary or appropriate to carry out the purpose and intent of this Ordinance. Violations of any rules and/or regulations established by the executive director pursuant to this Ordinance will be subject to enforcement as provided under this Ordinance. No person may violate or fail to comply with any rule or regulation established by the executive director or willfully make any false or misleading statement to the executive director regarding information relevant to the issuance of a license.

**200.600 Severability**

If a court of competent jurisdiction finds any provision of this Ordinance to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

**200.700 Compliance With 18 U.S.C. 1161**

The Tribe will comply with Oregon Liquor Laws to the extent required by 18 U.S.C. 1161.

**200.800 Effective Date**

This Ordinance shall be effective upon publication in the **Federal Register** after approval by the Secretary of the Interior or his designee.

**200.900 Sovereign Immunity**

Nothing in this Ordinance waives the sovereign immunity of the Coquille Indian Tribe or any of its officers, directors or employees.

[FR Doc. 2024–17673 Filed 8–8–24; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[245A2100DD/AAKC001030/A0A501010.999900]**

### Rate Adjustments for Indian Irrigation Projects

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

**DATES:** The 2025 Irrigation Assessment Rates are effective on January 1, 2025.

**FOR FURTHER INFORMATION CONTACT:** Leslie Underwood, Program Specialist, Division of Water and Power, Office of Trust Services, (406) 657–5985. For details about a particular BIA irrigation project, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the BIA regional or local office where the irrigation project is located.

**SUPPLEMENTARY INFORMATION:** Notices of Proposed Rate Adjustment were published in the **Federal Register** on February 8, 2024 (89 FR 8707) and May 6, 2024 (89 FR 37238) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended April 8, 2024, and July 5, 2024, respectively.

**Did BIA defer or change any proposed rate increases?**

No. BIA did not defer or change any proposed rate increases.

**Did BIA receive any comments on the proposed irrigation assessment rate adjustments?**

Yes. BIA received five (5) written comments related to the proposed 2025 irrigation assessment rate adjustment for the BIA Colorado River Irrigation Project (CRIP). Comments were received by letter and email.

**What issues were of concern to the commenters?**

Comments received relate specifically to the proposed 2025 rate adjustment for CRIP and other issues associated only with CRIP. BIA's summary of the issues and responses are provided below.

*Comment:* Four commenters state a general opposition to the proposed CRIP 2025 rate increase because commenters believe basic services, such as water delivery, maintenance, and measurements are not being provided. The fifth commenter, Colorado River Indian Tribes (CRIT), generally supports the proposed 2025 rate adjustment and recommends BIA increase future rates because CRIT believes CRIP's operations and maintenance (O&M) are underfunded. CRIT further requests that the additional revenues from the rate increase be used to improve system performance and reliability.

*Response:* As noted when rates were proposed in the **Federal Register** on February 8, 2024 (89 FR 8707) and May 6, 2024 (89 FR 37238), BIA is required to establish irrigation assessment rates that recover the costs to administer, operate, maintain, and rehabilitate our projects. As owner of CRIP, BIA assesses rates to ensure adequate resources are made available to meet the requirements noted above. BIA's authority to assess

rates is codified at 25 U.S.C. 381 *et seq.* and is addressed in BIA's regulations at 25 CFR part 171. *See also* February 29, 2008 (73 FR 11028). The procedures followed by BIA in adjusting its irrigation assessment rates are consistent with applicable law and past practice, and the methodology used by BIA to determine the O&M assessment rates for CRIP is reasonable.

The proposed 2025 irrigation assessment adjustments for CRIP's basic per acre rate categories are necessary and justified due to the increased costs associated with administering, operating, maintaining, and rehabilitating CRIP. In accordance with BIA financial guidelines and 25 CFR part 171, BIA developed the CRIP budget for 2025 expenditures and income approximately two years in advance. BIA relied on financial reports generated by the Financial and Business Management System and procurement files to review past expenditures and project a future budget. The CRIP Project Manager also used his discretion to assess and anticipate upcoming financial needs and priorities. The 2025 expenses were then divided by the total assessable acres within CRIP. The $5.00 per acre assessment increase for the ''basic per acre'' rate category is necessary to ensure CRIP can pay its anticipated expenses for 2025.

The BIA Colorado River Agency Superintendent and CRIP Project Manager routinely attend the CRIT Irrigation Committee's monthly meetings to provide project updates and explain proposed rate increases. BIA also met with CRIT's Tribal Council on March 25, 2024. On March 28, 2024, BIA held a water user meeting and attendees included individual water users, CRIT's legal counsel, CRIT's farm director, and a U.S. Fish and Wildlife Service biological science technician. During all of these meetings, BIA presented details supporting the 2025 budget, upcoming expenses, and the proposed O&M assessment increase from $64 to $69 per acre. BIA also explained it provides irrigation service commensurate with its resources, meaning the $5.00 per acre assessment increase is needed to improve the project's quality of service.

BIA agrees with commenters that CRIP's water measurement devices can be operated and maintained better to meet water delivery requirements, and BIA is working to resolve this issue with our contractors and experts. BIA is addressing priority deferred maintenance projects at CRIP by providing supplemental funding, engineering, design, and construction resources to CRIP. From 2022 through 2024, BIA allocated over $17 million in supplemental funding for deferred maintenance projects, such as Lateral 73–36 Check 1 and Main Canal Check rehabilitation. BIA provided this supplemental funding in addition to revenues collected from CRIP's assessable acres.

We appreciate water users' participation in our meetings and comments, and we have sent a follow-up letter to CRIT in response to their unique questions and concerns.

*Comment:* Commenters state CRIP is chronically understaffed due to its lengthy hiring process and Indian preference requirements, and request BIA hire more staff to improve water deliveries along with a specific concern that the project is understaffed and personnel costs should not increase until vacant positions are filled.

*Response:* Due to a variety of reasons, recruitment for CRIP positions has proved to be challenging. The BIA Western Regional Director and Human Resources team remain committed to filling vacancies in CRIP's 78-position organizational chart as rapidly as possible. We are currently seeking applicants for the following 13 positions: 2 Maintenance Workers, 3 Engineering Equipment Operators, 7 Irrigation System Operators, and 1 Accounting Technician. Applications are reviewed on a rolling basis, and all positions are open until filled. Preference in filing vacancies is given to qualified Indian candidates in accordance with the Indian Preference Act of 1934 (25 U.S.C. 5116). Given our difficulties with filling the Irrigation System Operator positions, BIA's Human Resources opened these positions to the public in April and authorized recruitment or relocation incentives. All applicants must apply online at *www.usajobs.gov* (search for BIA positions in Poston, Arizona). BIA also posted application information in local newspapers, and the Superintendent will be attending job fairs at local colleges to recruit.

CRIP's 2025 budget can support personnel salary, benefits, and overtime for up to 45 employees, which is an increase of 17 CRIP employees above the current 2024 staffing levels. The remaining 33 vacant positions in CRIP's organizational chart are not accounted for or funded in the 2025 budget. The quality of irrigation service will improve as vacancies are filled, while also retaining and increasing experience levels of existing CRIP staff.

*Comment:* Commenters state BIA should have anticipated lost revenue from 2023 excess water sales and is punishing irrigators for using less water.

*Response:* All presently assessable acres within CRIP must pay an annual basic per acre charge for up to 5.75 acre-feet of water. If additional water is available, irrigators may request more water and pay our per acre-foot fee for ''excess water.'' Because the availability of excess water fluctuates year-to-year along with irrigators' demands, CRIP's excess water revenue fluctuates. In calendar years 2020, 2021, and 2022, CRIP's excess water revenues were around $480,000, $830,000, and $650,000, respectively. Based on prior revenues, BIA budgeted for 2023 excess water revenues of $580,000. This estimate, however, fell short, and the actual excess water revenue was around $170,000 for 2023. While we do not know why irrigators ordered less excess water in 2023 than in prior years, we believe it might be in part due to the unusually wet spring in 2023.

Given the difficulties of predicting an upcoming year's rainfall and the amount of excess water irrigators will order, BIA's budgets will no longer rely on excess water revenues to fund operational expenses. Accordingly, BIA's budgeted excess water revenue for 2024 and 2025 has been reduced to $150,000 per year. If the revenues from excess water sales exceed our budgeted amounts, CRIP will allocate the extra funds to filling vacancies or addressing deferred maintenance. Going forth, CRIP's budget will instead rely on collections from our basic per acre assessment to fund O&M expenses. We do not intend to punish irrigators for ordering less water. Rather, our budgets must account for the fact that irrigators are conserving and improving their on-farm watering techniques.

**Does this notice affect me?**

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

**Where can I get information on the regulatory and legal citations in this notice?**

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the internet site for the Government Publishing Office at *www.gpo.gov.*

**What authorizes you to issue this notice?**

Our authority to issue this notice is vested in the Secretary of the Interior (Secretary) by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn

delegated this authority to the Assistant Secretary—Indian Affairs under part 209, chapter 8.1A, of the Department of the Interior's Departmental Manual.

**Whom can I contact for further information?**

The following tables are the regional and project/agency contacts for our irrigation facilities.

**Northwest Region Contacts**

Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169. Telephone: (503) 231–6702.

| | |
|---|---|
| Flathead Indian Irrigation Project. | Eric Bruguier, Acting Irrigation Project Manager, 220 Project Drive, St. Ignatius, MT 59865. Telephone: (406) 745–2661 |
| Fort Hall Irrigation Project .... | David Bollinger, Irrigation Project Manager, 36 Bannock Avenue, Fort Hall, ID 83203–0220. Telephone: (208) 238–1992. |
| Wapato Irrigation Project ..... | Pete Plant, Project Administrator, 413 South Camas Avenue, Wapato, WA 98951–0220. Telephone: (509) 877–3155. |

**Rocky Mountain Region Contacts**

Leslie Shakespeare, Acting Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101. Telephone: (406) 247–7943.

| | |
|---|---|
| Blackfeet Irrigation Project ... | Kenneth Bird, Superintendent, Greg Tatsey, Irrigation Project Manager, P.O. Box 880, Browning, MT 59417. Telephones: Superintendent (406) 338–7544; Irrigation Project Manager (406) 338–7519. |
| Crow Irrigation Project ..... | Clifford Serawop, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project O&M performed by Water Users Association), P.O. Box 69, Crow Agency, MT 59022. Telephones: Superintendent (406) 638–2672; Acting Irrigation Project Manager (406) 247–7998. |
| Fort Belknap Irrigation Project. | Mark Azure, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project O&M contracted to Tribes under PL 93–638), 158 Tribal Way, Suite B, Harlem, MT 59526. Telephones: Superintendent (406) 353–2901; Irrigation Project Manager, Tribal Office (406) 353–8454. |
| Fort Peck Irrigation Project .. | Anna Eder, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project O&M performed by Fort Peck Water Users Association), P.O. Box 637, Poplar, MT 59255. Telephones: Superintendent (406) 768–5312; Acting Irrigation Project Manager (406) 247–7998. |
| Wind River Irrigation Project | Leslie Shakespeare, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project O&M for Little Wind, Johnstown, and Lefthand Units contracted to Tribes under PL 93–638; Little Wind-Ray and Upper Wind Units O&M performed by Ray Canal, A Canal, and Crowheart Water Users Associations), P.O. Box 158, Fort Washakie, WY 82514. Telephones: Superintendent (307) 332–7810; Acting Irrigation Project Manager (406) 247–7998. |

**Southwest Region Contacts**

Patricia L. Mattingly, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road NW, Albuquerque, NM 87104. Telephone: (505) 563–3100.

| | |
|---|---|
| Pine River Irrigation Project | Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315. Telephones: Superintendent (970) 563–4511; Irrigation Project Manager (970) 563–9484. |

**Western Region Contacts**

Jessie Durham, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004. Telephone: (602) 379–6600.

| | |
|---|---|
| Colorado River Irrigation Project. | Davetta Ameelyenah, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344. Telephones: Superintendent (928) 669–7111; (928) 662–4392 Irrigation Project Manager. |
| Duck Valley Irrigation Project | Phaline Conklin, Superintendent, (Project O&M compacted to Shoshone-Paiute Tribes under PL 93–638), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801. Telephones: Superintendent (775) 738–5165; Tribal Office (208) 759–3100. |
| Yuma Project, Indian Unit .... | Maureen Brown, Superintendent, (Bureau of Reclamation (BOR) owns the Project and is responsible for O&M), 256 South Second Avenue, Suite D, Yuma, AZ 85364. Telephones: Superintendent (928) 782–1202; BOR Area Office Manager (928) 343–8100. |
| San Carlos Irrigation Project (Indian Works and Joint Works). | Ferris Begay, Project Manager (BIA), Clarence Begay, Supervisory Civil Engineer (BIA), (Portions of Indian Works O&M compacted to Gila River Indian Community under PL 93–638; Joint Control Board is responsible for portions of Joint Works maintenance pursuant to Gila River Indian Community Water Rights Settlement Act of 2004, 118 Stat. 3499), 13805 North Arizona Boulevard, Coolidge, AZ 85128. Telephones: Project Manager (520) 723–6225; Supervisory Civil Engineer (520) 723–6203; Gila River Indian Irrigation & Drainage District (520) 562–6720; Joint Control Board (520) 562–9760, (520) 723–5408. |
| Uintah Irrigation Project ..... | Antonio Pingree, Superintendent, Ken Asay, Irrigation System Manager (BIA), (Project O&M performed by Uintah Indian Irrigation Project Operation and Maintenance Company), P.O. Box 130, Fort Duchesne, UT 84026. Telephones: Superintendent (435) 722–4300; Irrigation System Manager (435) 722–4344; Uintah Indian Irrigation Operation and Maintenance Company (435) 724–5200. |
| Walker River Irrigation Project. | Colleen Labelle, Superintendent, 311 East Washington Street, Carson City, NV 89701. Telephone: (775) 887–3500. |

**What irrigation assessments or charges are adjusted by this notice?**

The rate table below contains final rates for the 2024 and 2025 calendar years for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. An asterisk immediately following the rate category notes irrigation projects where 2024 rates are different from the 2025 rates.

| Project name | Rate category | Final 2024 rate | Final 2025 rate |
|---|---|---|---|
| **Northwest Region Rate Table** | | | |
| Flathead Irrigation Project | Basic per acre—A | $39.00 | $39.00 |
| | Basic per acre—B | 19.50 | 19.50 |
| | Minimum Charge per tract | 75.00 | 75.00 |
| Fort Hall Irrigation Project | Basic per acre * | 65.50 | 66.50 |
| | Minimum Charge per tract * | 41.00 | 43.00 |
| Fort Hall Irrigation Project—Minor Units | Basic per acre * | 45.00 | 45.50 |
| | Minimum Charge per tract * | 41.00 | 43.00 |
| Fort Hall Irrigation Project—Michaud Unit | Basic per acre * | 75.00 | 75.50 |
| | Pressure per acre * | 116.50 | 117.00 |
| | Minimum Charge per tract * | 41.00 | 43.00 |
| Wapato Irrigation Project—Toppenish/Simcoe Units | Minimum Charge per bill | 28.00 | 28.00 |
| | Basic per acre | 28.00 | 28.00 |
| Wapato Irrigation Project—Ahtanum Units | Minimum Charge per bill | 35.00 | 35.00 |
| | Basic per acre | 35.00 | 35.00 |
| Wapato Irrigation Project—Satus Unit | Minimum Charge per bill | 100.00 | 100.00 |
| | "A" Basic per acre | 86.00 | 86.00 |
| | "B" Basic per acre | 92.00 | 92.00 |
| Wapato Irrigation Project—Additional Works | Minimum Charge per bill | 100.00 | 100.00 |
| | Basic per acre | 87.00 | 87.00 |
| Wapato Irrigation Project—Water Rental | Minimum Charge per bill | 100.00 | 100.00 |
| | Basic per acre | 100.00 | 100.00 |
| **Rocky Mountain Region Rate Table** | | | |
| Blackfeet Irrigation Project | Basic-per acre | 21.50 | 21.50 |
| Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units). | Basic-per acre | 30.00 | 30.00 |
| Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units). | Basic-per acre | 30.00 | 30.00 |
| Crow Irrigation Project—Two Leggins Unit | Basic-per acre | 15.00 | 15.00 |
| Crow Irrigation Two Leggins Drainage District | Basic-per acre | 3.00 | 3.00 |
| Fort Belknap Irrigation Project | Basic-per acre | 20.00 | 20.00 |
| Fort Peck Irrigation Project | Basic-per acre | 29.00 | 29.00 |
| Wind River Irrigation Project—Units 2, 3 and 4 | Basic-per acre | 26.00 | 26.00 |
| Wind River Irrigation Project—Unit 6 | Basic-per acre | 23.00 | 23.00 |
| Wind River Irrigation Project—LeClair District (See Note #1) | Basic-per acre | 47.00 | 47.00 |
| Wind River Irrigation Project—Crow Heart Unit | Basic-per acre | 16.50 | 16.50 |
| Wind River Irrigation Project—A Canal Unit | Basic-per acre | 16.50 | 16.50 |
| Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #1). | Basic-per acre | 30.65 | 30.65 |
| **Southwest Region Rate Table** | | | |
| Pine River Irrigation Project | Minimum Charge per tract | 75.00 | 75.00 |
| | Basic-per acre * | 23.50 | 24.00 |
| **Western Region Rate Table** | | | |
| Colorado River Irrigation Project | Basic per acre up to 5.75 acre-feet *. | 64.00 | 69.00 |
| | Excess Water per acre-foot over 5.75 acre-feet. | 18.00 | 18.00 |
| Duck Valley Irrigation Project | Basic per acre * | 5.30 | 11.00 |
| Yuma Project, Indian Unit (See Note #2) | Basic per acre up to 5.0 acre-feet * | 184.00 | ( + ) |
| | Excess Water per acre-foot over 5.0 acre-feet. | 35.00 | ( + ) |
| | Basic per acre up to 5.0 acre-feet (Ranch 5). | 184.00 | ( + ) |

| | | | | |
|---|---|---|---|---|
| San Carlos Irrigation Project (Joint Works) (See Note #3) | Basic per acre | | $26.00 | $26.00 |
| | Proposed 2025 Construction Water Rate Schedule: | | | |
| | | Off project construction | On project construction—gravity water | On project construction—pump water |
| | Administrative Fee. | $300.00 | $300.00 | $300.00. |
| | Usage Fee | $250.00 per month. | No Fee | $100.00 per acre foot. |
| | Excess Water Rate †. | $5.00 per 1,000 gal. | No Charge | No Charge. |

| Project name | Rate category | Final 2024 rate | Final 2025 rate |
|---|---|---|---|
| San Carlos Irrigation Project (Indian Works) (See Note #4) | Basic per acre | $99.62 | $93.85 |
| Uintah Irrigation Project | Basic per acre * | 23.00 | 25.00 |
| | Minimum Charge per bill | 25.00 | 25.00 |
| Walker River Irrigation Project | Basic per acre * | 31.00 | 32.00 |

** Notes irrigation projects where BIA rates are adjusted.
+ These rates have not yet been determined.
† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.

**Note #1:** O&M rates for LeClair and Riverton Valley Irrigation Districts apply to Trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.

**Note #2:** The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by the Bureau of Reclamation (BOR), the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR is $180.00 for 2024 but has not been established for 2025. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The final 2024 BIA rate component is $4.00 per acre. The final 2025 BIA rate component is $4.50 per acre.

**Note #3:** The Construction Water Rate Schedule identifies fees assessed for use of irrigation water for non-irrigation purposes.

**Note #4:** The O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is established by BIA San Carlos Irrigation Project—Indian Works; the final 2024 and 2025 rate is $55.85 per acre. The second component is established by BIA San Carlos Irrigation Project—Joint Works; the final 2024 and 2025 rate is $26.00 per acre. The third component is established by the San Carlos Irrigation Project Joint Control Board (comprised of representatives from the Gila River Indian Community and the San Carlos Irrigation and Drainage District); the 2024 rate is $17.77 per acre, and the 2025 rate is $12.00 per acre.

**Consultation and Coordination With Tribal Governments (Executive Order 13175)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

**Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)**

These rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**Regulatory Planning and Review (Executive Order 12866, as Amended by Executive Order 14094)**

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866, as amended by Executive Order 14094.

**Regulatory Flexibility Act**

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

**Unfunded Mandates Reform Act of 1995**

These rate adjustments do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

**Takings (Executive Order 12630)**

These rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The rate adjustments do not deprive the public, State, or local governments of rights or property.

**Federalism (Executive Order 13132)**

Under the criteria in section 1 of Executive Order 13132, these rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and

the States, or the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988)**

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

**Paperwork Reduction Act of 1995**

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires March 31, 2026.

**National Environmental Policy Act**

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d)), pursuant to 43 CFR 46.210(i). In addition, the rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2024–17669 Filed 8–8–24; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_WY_FRN_MO4500180137]**

### Notice of Availability of the Draft Environmental Impact Statement for the Dry Creek Trona Mine Project, Sweetwater County, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the draft Environmental Impact Statement (EIS) for the Dry Creek Trona Mine Project, Sweetwater County, WY.

**DATES:** To afford the BLM the opportunity to consider comments on the draft EIS, please ensure that the BLM receives your comments within 45 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. The BLM will hold a public meeting during the public comment period. The date, time, and location will be announced at least 15 days prior to the meeting, through public notices, news releases, social media, mailings and the BLM website: *https://eplanning.blm.gov/eplanning-ui/admin/project/2016395/510.*

**ADDRESSES:** The draft EIS is available for review on the BLM project website at *https://eplanning.blm.gov/eplanning-ui/admin/project/2016395/510.*

Written comments related to the Dry Creek Trona Mine EIS may be submitted by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/admin/project/2016395/510*
- *Email: BLM_WY_Dry_Creek@blm.gov*
- *Mail:* Dry Creek Trona Mine EIS c/o BLM Kemmerer Field Office, 430 North Highway 189, Kemmerer, WY 83101

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/admin/project/2016395/510* and at the Kemmerer and Rock Springs Field Offices.

**FOR FURTHER INFORMATION CONTACT:** Kelly Lamborn, Project Manager, telephone: (307) 828–4505; address: 430 North Highway 189, Kemmerer, WY 83101; email *BLM_WY_Dry_Creek@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Kelly Lamborn. 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 draft EIS provides the analysis of environmental impacts for the proposed Dry Creek Trona Mine Project. Pacific Soda, LLC (Pacific Soda) owns rights to mine trona resources on private lands and leased BLM administered lands in the Kemmerer Field Office in Sweetwater County, Wyoming. The proposed mine permit area includes two BLM leased sections and three private sections locatedsouth of I–80 and west of Wyoming State Highway 530, south of the town of Green River, Wyoming. The mine plan, if approved by the BLM, would allow Pacific Soda to construct mining facilities and employ solution mining technologies to develop their BLM leases by mining trona beds 2,300 feet below the surface and processing that trona for market. Pacific Soda estimates that approximately 23.5 million tons of trona are in reserve on each section of land within the proposed project area, that mining would occur on each section for 9 to 10 years, and that mined trona would be refined to produce approximately 6.0 million metric tons of marketable soda ash per year and 440,900 metric tons of sodium bicarbonate (baking soda) per year. Key approving agencies are the Wyoming Department of Environmental Quality, the BLM, and the State of Wyoming Industrial Siting Commission.

There are four alternatives under consideration. Approximately the same amount of trona would be mined under each action alternative (*i.e.,* alternatives B, C, and D):

Alternative A—No Action Alternative: The project would not be approved.

Alternative B—Proposed Action: Company proposed action would include processing facilities at the mine location. This alternative includes 26.22 miles of water line and impacts nine acres of USFS managed lands near the Green River. Under the proposed action approximately 6,325 total acres could be impacted, of which about 327 acres is identified as a priority habitat management area (PHMA) for sage grouse, with the remaining acreage a general habitat management area (GHMA).

Alternative C—Modified proposed action: would collocate the transmission line, access road, and rail line and thereby reduce construction in undisturbed areas. The water line would remain the same as Alternative B. Under this alternative approximately 6,387 total acres would be impacted, of which about 324 acres are PHMA, with the remaining acreage being GHMA.

Alternative D—BLM Preferred Alternative: Implementation of Alternative D would result in a larger total project footprint (7,015 acres). Although development of the well field and mine production levels would be unchanged, the processing facilities would be moved from the mine site area to a site north of I–80, approximately 8 miles west of Green River, Wyoming, within a designated processing facilities boundary. The water supply pipeline

would be relocated to north of I–80, connecting the processing facilities to the water intake on the Green River, reducing the impacts from 24.66 miles to 6.4 miles, and eliminating the disturbance through the U.S. Forest Service Flaming Gorge Recreation Area and the Blacks Fork PHMA for Greater Sage-Grouse.

The preparation of an EIS is intended to assist the BLM in the decision-making process through the identification, analysis, and public disclosure of potential impacts of the Proposed Action on the human environment, including but not limited to environmental, social, and economic impacts (40 CFR 1502.16). Aside from BLM- and USFS-managed lands, there are no additional federal or Wyoming state-managed lands that would be disturbed by the Proposed Action. Additionally, the BLM is not aware of any other proposed activities in the Dry Creek Trona Mine Project area that would be considered a connected action to the Proposed Action under NEPA.

*Purpose and Need for the Proposed Action:* The BLM's purpose for the action is to respond to Pacific Soda's Plan of Operations to construct and operate trona mining facilities, including mine well fields, processing facilities, a co-generation plant, storage ponds, access roads, railroad spurs, and utility features. If approved by the BLM, this would allow Pacific Soda the opportunity to develop their valid existing leases on specific public lands within the proposed mining plan boundary as authorized by the Mineral Leasing Act of 1920 (as amended) and FLPMA. Pacific Soda would construct the mining facilities and transportation and utility features specified in the Plan of Operations and SF–299 applications for rights-of-way for off lease facilities.

The need for the action is established by the BLM's responsibility under the Mineral Leasing Act of 1920 (as amended) and FLPMA. Under these statutes, the BLM is required to respond to the Proposed Action and review the proposed Mine Plan and associated SF–299 applications to ensure that proposed mining activities and construction of associated facilities do not cause unnecessary or undue degradation of public lands and are carried out consistent with leasing stipulations and other requirements mandated in the BLM Kemmerer and Green River Resource Management Plans (RMPs), as well as other applicable federal, state, and local statutes and regulations.

*Schedule for the Decision-Making Process:* The Proposed Final EIS is anticipated to be available for public review in December 2024, and the Record of Decision in March 2025. The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Consultation with interested Indian Tribal Nations is ongoing. A Programmatic Agreement for addressing cultural concerns is included in the EIS. Following a thorough NEPA analysis, the BLM's decision includes whether to approve the Plan of Operations and subsequent SF–299 applications (for transportation and utility features) and, if approved, to determine whether modifications and/or additional mitigation measures are required to comply with the FLPMA mandate to prevent unnecessary or undue degradation and conform to leasing stipulations specified in the BLM Kemmerer and Green River RMPs.

The BLM will hold a public meeting during the public comment period. The specific date, time, and location will be announced at least 15 days prior to the meeting, through public notices, news releases, social media, mailings, and the BLM website: *https://eplanning.blm.gov/eplanning-ui/admin/project/2016395/510.*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

**Franklin Keeler,**

*Acting District Manager, BLM High Desert District Office.*

[FR Doc. 2024–17683 Filed 8–8–24; 8:45 am]

**BILLING CODE 4331–26–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L19900000.PO0000.LLHQ300000.23X; OMB Control No. 1004–0025]**

## Agency Information Collection Activities; Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 8, 2024.

**ADDRESSES:** Send your written comments on this Information Collection Request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0025 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact John Grasso by email at *jgrasso@blm.gov,* or by telephone at (303) 239–3777. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. The BLM may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent

burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this Notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The General Mining Law (30 U.S.C. 29, 30, and 39) authorizes a holder of an unpatented claim for hardrock minerals to apply for fee title (patent) to the federal land (as well as minerals) embraced in the claim. Division E, Title IV of the Consolidated Appropriations Act, 2024 (H.R. 4366–260), annual appropriation bill for the Department of the Interior, has prevented the BLM from processing mineral patent applications unless the applications were grandfathered under the initial legislation. While grandfathered applications are rare at present, the approval to collect the information continues to be necessary because of the possibility that the moratorium will be lifted and applicable regulations that contain the information are still part of the Code of Federal Regulations.

OMB control number 1004–0025 is scheduled to expire on July 31, 2025. The BLM plans to request that OMB renew this OMB control number for an additional three (3) years.

*Title of Collection:* Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests (43 CFR parts 3860 and 3870).

*OMB Control Number:* 1004–0025.

*Form Numbers:* 3860–2 and 3860–5.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Owners of unpatented mining claims and mill sites upon the public lands, and of reserved mineral lands of the United States, National Forests, and National Parks.

*Total Estimated Number of Annual Respondents:* 1.

*Total Estimated Number of Annual Responses:* 10.

*Estimated Completion Time per Response:* Varies depending on activity.

*Total Estimated Number of Annual Burden Hours:* 559.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Non-hour Burden Cost:* $256,425.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

**Darrin A. King,**

*Information Collection Clearance Officer.*

[FR Doc. 2024–17739 Filed 8–8–24; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_MT_FRN_MO4500180327]**

### Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the North Dakota Resource Management Plan Revision

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a proposed resource management plan (RMP) and final environmental impact statement (EIS) for the North Dakota Resource Management Plan Revision and by this notice is announcing the start of a 30-day protest period of the proposed RMP.

**DATES:** This notice announces a 30-day protest period to the BLM on the proposed RMP beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the proposed RMP/final EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. Protests must be postmarked or electronically submitted on the BLM's ePlanning site during the 30-day protest period.

**ADDRESSES:** The proposed RMP and final EIS and other pertinent documents are available on the BLM ePlanning project website at *eplanning.blm.gov/eplanning-ui/project/1505069/510* and at the North Dakota Field Office; address 99 23rd Avenue West, Suite A, Dickinson, ND 58601.

Instructions for filing a protest with the BLM for the North Dakota Resource Management Plan Revision 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 through one of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/1505069/510*
- *Regular and Overnight Mail:* BLM Director, Attention: Protest Coordinator (HQ210), Denver Federal Center, Building 40 (Door W–4), Lakewood, CO 80215

**FOR FURTHER INFORMATION CONTACT:** Kristine Braun, telephone 701–227–7725; address 99 23rd Avenue West, Suite A, Dickinson, ND 58601; email *kebraun@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Kristine Braun. 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 North Dakota proposed RMP provides a comprehensive land use plan that guides management on approximately 58,500 acres of BLM-managed public

lands and 4.1 million acres of BLM-administered mineral estate in North Dakota. The planning area is currently managed under the 1988 North Dakota RMP, as amended. This planning effort would update management guidance and create a new North Dakota RMP.

The proposed RMP/final EIS evaluates five alternatives in detail. Alternative A is the No Action Alternative, which is the continuation of current management under the existing 1988 North Dakota RMP, as amended.

Alternative B (Preferred Alternative from the draft RMP/EIS) emphasizes sustaining the ecological integrity of habitats for all priority plant, wildlife, and fish species, while allowing appropriate development scenarios for resource uses. Under Alternative B, the BLM would close low oil and gas development potential areas and State-designated drinking water source protection areas to future Federal oil and gas leasing and would not allow future leasing for Federal coal outside of a 4-mile development area from existing mine permit boundaries. Where oil and gas are available for leasing, no surface occupancy, controlled surface use, or timing limitation stipulations would apply to most areas. Alternative B provides opportunities for recreation and improved access by designating one special recreation management area (SRMA) and two backcountry conservation areas (BCAs). It would manage for other social and scientific values by designating one area of critical environmental concern (ACEC). Alternative B would recommend three eligible wild and scenic rivers as suitable for designation.

Alternative B.1 is a sub-alternative to Alternative B that provides the same management opportunities and protections as found under Alternative B for all resources except coal. Under this alternative, future leasing of Federal coal would be further restricted by designating the area outside the approved permit boundaries at each coal mine (as of September 9, 2022) as unavailable for coal leasing.

Alternative C does not close any areas to future Federal oil and gas leasing, but more acres would be subject to no surface occupancy lease stipulations than Alternative A. Under Alternative C, fewer acres of Federal coal would be made unavailable for leasing than Alternative B, but more than Alternative A. Alternative C provides opportunities for recreation and improved access by also designating one SRMA and two BCAs, but with reduced size and/or management restrictions.

Alternative D is the proposed RMP and includes management direction from Alternatives A, B, and C. Alternative D carries forward many of the key allocations from Alternative B (the Preferred Alternative in the draft RMP/draft EIS) for oil, gas, and coal as well as the management direction establishing the SRMA, two BCAs, and designation of one ACEC. Alternative D would close low oil and gas development potential areas and State-designated drinking water source protection areas to future Federal oil and gas leasing and would make Federal coal minerals outside a 4-mile development area from existing mine permit boundaries unavailable for consideration for future leasing. Alternative D, however, adjusts fluid mineral lease stipulations for some wildlife habitat and would change some right-of-way exclusion areas to avoidance areas where the functionality of the habitat can be maintained by applying special stipulations and design features. Alternative D also adjusts the application of Coal Screen 4 to look for clusters of surface owner opposition in determining lands as unavailable for future consideration for leasing. Alternative D would not recommend any river as suitable for inclusion in the National Wild and Scenic River System due to segments being small, fragmented, and impractical to manage. Alternative D would also reduce some visual resource management classifications and would include approximately 100 acres as potentially available for disposal to allow for flexibility for transfer, exchange, or direct sale of a handful of small, scattered parcels without public access ranging in size from 0.1 –1.0 acres.

The North Dakota draft RMP/draft EIS public comment period began on January 20, 2023, was extended 30-days, and ended on May 22, 2023. The BLM held two in-person public meetings in Bowman and Dickinson, North Dakota, during the public comment period. The BLM considered and incorporated in the proposed RMP, as appropriate, comments received from the public, cooperating agencies, and internal BLM review.

**Protest of the Proposed RMP**

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the proposed RMP may protest its approval to the BLM Director. Protest on the proposed RMP constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP. Instructions for filing a protest regarding the proposed RMP with the BLM Director may be found online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website as set forth in the **ADDRESSES** section. Protests submitted by any other means will be invalid. The BLM Director will render a written decision on each protest. The Director's decision shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports*. After 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)

**Sonya Germann,**

*State Director.*

[FR Doc. 2024–17402 Filed 8–8–24; 8:45 am]

**BILLING CODE 4331–20–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_NM_FRN_MO4500178348]**

### Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the BLM Rio Puerco Field Office, New Mexico

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Rio Puerco

Field Office has prepared a Proposed Resource Management Plan (RMP) and associated Final Environmental Impact Statement (EIS), and by this notice is announcing the start of a 30-day protest period of the Proposed RMP.

**DATES:** This notice announces a 30-day protest period to the BLM on the Proposed RMP beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the Proposed RMP/Final EIS by September 9, 2024. The EPA usually publishes its NOAs on Fridays. Protests must be postmarked or electronically submitted on the BLM's ePlanning website during the 30-day protest period.

**ADDRESSES:** The Proposed RMP/Final EIS is available online in the Documents and Reports section of the ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/64954/510*. Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/64954/510* and at the Rio Puerco Field Office.

Instructions for filing a protest with the BLM for the Proposed RMP for the BLM Rio Puerco Field Office can be found at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.5–2.

**FOR FURTHER INFORMATION CONTACT:** Adam Lujan, Resource Management Plan Project Manager, BLM Rio Puerco Field Office; telephone: 505–761–8734; address: 100 Sun Ave. NE, Suite 330, Albuquerque, New Mexico 87109; or email: *alujan@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. Lujan. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** In the Rio Puerco Proposed RMP/Final EIS, the BLM analyzed the environmental consequences of four alternatives under consideration for managing approximately 731,600 acres of surface estate and about 3.6 million acres of subsurface mineral estate, which is known as the decision area. These lands, administered by the BLM Rio Puerco Field Office, are located within Bernalillo, Cibola, McKinley, Sandoval, Torrance, and Valencia counties in central New Mexico. The Rio Puerco planning area encompasses approximately 9.5 million acres, including National Forest; National Monuments; and Tribal, State, and private lands. It also includes valuable mineral resources and the largest population center in the State of New Mexico. This land use plan would replace the current Rio Puerco RMP, which the BLM approved in 1986 and amended in 1992. The Proposed RMP/Final EIS analyzes the impacts of delineating lands to account for changes in population, types of uses, technologies, user interests, and public understanding of resource availability in the Middle Rio Grande Watershed in central New Mexico.

The plan addresses several interrelated issues and management concerns, including land tenure adjustments, land use authorizations, recreation, areas with special management designations, lands with wilderness characteristics, livestock grazing, transportation access, renewable energy, visual resources, wildland/urban interface, and mineral resources. The agency selected these issues based on broad concerns or controversies related to conditions, trends, needs, and existing and potential uses of the planning area lands. Management prescriptions in potential areas of critical environmental concern (ACECs) that could limit development of (1) commercial mineral, solar, wind, or geothermal resources or (2) recreation or other resources important primarily for their economic benefit to the planning area must be evaluated to avoid unnecessarily restricting these activities. Additionally, large areas of mixed ownership (BLM parcels amongst private, Tribal, or other ownership) pose significant access and multiple-use issues, which is why this Proposed RMP/Final EIS identifies them as potential areas for exchange.

The four alternatives analyzed in detail in the Final EIS are as follows:

- BLM Alternative A (No Action)—Continues 1986 Resource Management Plan management direction;
- BLM Alternative B—Emphasizes resource protection;
- BLM Alternative C (Proposed) (Draft Preferred)—Focuses on providing a balance of resource uses with conservation; and
- BLM Alternative D—Allows for a greater opportunity for resource use and development.

The preferred alternative for the Proposed RMP is Alternative C, which was identified in the 2012 Draft RMP/Final EIS. The BLM has updated the alternatives, including Alternative C, for clarity and to incorporate the latest science and data, as well as to reflect current policies, laws, procedures, Tribal perspectives from government-to-government consultation, input and special expertise provided by cooperating agencies, and designations such as the Placitas Withdrawal (89 FR 31763 (April 25, 2024)). Some of these changes to Alternative C include closing additional sub-surface mineral acreage in the Placitas area to salable and locatable mineral development, closing areas with low potential for fluid mineral development, and modifying recreation management area designations. Alternative C would designate a total of 18 ACECs: 8 carried forward from the existing RMP (Cabezon Peak, Cañon Tapia, Elk Springs ACEC and Juana Lopez Research Natural Area, Jones Canyon, Ojito, Pronoun Cave Complex, San Luis Mesa Raptor Area, and Torreon Fossil Fauna); 2 expansions of ACECs in the existing RMP (Bluewater Canyon and Espinazo Ridge [formerly Ball Ranch]); and 10 new ACECs (Bony Canyon, Cañon Jarido, Cerro Verde, Guadalupe Ruin and Community, Ignacio Chavez, Legacy Uranium Mines, Petaca Pinta, and San Miguel Dome).

On February 29, 2008, the BLM published a Notice of Intent in the **Federal Register**, notifying the public of a formal scoping period and soliciting public participation (73 FR 11142). Between March 2007 and February 2008, Rio Puerco Field Office managers and staff had discussions about the Rio Puerco Draft RMP/Draft EIS with 12 local American Indian Tribal groups, including Acoma Pueblo, Eastern Navajo Agency Council, Isleta Pueblo, Jemez Pueblo, Laguna Pueblo, Navajo Nation, Ojo Encino Navajo Chapter, Sandia Pueblo, San Felipe Pueblo, Santo Domingo Pueblo, Torreon Navajo Chapter, Zia Pueblo, and Zuni Pueblo. A scoping presentation was given to the BLM Resource Advisory Council in March 2008. In April 2008, a scoping notice was distributed to more than 900 individuals. The BLM also met with various stakeholder and interest groups in the following ways:

- The BLM held eight scoping meetings in April 2008 in Albuquerque, Bernalillo, Cuba, Grants, Gallup, Los Lunas, Moriarty, and Rio Rancho.
- The BLM held two Economic Profile System workshops early in the process with local citizens and community leaders to develop a common understanding of the local economies and the ways in which land-use planning decisions might affect them.
- The public provided input on relevant issues to consider in the planning process. This information was

received during the scoping period ending on September 30, 2008.

- The BLM hosted two internal Alternatives Development Workshops.
- The BLM held a Cooperating Agency Workshop.

On July 13, 2012, the BLM published a Notice of Availability in the **Federal Register**, notifying the public of the release of the Draft RMP/Draft EIS, and the beginning of the comment period (77 FR 41444). During the 90-day comment period, the BLM received over 45,000 comments from interested parties. Substantive public comments and BLM responses are available in the Proposed RMP/Final EIS, Volume III, Appendix R. The Proposed RMP/Final EIS is the compilation of all the public input and data analyzed and presented in the Draft RMP/Draft EIS plus the public input considered during the 90-day comment period.

**Protest of the Proposed RMP**

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the Proposed RMP may protest its approval to the BLM Director. Protest on the Proposed RMP constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP. Instructions for filing a protest regarding the Proposed RMP with the BLM Director may be found online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section earlier, or submitted electronically through the BLM ePlanning project website as described previously. Protests submitted electronically by any means other than the ePlanning project website or by fax will be invalid unless a protest is also submitted as a hard copy. The BLM Director will render a written decision on each protest. The Director's decision shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.* Upon resolution of protests, the BLM will issue a Record of Decision 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)

**Melanie G. Barnes,**

*BLM New Mexico State Director.*

[FR Doc. 2024–17514 Filed 8–8–24; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520; OMB Control Number 1029–0036]**

### Agency Information Collection Activities; Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before September 9, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0036 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 12, 2024 (89 FR 9865). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you

should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of 30 U.S.C. 1201 *et seq.* require applicants to submit operation and reclamation plans for coal mining activities. This information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

*Title of Collection:* Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

*OMB Control Number:* 1029–0036.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Businesses and State governments.

*Total Estimated Number of Annual Respondents:* 100.

*Total Estimated Number of Annual Responses:* 2,311.

*Estimated Completion Time per Response:* Varies from 2 hours to 160 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 72,633.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* One time.

*Total Estimated Annual Nonhour Burden Cost:* $599,000.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Mark J. Gehlhar,**

*Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 2024–17782 Filed 8–8–24; 8:45 am]

**BILLING CODE 4310–05–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Hydrodermabrasion Systems and Components Thereof, DN 3765;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of HydraFacial LLC f/k/a Edge Systems LLC on August 6, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hydrodermabrasion systems and components thereof. The complaint names as respondents: Sinclair Pharma U.S. Inc. of Irvine, CA; Sinclair Pharma Limited of United Kingdom; Huadong Medicine Co., Ltd. of China; EMA Aesthetics, Ltd. of Ireland; Aesthetics Management Partners of Cordova, TN; Advanced Aesthetics Services LLC of Miami, FL; James Vaughn d/b/a Advanced Aesthetics Services LLC of Hampton Bays, NY; and H.R. Meditech of Korea. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing.

Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions

were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3765'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.)

No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 6, 2024.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2024–17767 Filed 8–8–24; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1658 (Final)]**

## Truck and Bus Tires From Thailand; Revised Schedule for the Subject Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**DATES:** August 5, 2024.

**FOR FURTHER INFORMATION CONTACT:** Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** Effective May 20, 2024, the Commission established a schedule for the conduct of the final phase of the subject investigation (89 FR 49903, June 12, 2024), and revised this schedule effective June 20, 2024 (89 FR 53119, June 25, 2024). Subsequently, the U.S. Department of Commerce (''Commerce'') issued a memorandum tolling certain statutory and regulatory deadlines by a total of seven days (Memorandum to the Record, Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings, July 22, 2024). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's revised dates in the schedule are as follows. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on September 27, 2024, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules. The deadline for filing prehearing briefs is 5:15 p.m. on October 4, 2024; if a brief contains business proprietary information, a nonbusiness proprietary version is due the following business day. Requests to appear at the hearing must be filed with the Secretary to the Commission not later than 5:15 p.m. on October 7, 2024. The prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 11, 2024, if deemed necessary. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on October 11, 2024. The hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 15, 2024. The deadline for filing posthearing briefs is October 22, 2024. Any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before October 22, 2024. On November 4, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 6, 2024. The deadline for filing appearances is 21 days prior to the hearing.

For further information concerning this proceeding, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

*Authority:* This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2024.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2024–17784 Filed 8–8–24; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–582 and 731–TA–1377 (Review)]**

### Ripe Olives From Spain

#### Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on ripe olives from Spain 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 July 3, 2023 (88 FR 42751) and determined on October 6, 2023 that it would conduct full reviews (88 FR 73043, October 24, 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 January 22, 2024 (89 FR 3950). The Commission conducted its hearing on May 30, 2024. All persons who requested the opportunity were permitted to participate.

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 August 5, 2024. The views of the Commission are contained in USITC Publication 5526 (July 2024), entitled *Ripe Olives from Spain: Investigation Nos. 701–TA–582 and 731–TA–1377 (Review).*

By order of the Commission.

Issued: August 6, 2024.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2024–17713 Filed 8–8–24; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–582 and 731–TA–1377 (Review)]**

### Ripe Olives From Spain; Withdrawal of Determinations

**SUMMARY:** On July 31, 2024, the Commission published a **Federal Register** notice of determinations for ripe olives from Spain. The notice is hereby withdrawn.

**DATES:** The document published at 89 FR 61497 on July 31, 2024 is withdrawn as of August 5, 2024.

By order of the Commission.

Issued: August 6, 2024.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2024–17712 Filed 8–8–24; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–729–730 and 731–TA–1698–1699 (Preliminary)]**

### Brake Drums From China and Turkey

#### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of brake drums from China and Turkey, provided for in subheading 8708.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of the subject merchandise from China and Turkey that are alleged to be subsidized by the governments of China and Turkey.[2]

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

#### Background

On June 20, 2024, Webb Wheel Products, Inc., Cullman, Alabama, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of brake drums from China and Turkey. Accordingly, effective June 20, 2024, the Commission instituted countervailing duty investigation Nos. 701–TA–729–730 and antidumping duty investigation Nos. 731–TA–1698–1699 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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** of June 26, 2024 (89 FR 53441). The Commission conducted its conference on July 11, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 58106 and 58116, July 17, 2024.

and filed its determinations in these investigations on August 5, 2024. The views of the Commission are contained in USITC Publication 5532 (August 2024), entitled *Brake Drums from China and Turkey: Investigation Nos. 701–TA–729–730 and 731–TA–1698–1699 (Preliminary).*

By order of the Commission.

Issued: August 5, 2024.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2024–17680 Filed 8–8–24; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–731 and 731–TA–1700 (Preliminary)]**

### Low Speed Personal Transportation Vehicles From China Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of low speed personal transportation vehicles from China, provided for in subheadings 8703.10.50, 8703.90.01, 8706.00.15, and 8707.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of the subject merchandise from China that are alleged to be subsidized by the government of China.[2]

**Commencement of Final Phase Investigations**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

**Background**

On June 20, 2024, the American Personal Transportation Vehicle Manufacturers Coalition filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of low speed personal transportation vehicles from China and LTFV imports of low speed personal transportation vehicles from China. Accordingly, effective June 20, 2024, the Commission instituted countervailing duty investigation No. 701–TA–731 and antidumping duty investigation No. 731–TA–1700 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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** of June 26, 2024 (89 FR 53440). The Commission conducted its conference on July 11, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 5, 2024. The views of the Commission are contained in USITC Publication 5533 (August 2024), entitled *Low Speed Personal Transportation Vehicles from China: Investigation Nos. 701–TA–731 and 731–TA–1700 (Preliminary).*

By order of the Commission.

Issued: August 5, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–17675 Filed 8–8–24; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Stephen Matthews, M.D.; Decision and Order

On July 27, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Stephen Matthews, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FM0055841 at the registered address of 11700 West 2nd Place, Suite 350, Medical Plaza 2, Lakewood, CO 80228. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Colorado, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.[1] ''A default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 57865, 89 FR 57870 (July 16, 2024).

[1] Based on the Government's submissions in its RFAA dated September 21, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Government's included Notice of Service of Order to Show Cause asserts that Registrant was personally served with the OSC on July 31, 2023; the Government notes that ''[d]ue to law enforcement safety concerns upon service, [Registrant] did not sign a Form DEA–12 acknowledging receipt of the [OSC].'' RFAAX 1, at 1.

circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.'' *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 3; *see also* 21 CFR 1316.67.

**Findings of Fact**

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, on May 22, 2023, the Colorado Medical Board issued a Non-Disciplinary Interim Cessation of Practice Agreement, in which Registrant agreed to not practice medicine in the State of Colorado. RFAAX 2, at 2; *see* RFAAX 3. According to Colorado online records, of which the Agency takes official notice, Registrant's medical license is under an ''Active—Restricted'' status with a stipulation that Registrant ''Cannot Practice.'' [2] Colorado Division of Professions and Occupations License Search, *https://apps2.colorado.gov/dora/licensing/lookup/licenselookup.aspx* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Colorado, the state in which he is registered with DEA.

**Discussion**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, D.O.,* 76 FR 71371, 71372 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.,* 43 FR 27616, 27617 (1978).[3]

According to Colorado statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user, patient, or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Colo. Rev. Stat. section 18–18–102(9) (2024). Further, a ''practitioner'' means a ''physician . . . or other person licensed, registered, or otherwise permitted, by this state, to distribute, dispense, conduct research with respect to, administer, or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' *Id.* section 18–18–102(29).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Colorado. As discussed above a physician must be a licensed practitioner permitted to dispense a controlled substance in Colorado. Thus, because Registrant lacks authority to practice medicine in Colorado and, therefore, is not authorized to handle controlled substances in Colorado, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

**Order**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FM0055841 issued to Stephen Matthews, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Stephen Matthews, M.D., to renew or modify this registration, as well as any other pending application of Stephen Matthews, M.D., for additional registration in Colorado. This Order is effective September 9, 2024.

**Signing Authority**

This document of the Drug Enforcement Administration was signed on August 2, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2024–17715 Filed 8–8–24; 8:45 am]

**BILLING CODE 4410–09–P**

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[3] This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR 71371–72; *Sheran Arden Yeates, D.O.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.,* 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR 27617.

## DEPARTMENT OF JUSTICE

### Notice of Reestablishment of the Charter of the Task Force on Research on Violence Against American Indian and Alaska Native Women

**AGENCY:** Office on Violence Against Women, United States Department of Justice.

**ACTION:** Notice of renewal of charter.

**SUMMARY:** The charter of the Task Force on Research on Violence Against American Indian and Alaska Native Women (hereinafter ''the Task Force'') has been reestablished.

**FOR FURTHER INFORMATION CONTACT:** Sherriann C. Moore, Deputy Director, Tribal Affairs Division, Office on Violence Against Women, United States Department of Justice, 145 N Street NE, Suite 10W.121, Washington, DC 20530, (202) 307–6026.

**SUPPLEMENTARY INFORMATION:** Authority for the Task Force is found in section 904(a)(3) of the Violence Against Women Act of 2005 (VAWA 2005), Public Law 109–162 (codified at 34 U.S.C. 10452 note) as amended by Section 907(a) of the Violence Against

Women Reauthorization Act, Public Law 113–4. The Task Force operates under the provisions of the Federal Advisory Committee Act of 1972, as amended (codified at 5 U.S.C. chapter 10).

The Deputy Attorney General has determined that the reestablishment of the Task Force is necessary and in the public interest and will provide information that will assist the National Institute of Justice (NIJ) to develop and implement a program of research on violence against American Indian and Alaska Native women, including domestic violence, dating violence, sexual assault, stalking, murder and sex trafficking. The research will evaluate the effectiveness of the Federal, State, and Tribal response to violence against American Indian and Alaska Native women and will propose recommendations to improve these responses. Title IX of VAWA 2005 also required the Attorney General to establish a Task Force to assist NIJ with development of the research study and the implementation of the recommendations.

The Attorney General, acting through the Director of the Office on Violence Against Women, originally established the Task Force on March 31, 2008. The charter to reestablish the Task Force was filed with the Agency on June 18, 2024 and was filed with Congress on July 11, 2024. The charter was re-filed with Congress with a technical amendment on July 29, 2024. The Task Force is comprised of representatives from national Tribal domestic violence and sexual assault nonprofit organizations, Tribal governments, and national Tribal organizations. Task Force members, with the exception of travel and per diem for official travel, shall serve without compensation.

The Deputy Director, Tribal Affairs Division, Office on Violence Against Women, shall serve as the Designated Federal officer for the Task Force.

**Rosemarie Hidalgo,**

*Director, Office on Violence Against Women.*

[FR Doc. 2024–17725 Filed 8–8–24; 8:45 am]

**BILLING CODE 4410–FX–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Advisory Committee for Cyberinfrastructure (#25150).

*Date and Time:* September 12, 2024–September 13, 2024 10 a.m.–3:30 p.m. (eastern).

*Place:* NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (In-Person)

The final meeting agenda and instructions to register and attend the meeting will be posted on the ACCI website: *https://new.nsf.gov/cise/oac/advisory-committee.*

*Type of Meeting:* Open.

*Contact Persons:* Walton, Amy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–4538.

*Minutes:* May be obtained from Christine Christy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–2221 and will be posted within 90-days after the meeting end date to the ACCI website: *https://new.nsf.gov/cise/oac/advisory-committee.*

*Purpose of Meeting:* To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

*Agenda:* Updates on NSF wide OAC activities *https://new.nsf.gov/cise/oac/advisory-committee.*

Dated: August 6, 2024.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2024–17788 Filed 8–8–24; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Advisory Committee for Biological Sciences (#1110)

*Date and Time:*

September 17, 2024; 10 a.m.–5 p.m. eastern

September 18, 2024; 10 a.m.–4 p.m. eastern

*Place:* U.S. National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

The meeting will be hybrid, with some Advisory Committee members participating in person and others participating virtually. For members of NSF and the external community, livestreaming will be accessible through the following pages:

September 17: *https://youtube.com/live/p6tMy00TKeg?feature=share*

September 18: *https://youtube.com/live/qlk5h1vQCrc?feature=share*

Information, including how to listen to the planned breakout sessions, will be posted on the meeting event web page prior to the meeting at: *https://new.nsf.gov/events/fall-2024-advisory-committee-meeting-directorate.*

*Type of Meeting:* Open.

*Contact Persons:* Dr. Karen C. Cone, U.S. National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–4967; Email: *kccone@nsf.gov.*

*Purpose of Meeting:* The Advisory Committee for the Directorate for Biological Sciences (BIO) provides advice and recommendations concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

*Summary of Minutes:* Minutes will be available on the BIO Advisory Committee website at *https://www.nsf.gov/bio/advisory.jsp* or can be obtained from the contact person listed above.

*Agenda:* Agenda items will include: Directorate business update; overview of NSF/BIO programs in support of the priority research areas of: Bioeconomy, Resilient Planet, and Artificial Intelligence; AC Breakout Groups to discuss opportunities and challenges for BIO in advancing these priority areas, followed by a report out from the breakout groups; overview of NSF and BIO's support of workforce education and training in the priority research areas of: Bioeconomy, Resilient Planet, and Artificial Intelligence; AC Breakout Groups to discuss needs, opportunities, and gaps for workforce development in these priority areas, followed by a report out from the breakout groups; discussion with leaders from the NSF Office of the Director; and other directorate matters.

Dated: August 5, 2024.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2024–17668 Filed 8–8–24; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the National Science Board/National Science Foundation Commission on Merit Review (MRX) for the transaction of National Science Board business pursuant to the NSF Act

and the Government in the Sunshine Act.

**TIME AND DATE:** Monday, August 12, 2024, from 4:00 p.m.–6:00 p.m. EDT.

**PLACE:** This meeting will be in person and via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** The agenda is: Commission Chair's remarks about the agenda; Discussion of NSF Activities Relevant to Potential Preliminary Accountability Suggestions; Commission Planning Updates; and Commission Chair's closing remarks.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

**Ann E. Bushmiller,**

*Senior Counsel to the National Science Board Office.*

[FR Doc. 2024–17845 Filed 8–7–24; 11:15 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* President's Committee on the National Medal of Science (#1182).

*Date and Time:* October 22, 2024; 8:30 a.m.–5 p.m. (eastern).

*Place:* NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

*Type of Meeting:* Closed.

*Contact Persons:* Pugh Lev, Gayle, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–7589.

*Purpose of Meeting:* Virtual meeting to provide advice and recommendations to the President in the selection of the 2023 National Medal of Science laureates. The committee assists the President in carrying out his responsibilities under 42 U.S.C. 1880–1881.

*Agenda:* To review and evaluate nominations as part of the selection process for the NMS-National Medal of Science program.

*Reason for Closing:* The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c), (6) of the Government in the Sunshine Act.

Dated: August 6, 2024.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2024–17777 Filed 8–8–24; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–9075; NRC–2024–0129]**

### Powertech (USA) Inc.; Dewey-Burdock In-Situ Uranium Recovery Facility; License Renewal Application

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Opportunity to request a hearing and to petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Source and Byproduct Materials License No. SUA–1600, which authorizes Powertech (USA) Inc. to operate the Dewey-Burdock Uranium *In-Situ* Recovery Facility (Dewey-Burdock Project)—a facility that has not been constructed. The applicant requests a renewed license that, if granted, would authorize it to operate the Dewey-Burdock Project for 20 years beyond the period specified in the current license.

**DATES:** A request for a hearing or petition for leave to intervene must be filed by October 8, 2024.

**ADDRESSES:** Please refer to Docket ID NRC–2024–0129 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–2024–0129. 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 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:** Thomas Lancaster, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6563; email: *Thomas.Lancaster@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The NRC received a license renewal application (LRA) from Powertech (USA) Inc., dated March 4, 2024, (ADAMS Package Accession No. ML24081A108) requesting renewal of Source and Byproduct Materials License No. SUA–1600. This license authorizes Powertech (USA) Inc. to operate the Dewey-Burdock Project, which is a uranium recovery facility that has not been constructed. The Dewey-Burdock Project is located in Fall River and Custer Counties, South Dakota. Powertech (USA) Inc. submitted the application, pursuant to part 2 and part 40 of title 10 of the *Code of Federal Regulations* (10 CFR).

The NRC's staff has determined that Powertech (USA) Inc. has submitted sufficient information to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current docket number, 40–9075, for license SUA–1600, will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed license should be issued and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules

and regulations. The NRC may issue a renewed license on the basis of its review if it finds there is reasonable assurance that the activities authorized by the renewed license will continue to meet the requirements for the issuance of a license under the Act and the Commission's regulations. The license SUA–1600 will not be deemed to have expired until the application has been finally determined.

Additionally, in accordance with 10 CFR part 51, the NRC will prepare a National Environmental Policy Act environmental document for the site. In considering the LRA, the NRC must find that the applicable requirements of 10 CFR part 51 have been satisfied.

**II. Opportunity To Request a Hearing and Petition for Leave To Intervene**

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*.

**III. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html*.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings

unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Copies of the application to renew the operating license for the Dewey-Burdock Project are available for public inspection at the NRC's PDR, and on the NRC's public website at *https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* while the application is under review. The application may be accessed in ADAMS through the NRC Library on the internet at *https://www.nrc.gov/reading-rm/adams.html* under ADAMS Package Accession No. ML24081A108.

As previously stated in this document, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *PDR.Resources@nrc.gov*.

Dated: August 5, 2024.

For the Nuclear Regulatory Commission.

**Randolph W. Von Till,**

*Chief, Uranium Recovery and Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2024–17583 Filed 8–8–24; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2024–473 and CP2024–480; MC2024–474 and CP2024–481; MC2024–477 and CP2024–484; MC2024–478 and CP2024–485]**

### 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:* August 13, 2024.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. *Docket No(s).:* MC2024–473 and CP2024–480; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 194 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 5, 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:* August 13, 2024.

2. *Docket No(s).:* MC2024–474 and CP2024–481; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 195 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* August 13, 2024.

3. *Docket No(s).:* MC2024–477 and CP2024–484; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 197 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* August 13, 2024.

4. *Docket No(s).:* MC2024–478 and CP2024–485; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 198 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* August 13, 2024.

This Notice will be published in the **Federal Register**.

**Kimberly R. Banks,**

*Secondary Certifying Official.*

[FR Doc. 2024–17730 Filed 8–8–24; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

**AGENCY:** Postal Service™.

[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).

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** *Date of notice:* August 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268–7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 42 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–471 and CP2024–478.

**Sarah Sullivan,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2024–17738 Filed 8–8–24; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100653; File No. SR–CboeBZX–2024–052]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024.

### I. Introduction

On June 7, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–CboeBZX–2024–052) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 25, 2024.[4] Pursuant to section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

### II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The Exchanges states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.[11]

### III. Suspension of the Proposed Rule Change

Pursuant to section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

#### *A. Exchange Statements in Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100363 (June 18, 2024), 89 FR 53154 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 53154. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBZX–2023–047). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–068. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 53154 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeBZX–2023–79). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–083. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–104. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–017. On April 9, 2024, the Exchange withdrew that filing and submitted this SR–CboeBZX–2024–028. On April 18, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–030. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

[7] *See* Notice, 89 FR at 53154.

[8] *See* Notice, 89 FR at 53154.

[9] *See* Notice, 89 FR at 53154 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[10] *See* Notice, 89 FR at 53154. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

[11] *See* Notice, 89 FR at 53154. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 53154 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 53154; 15 U.S.C. 78f(b).

change is consistent with the section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other options exchanges that trade options or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when adjusted for inflation.[35] Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to,

[15] *See* Notice, 89 FR at 53154; 15 U.S.C. 78f(b)(5).

[16] *See* Notice, 89 FR at 53154.

[17] *See* Notice, 89 FR at 53154; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 53154; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 53154.

[20] *See* Notice, 89 FR at 53154. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *Id.*

[21] *See* Notice, 89 FR at 53155. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 53155 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 53155. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 53155.

[25] *See* Notice, 89 FR at 53155.

[26] *See* Notice, 89 FR at 53155.

[27] *See* Notice, 89 FR at 53155 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 53155.

[29] *See* Notice, 89 FR at 53155 (citing Securities and Exchange Release No. 83429 (June 14, 2018), 83 FR 28685 (June 20, 2018) (SR–CboeBZX–2018–038)).

[30] *See* Notice, 89 FR at 53155.

[31] *See* Notice, 89 FR at 53155 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 53155.

[33] *See* Notice, 89 FR at 53155.

[34] *See* Notice, 89 FR at 53155.

[35] *See* Notice, 89 FR at 53155.

[36] *See* Notice, 89 FR at 53155.

[37] *See* Notice, 89 FR at 53155.

[38] *See* Notice, 89 FR at 53155. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single options exchange has more than approximately 18% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.,* Nasdaq MRX, LLC, MIAX Pearl, LLC, MIAX Emerald LLC, and most recently, MEMX LLC).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one options exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that while the Exchange has 61 members that trade options, Cboe EDGX has 51 members that trade options, and Cboe C2 has 52 Trading Permit Holders (''TPHs'') (*i.e.,* members).[52] The Exchange states that there is also no firm that is a Member of BZX Options only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members, and NYSE Arca Options has 69 members, MIAX Options has 46 members, and MIAX Pearl Options has 40 members.[54]

The Exchange states that a market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-Members also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as

[39] *See* Notice, 89 FR at 53155.

[40] *See* Notice, 89 FR at 53155.

[41] *See* Notice, 89 FR at 53155.

[42] *See* Notice, 89 FR at 53155.

[43] *See* Notice, 89 FR at 53155.

[44] *See* Notice, 89 FR at 53155.

[45] *See* Notice, 89 FR at 53155.

[46] *See* Notice, 89 FR at 53155 (citing Cboe Global Markets U.S. Options Market Volume Summary (June 6, 2024), available at *https://markets.cboe.com/us/options/market_statistics/*).

[47] *See* Notice, 89 FR at 53155.

[48] *See* Notice, 89 FR at 53155.

[49] *See* Notice, 89 FR at 53155.

[50] *See* Notice, 89 FR at 53155.

[51] *See* Notice, 89 FR at 53155.

[52] *See* Notice, 89 FR at 53155.

[53] *See* Notice, 89 FR at 53155–56.

[54] *See* Notice, 89 FR at 53156 (citing *https://www.nyse.com/markets/american-options/membership#directory; https://www.nyse.com/markets/arca-options/membership#directory; https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf; https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf*).

[55] *See* Notice, 89 FR at 53156.

[56] *See* Notice, 89 FR at 53156.

[57] *See* Notice, 89 FR at 53156. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.25.

[58] *See* Notice, 89 FR at 53156.

[59] *See* Notice, 89 FR at 53156 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 53156.

[61] *See* Notice, 89 FR at 53156. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.27.

[62] *See* Notice, 89 FR at 53156.

[63] *See* Notice, 89 FR at 53156.

hosting services.[64] That is, the Exchange states, that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it.[76] The Exchange explains that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 13 non-Cboe affiliated options markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitve rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an

[64] *See* Notice, 89 FR at 53156.

[65] *See* Notice, 89 FR at 53156.

[66] *See* Notice, 89 FR at 53156.

[67] *See* Notice, 89 FR at 53156.

[68] *See* Notice, 89 FR at 53156.

[69] *See* Notice, 89 FR at 53156.

[70] *See* Notice, 89 FR at 53156.

[71] *See* Notice, 89 FR at 53156.

[72] *See* Notice, 89 FR at 53156.

[73] *See* Notice, 89 FR at 53156.

[74] *See* Notice, 89 FR at 53156.

[75] *See* Notice, 89 FR at 53156 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.)).

[76] *See* Notice, 89 FR at 53156.

[77] *See* Notice, 89 FR at 53156.

[78] *See* Notice, 89 FR at 53156–57.

[79] *See* Notice, 89 FR at 53157.

[80] *See* Notice, 89 FR at 53157.

[81] *See* Notice, 89 FR at 53157.

[82] *See* Notice, 89 FR at 53157.

[83] *See* Notice, 89 FR at 53157.

[84] *See* Notice, 89 FR at 53157 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[85] *See* Notice, 89 FR at 53157 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 53157.

[87] *See* Notice, 89 FR at 53157.

[88] *See* Notice, 89 FR at 53157.

exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants.[117]

[89] *See* Notice, 89 FR at 53157.

[90] *See* Notice, 89 FR at 53157.

[91] *See* Notice, 89 FR at 53157.

[92] *See* Notice, 89 FR at 53157.

[93] *See* Notice, 89 FR at 53157.

[94] *See* Notice, 89 FR at 53157.

[95] *See* Notice, 89 FR at 53157 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition*) (''Mackintosh and Normyle'').

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 53157 n.32.

[97] *See* Notice, 89 FR at 53157 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 53157. The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 53157 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 53157.

[101] *See* Notice, 89 FR at 53157.

[102] *See* Notice, 89 FR at 53157.

[103] *See* Notice, 89 FR at 53157.

[104] *See* Notice, 89 FR at 53157.

[105] *See* Notice, 89 FR at 53157.

[106] *See* Notice, 89 FR at 53157.

[107] *See* Notice, 89 FR at 53157.

[108] *See* Notice, 89 FR at 53157.

[109] *See* Notice, 89 FR at 53157.

[110] *See* Notice, 89 FR at 53157.

[111] *See* Notice, 89 FR at 53157.

[112] *See* Notice, 89 FR at 53157–58.

[113] *See* Notice, 89 FR at 53158.

[114] *See* Notice, 89 FR at 53158.

[115] *See* Notice, 89 FR at 53158.

[116] *See* Notice, 89 FR at 53158.

[117] *See* Notice, 89 FR at 53158.

The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. [126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products).[127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139] The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-

[118] *See* Notice, 89 FR at 53158.

[119] *See* Notice, 89 FR at 53158.

[120] *See* Notice, 89 FR at 53158 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[121] *See* Notice, 89 FR at 53158.

[122] *See* Notice, 89 FR at 53158.

[123] *See* Notice, 89 FR at 53158.

[124] *See* Notice, 89 FR at 53158.

[125] *See* Notice, 89 FR at 53158.

[126] *See* Notice, 89 FR at 53158.

[127] *See* Notice, 89 FR at 53158.

[128] *See* Notice, 89 FR at 53158.

[129] *See* Notice, 89 FR at 53158.

[130] *See* Notice, 89 FR at 53158.

[131] *See* Notice, 89 FR at 53158.

[132] *See* Notice, 89 FR at 53158.

[133] *See* Notice, 89 FR at 53158.

[134] *See* Notice, 89 FR at 53158.

[135] *See* Notice, 89 FR at 53158.

[136] *See* Notice, 89 FR at 53158 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).

[137] *See* Notice, 89 FR at 53158 (citing 15 U.S.C. 78f(b)(5)).

[138] *See* Notice, 89 FR at 53158 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 53158 (citing 15 U.S.C. 78k-l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 53158.

[141] *See* Notice, 89 FR at 53158.

[142] *See* Notice, 89 FR at 53158.

going debate over formulas for allocation,[143] continual auditing, and considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid.[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or

[143] *See* Notice, 89 FR at 53158–59, n.41 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

[144] *See* Notice, 89 FR at 53158–59.

[145] *See* Notice, 89 FR at 53159.

[146] *See* Notice, 89 FR at 53159.

[147] *See* Notice, 89 FR at 53159.

[148] *See* Notice, 89 FR at 53159.

[149] *See* Notice, 89 FR at 53159.

[150] *See* Notice, 89 FR at 53159.

[151] *See* Notice, 89 FR at 53159.

[152] *See* Notice, 89 FR at 53159.

[153] *See* Notice, 89 FR at 53159.

[154] *See* Notice, 89 FR at 53159.

[155] *See* Notice, 89 FR at 53159.

[156] *See* Notice, 89 FR at 53159.

[157] *See* Notice, 89 FR at 53159.

[158] *See* Notice, 89 FR at 53159.

[159] *See* Notice, 89 FR at 53159 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).

[160] *See* Notice, 89 FR at 53159. The Exchange states that in *NetCoalition* v. *Securities and Exchange Commission*, the DC 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'. . ..'' (citing NetCoalition v. SEC, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21))).

[161] *See* Notice, 89 FR at 53159.

[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[163] *See id.*

[164] 15 U.S.C. 78f(b)(4).

[165] 15 U.S.C. 78f(b)(5).

appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to sections 19(b)(3)(C) [169] and 19(b)(2)(B) of the Act [170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [173] and
- Whether the Exchange has demonstrated how the proposed fee is consistent with section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [174]

As discussed in section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

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:

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[166] 15 U.S.C. 78f(b)(8).

[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeBZX–2024–052 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–052 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(3)(C) of the Act,[180] that File No. SR–CboeBZX–2024–052, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17700 Filed 8–8–24; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100656; File No. SR–CboeEDGX–2024–036]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024.

## I. Introduction

On June 7, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–CboeEDGX–2024–036) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 25, 2024.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

## II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The Exchanges states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100366 (June 18, 2024), 89 FR 53163 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 53163. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGX–2023–045). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–058. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 53163 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGX–2023–063). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–064. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–080. On February 12, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–014. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–021. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

[7] *See* Notice, 89 FR at 53163.

[8] *See* Notice, 89 FR at 53163.

[9] *See* Notice, 89 FR at 53163 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[10] *See* Notice, 89 FR at 53163. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

exchanges are accessed through that one port.[11]

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

### *A. Exchange Statements In Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other options exchanges that trade options or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it

[11] *See* Notice, 89 FR at 53163. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 53163 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 53163; 15 U.S.C. 78f(b).

[15] *See* Notice, 89 FR at 53163; 15 U.S.C. 78f(b)(5).

[16] *See* Notice, 89 FR at 53163.

[17] *See* Notice, 89 FR at 53163; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 53163; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 53163.

[20] *See* Notice, 89 FR at 53163–64. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *Id.*

[21] *See* Notice, 89 FR at 53164. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 53164 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 53164. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 53164.

[25] *See* Notice, 89 FR at 53164.

[26] *See* Notice, 89 FR at 53164.

[27] *See* Notice, 89 FR at 53164 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 53164.

[29] *See* Notice, 89 FR at 53164 (citing Securities and Exchange Release 83430 (June 14, 2018), 83 FR 28697 (June 20, 2018) (SR–CboeEDGX–2018–017)).

[30] *See* Notice, 89 FR at 53164.

[31] *See* Notice, 89 FR at 53164 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 53164.

[33] *See* Notice, 89 FR at 53164.

would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when adjusted for inflation.[35] Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single options exchange has more than approximately 18% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.,* Nasdaq MRX, LLC, MIAX Pearl, LLC, MIAX Emerald LLC, and most recently, MEMX LLC).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one options exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that while the Exchange has 51 members that trade options, Cboe EDGX has 61 members that trade options, and Cboe C2 has 52 Trading Permit Holders (''TPHs'') (*i.e.,* members).[52] The Exchange states that there is also no firm that is a Member of EDGX Options only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members, and NYSE Arca Options has 69 members, MIAX Options has 46 members, and MIAX Pearl Options has 40 members.[54]

The Exchange states that a market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-Members also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these

[34] *See* Notice, 89 FR at 53164.

[35] *See* Notice, 89 FR at 53164.

[36] *See* Notice, 89 FR at 53164.

[37] *See* Notice, 89 FR at 53164.

[38] *See* Notice, 89 FR at 53164. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[39] *See* Notice, 89 FR at 53164.

[40] *See* Notice, 89 FR at 53164.

[41] *See* Notice, 89 FR at 53164.

[42] *See* Notice, 89 FR at 53164.

[43] *See* Notice, 89 FR at 53164.

[44] *See* Notice, 89 FR at 53164.

[45] *See* Notice, 89 FR at 53164.

[46] *See* Notice, 89 FR at 53164 (citing Cboe Global Markets U.S. Options Market Volume Summary (June 6, 2024), available at *https://markets.cboe.com/us/options/market_statistics/*).

[47] *See* Notice, 89 FR at 53164.

[48] *See* Notice, 89 FR at 53164.

[49] *See* Notice, 89 FR at 53164.

[50] *See* Notice, 89 FR at 53164.

[51] *See* Notice, 89 FR at 53164.

[52] *See* Notice, 89 FR at 53164–65.

[53] *See* Notice, 89 FR at 53165.

[54] *See* Notice, 89 FR at 53165 (citing *https://www.nyse.com/markets/american-options/membership#directory; https://www.nyse.com/markets/arca-options/membership#directory; https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf; https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf*).

[55] *See* Notice, 89 FR at 53165.

[56] *See* Notice, 89 FR at 53165.

[57] *See* Notice, 89 FR at 53165. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.25.

[58] *See* Notice, 89 FR at 53165.

[59] *See* Notice, 89 FR at 53165 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683

third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services.[64] That is, the Exchange states, that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitve rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it.[76] The Exchange explains that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 13 non-Cboe affiliated options markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitve rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

(January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 53165.

[61] *See* Notice, 89 FR at 53165. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.27.

[62] *See* Notice, 89 FR at 53165.

[63] *See* Notice, 89 FR at 53165.

[64] *See* Notice, 89 FR at 53165.

[65] *See* Notice, 89 FR at 53165.

[66] *See* Notice, 89 FR at 53165.

[67] *See* Notice, 89 FR at 53165.

[68] *See* Notice, 89 FR at 53165.

[69] *See* Notice, 89 FR at 53165.

[70] *See* Notice, 89 FR at 53165.

[71] *See* Notice, 89 FR at 53165.

[72] *See* Notice, 89 FR at 53165.

[73] *See* Notice, 89 FR at 53165.

[74] *See* Notice, 89 FR at 53165.

[75] *See* Notice, 89 FR at 53165 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.)).

[76] *See* Notice, 89 FR at 53165.

[77] *See* Notice, 89 FR at 53165.

[78] *See* Notice, 89 FR at 53165–66.

[79] *See* Notice, 89 FR at 53166.

[80] *See* Notice, 89 FR at 53166.

[81] *See* Notice, 89 FR at 53166.

[82] *See* Notice, 89 FR at 53166.

[83] *See* Notice, 89 FR at 53166.

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including

[84] *See* Notice, 89 FR at 53166 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[85] *See* Notice, 89 FR at 53166 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 53166.

[87] *See* Notice, 89 FR at 53166.

[88] *See* Notice, 89 FR at 53166.

[89] *See* Notice, 89 FR at 53166.

[90] *See* Notice, 89 FR at 53166.

[91] *See* Notice, 89 FR at 53166.

[92] *See* Notice, 89 FR at 53166.

[93] *See* Notice, 89 FR at 53166.

[94] *See* Notice, 89 FR at 53166.

[95] *See* Notice, 89 FR at 53166 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition* (''Mackintosh and Normyle'')).

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 53166 n.32.

[97] *See* Notice, 89 FR at 53166 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 53166 The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 53166 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 53166.

[101] *See* Notice, 89 FR at 53166.

[102] *See* Notice, 89 FR at 53166.

[103] *See* Notice, 89 FR at 53166.

[104] *See* Notice, 89 FR at 53166.

[105] *See* Notice, 89 FR at 53166.

[106] *See* Notice, 89 FR at 53166.

[107] *See* Notice, 89 FR at 53166.

[108] *See* Notice, 89 FR at 53166.

[109] *See* Notice, 89 FR at 53166.

[110] *See* Notice, 89 FR at 53166.

costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants.[117] The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports.[126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products).[127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or

[111] *See* Notice, 89 FR at 53166.
[112] *See* Notice, 89 FR at 53166–67.
[113] *See* Notice, 89 FR at 53167.
[114] *See* Notice, 89 FR at 53167.
[115] *See* Notice, 89 FR at 53167.
[116] *See* Notice, 89 FR at 53167.
[117] *See* Notice, 89 FR at 53167.
[118] *See* Notice, 89 FR at 53167.
[119] *See* Notice, 89 FR at 53167.
[120] *See* Notice, 89 FR at 53167 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).
[121] *See* Notice, 89 FR at 53167.
[122] *See* Notice, 89 FR at 53167.
[123] *See* Notice, 89 FR at 53167.
[124] *See* Notice, 89 FR at 53167.
[125] *See* Notice, 89 FR at 53167.
[126] *See* Notice, 89 FR at 53167.
[127] *See* Notice, 89 FR at 53167.
[128] *See* Notice, 89 FR at 53167.
[129] *See* Notice, 89 FR at 53167.
[130] *See* Notice, 89 FR at 53167.
[131] *See* Notice, 89 FR at 53167.
[132] *See* Notice, 89 FR at 53167.
[133] *See* Notice, 89 FR at 53167.
[134] *See* Notice, 89 FR at 53167.
[135] *See* Notice, 89 FR at 53167.
[136] *See* Notice, 89 FR at 53167 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).
[137] *See* Notice, 89 FR at 53167 (citing 15 U.S.C. 78f(b)(5)).

appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139] The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,[143] continual auditing, and considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160]

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[138] *See* Notice, 89 FR at 53167 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 53167 (citing 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 53167.

[141] *See* Notice, 89 FR at 53167.

[142] *See* Notice, 89 FR at 53167.

[143] *See* Notice, 89 FR at 53167–68, n.41 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

[144] *See* Notice, 89 FR at 53167–68.

[145] *See* Notice, 89 FR at 53168.

[146] *See* Notice, 89 FR at 53168.

[147] *See* Notice, 89 FR at 53168.

[148] *See* Notice, 89 FR at 53168.

[149] *See* Notice, 89 FR at 53168.

[150] *See* Notice, 89 FR at 53168.

[151] *See* Notice, 89 FR at 53168.

[152] *See* Notice, 89 FR at 53168.

[153] *See* Notice, 89 FR at 53168.

[154] *See* Notice, 89 FR at 53168.

[155] *See* Notice, 89 FR at 53168.

[156] *See* Notice, 89 FR at 53168.

[157] *See* Notice, 89 FR at 53168.

[158] *See* Notice, 89 FR at 53168.

[159] *See* Notice, 89 FR at 53168 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).

[160] *See* Notice, 89 FR at 53168. The Exchange states that 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'. . . .'' (citing NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2,

Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [169] and 19(b)(2)(B) of the Act [170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [173] and
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [174]

As discussed in Section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its

2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21))).

[161] *See* Notice, 89 FR at 53168.

[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[163] *See id.*

[164] 15 U.S.C. 78f(b)(4).

[165] 15 U.S.C. 78f(b)(5).

[166] 15 U.S.C. 78f(b)(8).

[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–036 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2024–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX–2024–036 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(3)(C) of the Act,[180] that File No. SR–CboeEDGX–2024–036, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood,**

*Assistant Secretary.*

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[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100649; File No. SR–CboeBYX–2024–009]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Exchange Rule 11.25(e) To Allow Users To Utilize the Exchange's Match Trade Prevention Functionality When Entering Periodic Auction Orders Onto the Exchange for Execution

August 5, 2024.

On June 6, 2024, the Cboe BYX Exchange, Inc. (''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 amend Exchange Rule 11.25(e) to allow Users to utilize the Exchange's Match Trade Prevention functionality when entering Periodic Auction Orders onto the Exchange for execution. The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 5, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on 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,[5] designates September 19, 2024 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100337 (June 14, 2024), 89 FR 52148 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

whether to disapprove, the proposed rule change (File No. SR–CboeBYX–2024–009).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17696 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–035, OMB Control No. 3235–0029]**

### Submission for OMB Review; Comment Request; Extension: Rule 17f–2(c)

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17f–2(c) (17 CFR 240.17f–2(c)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Act to submit their fingerprints to the Attorney General of the United States or its designee (*i.e.,* the Federal Bureau of Investigation (''FBI'')) through a registered national securities exchange or a registered national securities association (collectively, also known as ''self-regulatory organizations'' or ''SROs'') pursuant to a fingerprint plan filed with, and declared effective by, the Commission. Fingerprint plans have been approved for the American, Boston, Chicago, New York, and Philadelphia stock exchanges and for the Financial Industry Regulatory Authority (''FINRA'') and the Chicago Board Options Exchange. Currently, the bulk of the fingerprints are submitted through FINRA.

It is estimated that 3,800 respondents submit approximately 278,455 sets of fingerprints (consisting of approximately 258,646 electronic sets and 19,809 hard copy sets) to SROs on an annual basis. The Commission estimates that it takes approximately 15 minutes to create and submit each fingerprint card. The total time burden is therefore estimated to be approximately 69,614 hours per year.

In addition, the SROs charge an estimated $31 fee for processing fingerprint cards submitted electronically, resulting in a total annual cost to all 3,800 respondents of approximately $8,018,026 per year. The SROs charge an estimated $41 fee for processing fingerprint cards submitted in hard copy, resulting in a total annual cost to all 3,800 respondents of approximately $812,169 per year. The combined annual cost to all respondents is thus approximately $8,830,195 per year.

Because the FBI will not accept fingerprint cards directly from submitting organizations, Commission approval of fingerprint plans from certain SROs is essential to carry out the Congressional goal to fingerprint securities industry personnel. Filing these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

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

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by September 9, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 6, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17727 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100658; File No. SR–NYSENAT–2024–21]**

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 2.9

August 5, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 25, 2024, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.9 (Dues, Assessments and Other Charges) to permit direct debiting of undisputed or final fees or other sums due the Exchange by ETP Holders with one or more Trading Permits and each applicant for a Trading Permit. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 2.9 (Dues, Assessments and Other Charges) to permit direct debiting of undisputed or final fees or other sums due the Exchange by ETP Holders with one or more Trading Permits and each applicant for a Trading Permit.

Rule 2.9 currently provides that the Exchange may prescribe such reasonable assessments, dues or other charges as it may, in its discretion, deem appropriate. The rule further provides that such assessments and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

The Exchange proposes to require that ETP Holders that hold a Trading Permit, and each applicant for a Trading Permit, provide one or more clearing account numbers that correspond to an account(s) at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to collect through direct debit any undisputed or final fees and/or other sums due to the Exchange. The Exchange would, however, permit an ETP Holder or applicant for a Trading Permit to opt-out of the requirement to provide NSCC clearing account numbers and establish alternative payment arrangements. In addition, consistent with current Rule 3.8 (Liability for Payment), the proposed change would not apply to disciplinary fines or monetary sanctions governed by Rule 10.8320. The proposed rule would also not apply to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA'').[4] The proposed change is based on the rules of the Exchange's affiliates NYSE American LLC (''NYSE American'') and NYSE Chicago, Inc. (''NYSE Chicago'') as well as other exchanges.[5]

Under the proposal, the Exchange would send a monthly invoice to each ETP Holder, generally on the 5th business day of each month as is currently the practice, for the debit amount due to the Exchange for the prior month. The Exchange would also send files to NSCC each month on or about the 11th business day of the month in order to initiate the debit of the amount due to the Exchange as provided for in the prior month's invoice.[6] The Exchange anticipates that NSCC will process the debits on the day it receives the file or the following business day. Because ETP Holders would be provided with an invoice approximately 1 week before the debit date, ETP Holders will have adequate time to contact the Exchange with any questions concerning the invoice. If an ETP Holder disagrees with the invoice in whole or in part, the Exchange would not commence the debit for the disputed amount until the dispute is resolved. Specifically, the Exchange would not include the disputed amount (or the entire invoice if it is not feasible to identify the disputed amounts) in the NSCC debit amount where the ETP Holder provides written notification of the dispute to the Exchange by the later of the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least $10,000 or greater.

Following receipt of the file from the Exchange, NSCC would proceed to debit the amounts indicated from the account of the ETP Holder that clears the applicable transactions (''Clearing ETP Holder,'' *i.e.,* either an ETP Holder that is self-clearing or another ETP Holder that provides clearing services on behalf of the ETP Holder) and disburse such amounts to the Exchange. Where an ETP Holder clears through another a ETP Holder, the Exchange understands that the estimated transaction fees owed to the Exchange are typically debited by the Clearing ETP Holder on a daily basis using daily transaction detail reports provided by the Exchange to the Clearing ETP Holder in order to ensure adequate funds have been escrowed. The Exchange notes that it is proposing to permit an ETP Holder to designate one or more clearing account numbers that correspond to an account(s) at NSCC to permit ETP Holders that clear through multiple different clearing accounts to set up the billing process with the Exchange in a manner that is most efficient for internal reconciliation and billing purposes of the ETP Holder.

The Exchange believes that the proposed debiting process would provide an efficient method of collecting undisputed or final fees and/or sums due to the Exchange consistent with the practice on other exchanges.[7] Moreover, the Exchange believes that it is reasonable to permit an ETP Holder and applicants for a Trading Permit to opt-out of the requirement to provide an NSCC account number to permit direct debiting and instead establish alternative payment arrangements. Finally, the Exchange believes that it is also reasonable to provide for a $10,000 limitation on pre-debit billing disputes since it would be inefficient to delay a direct debit for a de minimis amount. An ETP Holder would still be able to dispute billing amounts that are less than $10,000 pursuant to the billing policy set forth in the Schedule of Fees and Rebates.[8]

To effectuate this change, the Exchange would add the following text to Rule 2.9 (italicized):

*Each ETP Holder that has one or more Trading Permits, and each applicant for a Trading Permit, shall be required to*

[4] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers. Certain of the regulatory fees provided in the Schedule of Fees and Rebates are collected and retained by FINRA via the CRD system for the registration of ETP Holders and employees of ETP Holders that are not FINRA members. These fees would be excluded from direct debiting.

[5] *See* NYSE American Rule 41 (Collection of and Failure to Pay Exchange Fees); NYSE Chicago Article 7, Rule 11 (Fixing and Paying Fees and Charges). *See also, e.g.,* MEMX LLC (''MEMX'') Rule 15.3(a) (Collection of Exchange Fees and Other Claims and Billing Policy) requires each MEMX member and all applicants for registration as members are required to provide one or more clearing account numbers that correspond to an account(s) at the NSCC for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due to the Exchange. As noted, the proposed rule would not apply to disciplinary fines or monetary sanctions, and the proposal does not propose to change this. The MEMX rule also requires members to submit billing disputes within a certain time period. The Exchange's current billing disputes policy is set forth in the first bullet under ''Fees and Credits Applicable to Market Participants'' in the Schedule of Fees and Rebates, available at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf,* and provides that all fee disputes must be submitted no later than sixty days after receipt of a billing invoice. The proposal does not modify or rescind the Exchange's billing disputes policy, and that policy would continue to apply to all billing disputes.

[6] As discussed below, if an ETP Holder disputes an invoice, the Exchange would not include the disputed amount in the automatic debit if the ETP Holder has disputed the amount in writing to the Exchange by the 15th of the month, or the following business day if the 15th is not a business day, and the disputed amount is at least $10,000 or greater. As a practical matter, the Exchange would not send a file to the NSCC until the proposed time in Rule 2.9 for a member organization to dispute an invoice subject to automatic debit has passed.

[7] *See* note 5, *supra.* In addition to MEMX, IEX, Nasdaq, Nasdaq BX, and Nasdaq Phlx all provide for collection of fees and fines through direct debits. *See* IEX Rule 15.120; Nasdaq Rule Equity 7, Section 70; Nasdaq BX Rule Equity 7, Section 111; and Nasdaq Phlx Rule Equity 7, Section 2.

[8] *See* note 5, *supra.*

*provide one or more clearing account numbers that correspond to an account(s) at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to collect through direct debit any undisputed or final fees and/or other sums due to the Exchange; provided, however, that an ETP Holder or applicant may request to opt-out of the requirement to provide an NSCC clearing account number and establish alternative payment arrangements. If an ETP Holder disputes an invoice, the Exchange will not include the disputed amount in the debit if the ETP Holder has disputed the amount in writing to the Exchange by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least $10,000 or greater. The Exchange will not debit fees related to the CRD system set forth in the Schedule of Fees and Rebates, which are collected and retained by FINRA.*

The remaining provisions of the current rule would remain unchanged.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed direct debit process would provide ETP Holders with an efficient process to pay undisputed or final fees and/or sums due to the Exchange.

The Exchange believes that the proposal to debit NSCC accounts directly is reasonable because it would ease the administrative burden on ETP Holders of paying monthly invoices and avoiding overdue balances, and would provide efficient collection from all ETP Holders who owe monies to the Exchange. Moreover, the Exchange believes that the minimum time frame provided to ETP Holders to dispute invoices is reasonable and adequate to enable ETP Holders to identify potentially erroneous charges. In addition, the Exchange believes that the $10,000 limitation on pre-debit billing disputes is reasonable because it would be inefficient to delay a direct debit for a de minimis amount. The same $10,000 limitation is in place on exchanges that have adopted direct debit rules.[11] ETP Holders will still be able to dispute billing amounts that are less than $10,000 pursuant to the Exchange's Schedule of Fees and Rebates. Finally, the Exchange believes that it is reasonable to permit ETP Holders or applicants to request to opt-out of the requirement to provide NSCC account information and instead establish alternative payment arrangements with the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply uniformly to all ETP Holders that have one or more Trading Permits and to all applicants for Trading Permits, and will not disproportionately burden or otherwise impact any single ETP Holder.

The Exchange does not believe that the proposal will create an intermarket burden on competition since the Exchange will only debit fees (other than de minimis fees below $10,000) that are undisputed by the ETP Holder and ETP Holders will have a reasonable opportunity to dispute the fees both before and after the direct debit process. In addition, ETP Holders will have a reasonable opportunity to opt-out of the requirement to provide clearing account information and instead adopt alternative payment arrangements.

The Exchange also does not believe that the proposal will create an intramarket burden on competition, since the proposed direct debit process will be applied equally to all ETP Holders. Moreover, other exchanges utilize a similar process which the Exchange believes is generally familiar to ETP Holders. Consequently, the Exchange does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission in connection with direct debit and billing policies of other exchanges. Further, this proposal is expected to provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange. In addition, the debiting process would mitigate against ETP Holder accounts becoming overdue.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* notes 7 & 8, *supra*.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the 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 pre-filing requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSENAT–2024–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2024–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2024–21 and should be submitted on or before August 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17687 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100650; File No. SR–CboeEDGA–2024–022]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024

### I. Introduction

On June 7, 2024, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–CboeEDGA–2024–022) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

### II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The Exchanges states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe C2 Exchange, Inc. (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100349 (June 14, 2024), 89 FR 52118 (June 21, 2024) (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 52118. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGA–2023–011). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGA–2023–015. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 52118 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGA–2023–016). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGA–2023–017. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGA–2023–022. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGA–2024–006. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGA–2024–013. On June 7, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGA–2024–022.

[7] *See* Notice, 89 FR at 52118.

[8] *See* Notice, 89 FR at 52118.

[9] *See* Notice, 89 FR at 52118 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[10] *See* Notice, 89 FR at 52118. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

[11] *See* Notice, 89 FR at 52118. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 52118 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

### *A. Exchange Statements in Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 52118; 15 U.S.C. 78f(b).

[15] *See* Notice, 89 FR at 52118; 15 U.S.C. 78f(b)(5).

[16] *See* Notice, 89 FR at 52118.

[17] *See* Notice, 89 FR at 52118; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 52118; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 52118.

[20] *See* Notice, 89 FR at 52118–19. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *See id.* at 52119.

[21] *See* Notice, 89 FR at 52119. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 52119 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 52119. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 52119.

[25] *See* Notice, 89 FR at 52119.

[26] *See* Notice, 89 FR at 52119.

[27] *See* Notice, 89 FR at 52119 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 52119.

[29] *See* Notice, 89 FR at 52119 (citing Securities and Exchange Release No. 83449 (June 15, 2018), 83 FR 28890 (June 21, 2018) (SR–CboeEDGA–2018–010)).

[30] *See* Notice, 89 FR at 52119.

[31] *See* Notice, 89 FR at 52119 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 52119.

[33] *See* Notice, 89 FR at 52119.

[34] *See* Notice, 89 FR at 52119.

adjusted for inflation.[35] Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single equities exchange has more than approximately 15% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one equities exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that as of April 2024, Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe EDGA [sic] has 132 members.[52] The Exchange states that there is also no firm that is a Member of the Exchange only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members, IEX has 129 members and MIAX Pearl has 51 members.[54]

The Exchange states that a market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-Members also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-

[35] *See* Notice, 89 FR at 52119.

[36] *See* Notice, 89 FR at 52119.

[37] *See* Notice, 89 FR at 52119.

[38] *See* Notice, 89 FR at 52119. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[39] *See* Notice, 89 FR at 52119.

[40] *See* Notice, 89 FR at 52119.

[41] *See* Notice, 89 FR at 52119.

[42] *See* Notice, 89 FR at 52119.

[43] *See* Notice, 89 FR at 52119.

[44] *See* Notice, 89 FR at 52119.

[45] *See* Notice, 89 FR at 52119.

[46] *See* Notice, 89 FR at 52119 (citing Cboe Global Markets U.S. Equities Market Volume Summary (June 6, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*).

[47] *See* Notice, 89 FR at 52119.

[48] *See* Notice, 89 FR at 52119.

[49] *See* Notice, 89 FR at 52119.

[50] *See* Notice, 89 FR at 52119.

[51] *See* Notice, 89 FR at 52119.

[52] *See* Notice, 89 FR at 52119.

[53] *See* Notice, 89 FR at 52120.

[54] *See* Notice, 89 FR at 52120 (citing *https://www.nyse.com/markets/nyse/membership; https://www.iexexchange.io/membership;* and *https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf*).

[55] *See* Notice, 89 FR at 52120.

[56] *See* Notice, 89 FR at 52120.

[57] *See* Notice, 89 FR at 52120. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.24.

[58] *See* Notice, 89 FR at 52120.

[59] *See* Notice, 89 FR at 52120 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (*nasdaqtrader.com*); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 52120.

seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services.[64] That is, the Exchange states that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitve rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it.[76] The Exchange explains that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitve rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the

[61] *See* Notice, 89 FR at 52120. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.26.

[62] *See* Notice, 89 FR at 52120.

[63] *See* Notice, 89 FR at 52120.

[64] *See* Notice, 89 FR at 52120.

[65] *See* Notice, 89 FR at 52120.

[66] *See* Notice, 89 FR at 52120.

[67] *See* Notice, 89 FR at 52120.

[68] *See* Notice, 89 FR at 52120.

[69] *See* Notice, 89 FR at 52120.

[70] *See* Notice, 89 FR at 52120.

[71] *See* Notice, 89 FR at 52120.

[72] *See* Notice, 89 FR at 52120.

[73] *See* Notice, 89 FR at 52120–21.

[74] *See* Notice, 89 FR at 52121.

[75] *See* Notice, 89 FR at 52121 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.)).

[76] *See* Notice, 89 FR at 52121.

[77] *See* Notice, 89 FR at 52121.

[78] *See* Notice, 89 FR at 52121.

[79] *See* Notice, 89 FR at 52121.

[80] *See* Notice, 89 FR at 52121.

[81] *See* Notice, 89 FR at 52121.

[82] *See* Notice, 89 FR at 52121.

[83] *See* Notice, 89 FR at 52121.

[84] *See* Notice, 89 FR at 52121 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were

[85] *See* Notice, 89 FR at 52121 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 52121.

[87] *See* Notice, 89 FR at 52121.

[88] *See* Notice, 89 FR at 52121.

[89] *See* Notice, 89 FR at 52121.

[90] *See* Notice, 89 FR at 52121.

[91] *See* Notice, 89 FR at 52121.

[92] *See* Notice, 89 FR at 52121.

[93] *See* Notice, 89 FR at 52121.

[94] *See* Notice, 89 FR at 52121.

[95] *See* Notice, 89 FR at 52121 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition*) (''Mackintosh and Normyle'').

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 52121 n.31.

[97] *See* Notice, 89 FR at 52121 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 52121. The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 52121 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 52121.

[101] *See* Notice, 89 FR at 52121.

[102] *See* Notice, 89 FR at 52121.

[103] *See* Notice, 89 FR at 52121.

[104] *See* Notice, 89 FR at 52121.

[105] *See* Notice, 89 FR at 52121.

[106] *See* Notice, 89 FR at 52121.

[107] *See* Notice, 89 FR at 52121.

[108] *See* Notice, 89 FR at 52121.

[109] *See* Notice, 89 FR at 52121.

[110] *See* Notice, 89 FR at 52121.

[111] *See* Notice, 89 FR at 52121.

[112] *See* Notice, 89 FR at 52121.

adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants.[117] The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. [126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products).[127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139]

[113] *See* Notice, 89 FR at 52121.

[114] *See* Notice, 89 FR at 52121–22.

[115] *See* Notice, 89 FR at 52122.

[116] *See* Notice, 89 FR at 52122.

[117] *See* Notice, 89 FR at 52122.

[118] *See* Notice, 89 FR at 52122.

[119] *See* Notice, 89 FR at 52122.

[120] *See* Notice, 89 FR at 52122 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[121] *See* Notice, 89 FR at 52122.

[122] *See* Notice, 89 FR at 52122.

[123] *See* Notice, 89 FR at 52122.

[124] *See* Notice, 89 FR at 52122.

[125] *See* Notice, 89 FR at 52122.

[126] *See* Notice, 89 FR at 52122.

[127] *See* Notice, 89 FR at 52122.

[128] *See* Notice, 89 FR at 52122.

[129] *See* Notice, 89 FR at 52122.

[130] *See* Notice, 89 FR at 52122.

[131] *See* Notice, 89 FR at 52122.

[132] *See* Notice, 89 FR at 52122.

[133] *See* Notice, 89 FR at 52122.

[134] *See* Notice, 89 FR at 52122.

[135] *See* Notice, 89 FR at 52122.

[136] *See* Notice, 89 FR at 52122 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).

[137] *See* Notice, 89 FR at 52122 (citing 15 U.S.C. 78f(b)(5)).

[138] *See* Notice, 89 FR at 52122 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 52122 (citing 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and

Continued

The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,[143] continual auditing, and considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid.[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.,* all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

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dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 52122.

[141] *See* Notice, 89 FR at 52122.

[142] *See* Notice, 89 FR at 52122.

[143] *See* Notice, 89 FR at 52122, n.40 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

[144] *See* Notice, 89 FR at 52122–23.

[145] *See* Notice, 89 FR at 52123.

[146] *See* Notice, 89 FR at 52123.

[147] *See* Notice, 89 FR at 52123.

[148] *See* Notice, 89 FR at 52123.

[149] *See* Notice, 89 FR at 52123.

[150] *See* Notice, 89 FR at 52123.

[151] *See* Notice, 89 FR at 52123.

[152] *See* Notice, 89 FR at 52123.

[153] *See* Notice, 89 FR at 52123.

[154] *See* Notice, 89 FR at 52123.

[155] *See* Notice, 89 FR at 52123.

[156] *See* Notice, 89 FR at 52123.

[157] *See* Notice, 89 FR at 52123.

[158] *See* Notice, 89 FR at 52123.

[159] *See* Notice, 89 FR at 52123 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).

[160] *See* Notice, 89 FR at 52123. The Exchange states that 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' . . . .'' (citing *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21))).

[161] *See* Notice, 89 FR at 52123.

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [169] and 19(b)(2)(B) of the Act [170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [173] and
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [174]

As discussed in Section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in

[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[163] *See id.*

[164] 15 U.S.C. 78f(b)(4).

[165] 15 U.S.C. 78f(b)(5).

[166] 15 U.S.C. 78f(b)(8).

[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2024–022 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGA–2024–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2024–022 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,[180] that File No. SR–CboeEDGA–2024–022, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17697 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100652; File No. SR–C2–2024–010]**

## Self-Regulatory Organizations; C2 Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024.

## I. Introduction

On June 7, 2024, C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–C2–2024–010) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 25, 2024.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

## II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100364 (June 18, 2024), 89 FR 53134 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 53134. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–C2–2023–014). On September 1, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–020. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 53134 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR–C2–2023–021). On October 13, 2023,

Exchanges states that, by way of background, a physical port is utilized by a Trading Permit Holder (''TPH'') or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for TPHs and non-TPHs on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe EDGA Exchange, Inc., (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.[11]

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

### *A. Exchange Statements In Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other options exchanges that trade options or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data.

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the Exchange withdrew that filing and submitted SR–C2–2023–022. On December 12, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–025. On February 9, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–004. On April 9, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–005. On June 7, 2024 the Exchange withdrew that filing and submitted this filing.

[7] *See* Notice, 89 FR at 53134.

[8] *See* Notice, 89 FR at 53134.

[9] *See* Notice, 89 FR at 53134 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[10] *See* Notice, 89 FR at 53134. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

[11] *See* Notice, 89 FR at 53134. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 53134 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 53134; 15 U.S.C. 78f(b).

[15] *See* Notice, 89 FR at 53134; 15 U.S.C. 78f(b)(5).

[16] *See* Notice, 89 FR at 53134.

[17] *See* Notice, 89 FR at 53134; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 53134; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 53134.

[20] *See* Notice, 89 FR at 53134–35. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *Id.*

[21] *See* Notice, 89 FR at 53135. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 53135 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 53135. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 53135.

As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when adjusted for inflation.[35] Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes TPHs and non-TPHs will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a TPH of, let alone connect directly to, the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single options exchange has more than approximately 18% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.,* Nasdaq MRX, LLC, MIAX Pearl, LLC, MIAX Emerald LLC, and most recently, MEMX LLC).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one options exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that while the Exchange has 52 TPHs (*i.e.,* members), Cboe EDGX has 51 members that trade options, and Cboe BZX has 61 members that trade options.[52] The Exchange states that there is also no firm that is a member of C2 Options only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members, and NYSE Arca Options has 69 members, MIAX Options has 46 members, and MIAX Pearl Options has 40 members.[54]

The Exchange states that a market participant may also submit orders to

[25] *See* Notice, 89 FR at 53135.

[26] *See* Notice, 89 FR at 53135.

[27] *See* Notice, 89 FR at 53135 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 53135.

[29] *See* Notice, 89 FR at 53135 (citing Securities and Exchange Release No. 83455 (June 15, 2018), 83 FR 28892 (June 21, 2018) (SR–C2–2018–014)).

[30] *See* Notice, 89 FR at 53135.

[31] *See* Notice, 89 FR at 53135 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 53135.

[33] *See* Notice, 89 FR at 53135.

[34] *See* Notice, 89 FR at 53135.

[35] *See* Notice, 89 FR at 53135.

[36] *See* Notice, 89 FR at 53135.

[37] *See* Notice, 89 FR at 53135.

[38] *See* Notice, 89 FR at 53135. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[39] *See* Notice, 89 FR at 53135.

[40] *See* Notice, 89 FR at 53135.

[41] *See* Notice, 89 FR at 53135.

[42] *See* Notice, 89 FR at 53135.

[43] *See* Notice, 89 FR at 53135.

[44] *See* Notice, 89 FR at 53135.

[45] *See* Notice, 89 FR at 53135.

[46] *See* Notice, 89 FR at 53135 (citing Cboe Global Markets U.S. Options Market Volume Summary (June 6, 2024), available at *https://markets.cboe.com/us/options/market_statistics/*).

[47] *See* Notice, 89 FR at 53135.

[48] *See* Notice, 89 FR at 53135.

[49] *See* Notice, 89 FR at 53135.

[50] *See* Notice, 89 FR at 53135.

[51] *See* Notice, 89 FR at 53135.

[52] *See* Notice, 89 FR at 53135–36.

[53] *See* Notice, 89 FR at 53136.

[54] *See* Notice, 89 FR at 53136 (citing *https://www.nyse.com/markets/american-options/membership#directory; https://www.nyse.com/markets/arca-options/membership#directory; https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf; https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf*).

the Exchange via a TPH broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-TPHs also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-TPHs and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of TPHs that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple TPHss are able to share a single physical port (and corresponding bandwidth) with other non-affiliated TPHs if purchased through a third-party re-seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services.[64] That is, the Exchange states, that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitve rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a TPH of the Exchange, let alone connect directly to it.[76] The Exchange explains

[55] *See* Notice, 89 FR at 53136.

[56] *See* Notice, 89 FR at 53136.

[57] *See* Notice, 89 FR at 53136. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.25.

[58] *See* Notice, 89 FR at 53136.

[59] *See* Notice, 89 FR at 53136 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (*nasdaqtrader.com*); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 53136.

[61] *See* Notice, 89 FR at 53136. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.27.

[62] *See* Notice, 89 FR at 53136.

[63] *See* Notice, 89 FR at 53136.

[64] *See* Notice, 89 FR at 53136.

[65] *See* Notice, 89 FR at 53136.

[66] *See* Notice, 89 FR at 53136.

[67] *See* Notice, 89 FR at 53136.

[68] *See* Notice, 89 FR at 53136.

[69] *See* Notice, 89 FR at 53136.

[70] *See* Notice, 89 FR at 53136.

[71] *See* Notice, 89 FR at 53136.

[72] *See* Notice, 89 FR at 53136.

[73] *See* Notice, 89 FR at 53136.

[74] *See* Notice, 89 FR at 53136.

[75] *See* Notice, 89 FR at 53136 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.)).

[76] *See* Notice, 89 FR at 53136.

that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 13 non-Cboe affiliated options markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitve rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange

[77] *See* Notice, 89 FR at 53136.

[78] *See* Notice, 89 FR at 53136.

[79] *See* Notice, 89 FR at 53136–37.

[80] *See* Notice, 89 FR at 53137.

[81] *See* Notice, 89 FR at 53137.

[82] *See* Notice, 89 FR at 53137.

[83] *See* Notice, 89 FR at 53137.

[84] *See* Notice, 89 FR at 53137 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[85] *See* Notice, 89 FR at 53137 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 53137.

[87] *See* Notice, 89 FR at 53137.

[88] *See* Notice, 89 FR at 53137.

[89] *See* Notice, 89 FR at 53137.

[90] *See* Notice, 89 FR at 53137.

[91] *See* Notice, 89 FR at 53137.

[92] *See* Notice, 89 FR at 53137.

[93] *See* Notice, 89 FR at 53137.

[94] *See* Notice, 89 FR at 53137.

[95] *See* Notice, 89 FR at 53137 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition* (''Mackintosh and Normyle'')).

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 53137 n.32.

[97] *See* Notice, 89 FR at 53137 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 53137. The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 53137 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 53137.

[101] *See* Notice, 89 FR at 53137.

[102] *See* Notice, 89 FR at 53137.

explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its TPHs and continue to compete among other options markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 17 options markets and potential new entrants.[117] The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that TPHs are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports.[126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products).[127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports

[103] *See* Notice, 89 FR at 53137.
[104] *See* Notice, 89 FR at 53137.
[105] *See* Notice, 89 FR at 53137.
[106] *See* Notice, 89 FR at 53137.
[107] *See* Notice, 89 FR at 53137.
[108] *See* Notice, 89 FR at 53137.
[109] *See* Notice, 89 FR at 53137.
[110] *See* Notice, 89 FR at 53137.
[111] *See* Notice, 89 FR at 53137.
[112] *See* Notice, 89 FR at 53137–38.
[113] *See* Notice, 89 FR at 53138.
[114] *See* Notice, 89 FR at 53138.
[115] *See* Notice, 89 FR at 53138.
[116] *See* Notice, 89 FR at 53138.
[117] *See* Notice, 89 FR at 53138.
[118] *See* Notice, 89 FR at 53138.
[119] *See* Notice, 89 FR at 53138.
[120] *See* Notice, 89 FR at 53138 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).
[121] *See* Notice, 89 FR at 53138.
[122] *See* Notice, 89 FR at 53138.
[123] *See* Notice, 89 FR at 53138.
[124] *See* Notice, 89 FR at 53138.
[125] *See* Notice, 89 FR at 53138.
[126] *See* Notice, 89 FR at 53138.
[127] *See* Notice, 89 FR at 53138.
[128] *See* Notice, 89 FR at 53138.
[129] *See* Notice, 89 FR at 53138.

connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139] The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,[143] continual auditing, and considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid.[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated TPHs equally (i.e., all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states

[130] *See* Notice, 89 FR at 53138.

[131] *See* Notice, 89 FR at 53138.

[132] *See* Notice, 89 FR at 53138.

[133] *See* Notice, 89 FR at 53138.

[134] *See* Notice, 89 FR at 53138.

[135] *See* Notice, 89 FR at 53138.

[136] *See* Notice, 89 FR at 53138 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).

[137] *See* Notice, 89 FR at 53138 (citing 15 U.S.C. 78f(b)(5)).

[138] *See* Notice, 89 FR at 53138 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 53138 (citing 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 53138.

[141] *See* Notice, 89 FR at 53138.

[142] *See* Notice, 89 FR at 53138.

[143] *See* Notice, 89 FR at 53138–39, n.41 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

[144] *See* Notice, 89 FR at 53138–39.

[145] *See* Notice, 89 FR at 53139.

[146] *See* Notice, 89 FR at 53139.

[147] *See* Notice, 89 FR at 53139.

[148] *See* Notice, 89 FR at 53139.

[149] *See* Notice, 89 FR at 53139.

[150] *See* Notice, 89 FR at 53139.

[151] *See* Notice, 89 FR at 53139.

[152] *See* Notice, 89 FR at 53139.

[153] *See* Notice, 89 FR at 53139.

[154] *See* Notice, 89 FR at 53139.

that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [169] and 19(b)(2)(B) of the Act [170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [173] and

[155] *See* Notice, 89 FR at 53139.

[156] *See* Notice, 89 FR at 53139.

[157] *See* Notice, 89 FR at 53139.

[158] *See* Notice, 89 FR at 53139.

[159] *See* Notice, 89 FR at 53139 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).

[160] *See* Notice, 89 FR at 53139. The Exchange states that 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'. . . .'' (citing *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21))).

[161] *See* Notice, 89 FR at 53139.

[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change''). To date, the Commission has received one comment letter on proposed rule change, which does not appear to be relevant to the instant filing. *See* Ross Letter.

[163] *See id.*

[164] 15 U.S.C. 78f(b)(4).

[165] 15 U.S.C. 78f(b)(5).

[166] 15 U.S.C. 78f(b)(8).

[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

• Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [174]

As discussed in Section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–C2–2024–010 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–C2–2024–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–C2–2024–010 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,[180] that File No. SR–C2–2024–010, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17699 Filed 8–8–24; 8:45 am]

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[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100655; File No. SR–FINRA–2024–007]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))

August 5, 2024.

### I. Introduction

On May 1, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''SEA'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to (1) require reporting of securities loans; and (2) provide for the public dissemination of loan information. The proposed rule change was published for comment in the **Federal Register** on May 7, 2024.[3] The Commission received comments in response to the proposal.[4] On June 10, 2024, the Commission extended until August 5, 2024, the time 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] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.

### II. Summary of the Proposed Rule Change

As described in more detail in the Notice, FINRA stated it is proposing, consistent with Exchange Act Rule 10c–1a, to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to establish reporting requirements for covered securities loans and to provide for the dissemination of individual and aggregate covered securities loan information and loan rate statistics. These proposed rules would define key terms for the reporting of covered securities loans and specify the reporting requirements with respect to both initial covered securities loans and loan modifications, including prescribing required modifiers and indicators.[7] FINRA stated that it intends to file separately a proposed rule change to establish covered securities loan reporting fees and securities loan data products and associated fees.[8]

According to FINRA, the proposed Rule 6500 Series is designed to improve transparency and efficiency in the securities lending market, consistent with Section 15(A)(b)(6) of the Exchange Act, Rule 10c–1a, and Section 984 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[9] FINRA stated that the proposed rule change would do so by facilitating the collection of specified securities loan information from Covered Persons and Reporting Agents, which include non-FINRA members, and providing access to such information to market participants, the public, and regulators.[10]

#### *A. Reporting Initial Covered Securities Loans*

Proposed Rule 6530(a) would govern the reporting requirements applicable to Covered Persons for reporting Initial Covered Securities Loans.[11] Proposed Rule 6510(e) would define ''Initial Covered Securities Loan'' as a new Covered Securities Loan not previously reported to SLATE. The definitions of ''Covered Person'' and ''Covered Securities Loan'' for the purposes of this proposed rule change would be the same as set forth in Rule 10c–1a. Initial Covered Securities Loans would be required to be reported within the time periods outlined in proposed Rule 6530(a)(1) (When and How Initial Covered Securities Loans Are Reported). Specifically, for Initial Covered Securities Loans effected on a business day at or after 12:00:00 a.m. Eastern Time (''ET'') through 7:45:00 p.m. ET, the required information must be reported the same day before 8:00:00 p.m. ET.[12] For Initial Covered Securities Loans effected on a business day after 7:45:00 p.m. ET, the required information must be reported no later than the next business day (T+1) before 8:00:00 p.m. ET; [13] and Initial Covered Securities Loans effected on a Saturday, a Sunday, a federal or religious holiday or other day on which SLATE is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T+1) before 8:00:00 p.m. ET.[14]

Proposed Rule 6530(a)(2) (Loan Information To Be Reported) would specify the items of information that must be reported to FINRA. Specifically, proposed Rule 6530(a)(2)(A) through (N) would require that Initial Covered Securities Loan reports must contain the below non-confidential data elements:

(1) The legal name of the security issuer and the LEI of the issuer (if the issuer has a non-lapsed LEI);

(2) Security symbol, CUSIP, ISIN, or FIGI, if any;

(3) The date the Covered Securities Loan was effected;

(4) The time the Covered Securities Loan was effected;

(5) The expected settlement date of the Covered Securities Loan;

(6) The platform or venue where the Covered Securities Loan was effected;

(7) The amount of the Reportable Securities loaned;

(8) The type of collateral used to secure the Covered Securities Loan;

(9) For a Covered Securities Loan collateralized by cash, the rebate rate;

(10) For a Covered Securities Loan not collateralized by cash, the securities lending fee;

(11) Any other fees or charges;

(12) The percentage of collateral to value of Reportable Securities loaned required to secure such Covered Securities Loan;

(13) For a Covered Securities Loan with a specified term, the termination date of the Covered Securities Loan; [15]

(14) Whether the borrower is a Broker or Dealer, a customer (if the person lending securities is a Broker or Dealer), a Clearing Agency, a Bank, a Custodian, or other person.

Proposed Rule 6530(a)(2)(O) through (U) would also require that Initial Covered Securities Loan reports contain the below confidential data elements:

(1) If known, the legal name of each party to the Covered Securities Loan (other than the customer from whom a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100046 (May 1, 2024), 89 FR 38203 (May 7, 2024) (''Notice''). All defined terms herein have the same meaning as they do in the Notice.

[4] Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007.htm.*

[5] *See* Securities Exchange Act Release No. 100305 (June 10, 2024), 89 FR 50644 (June 14, 2024).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Notice, 89 FR 38206.

[8] Notice, 89 FR 38206.

[9] Notice, 89 FR 38213.

[10] Notice, 89 FR 38213.

[11] As described in more detail in the Notice, a Covered Person may engage a Reporting Agent to comply with the reporting obligations on its behalf.

[12] *See* proposed Rule 6530(a)(1)(A).

[13] *See* proposed Rule 6530(a)(1)(B).

[14] *See* proposed Rule 6530(a)(1)(C).

[15] FINRA stated that this field would remain blank if reporting a Covered Securities Loan without a specified term (*i.e.,* an open-ended loan). However, upon the termination of an open-ended loan, as is the case with a term loan, a Covered Person would be required to submit a Loan Modification appending the terminated loan indicator pursuant to proposed Rule 6530(c)(4).

Broker or Dealer borrows fully paid or excess margin securities pursuant to SEA Rule 15c3–3(b)(3));

(2) If known, the CRD Number or IARD Number of each party to the Covered Securities Loan, if applicable;

(3) If known, the MPID of each party to the Covered Securities Loan;

(4) If known, the LEI of each party to the Covered Securities Loan;

(5) If known, whether each party to the Covered Securities Loan is the lender, the borrower, or an intermediary between the lender and the borrower;

(6) If the person lending securities is a Broker or Dealer and the borrower is its customer, whether the security is loaned from the Broker's or Dealer's securities inventory to the customer of such Broker or Dealer; and

(7) If known, whether the Covered Securities Loan is being used to close out a fail to deliver pursuant to Rule 204 of SEC Regulation SHO or to close out a fail to deliver outside of Regulation SHO.

Additionally, proposed Rule 6530(a)(2)(V) through (Y) would require a Covered Person to report:

(1) Whether the Covered Person is the lender, borrower or intermediary;

(2) The unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE;

(3) If the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the Covered Person responsible for reporting the Covered Securities Loan to SLATE;

(4) Such modifiers and indicators as required by either the Rule 6500 Series or the SLATE Participant specification.

FINRA stated that the modifiers and indicators—set forth in proposed Rule 6530(c) (Modifiers and Indicators)—would apply to specific scenarios where additional detail is appropriate to clarify the information required to be reported pursuant to proposed Rule 6530(a)(2) and (b)(2). FINRA stated that it intends to use these modifiers and indicators to provide regulators and the public with important information regarding the reported securities loan. Specifically, proposed Rule 6530(c)(1) (Exclusive Arrangement) would require a Covered Person to append an indicator to identify a loan made pursuant to an exclusive arrangement with the borrower or intermediary. Proposed Rule 6530(c)(2) (Loan to Affiliate) would require a Covered Person to append an indicator to identify a loan made to an Affiliate of the lender or intermediary.

Proposed Rule 6530(c)(3) (Unsettled Loan) would require a Covered Person to append an indicator to identify an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned that did not settle by the close of SLATE System Hours on the expected settlement date reported to SLATE. Proposed Rule 6530(c)(4) (Terminated Loan) would require a Covered Person to indicate when a Covered Securities Loan has been terminated. The terminated loan indicator would therefore be required to be appended on reports of: (1) an Initial Covered Securities Loan that did not and will not settle; and (2) Loan Modifications reporting the termination of a Covered Securities Loan (whether an open-ended or a term loan).

Proposed Rule 6530(c)(5) (Rate or Fee Adjustment) would require a Covered Person to report the appropriate modifier if a loan rebate rate or lending fee accounts for: (1) a billing adjustment or correction to amounts previously rebated or charged; or (2) the value of a distribution or other economic benefit associated with the Reportable Security, *e.g.,* a corporate action. Similarly, proposed Rule 6530(c)(6) (Basket Loan) would require a Covered Person to report the appropriate modifier if a loan rebate rate or lending fee reflects a rate or fee involving a basket of at least 10 unique Reportable Securities for a single agreed rate or fee for the entire basket. In each of these scenarios, the modifier would help to identify loans where the rate or fee may not reflect the current market. FINRA stated that it plans to use these modifiers for data validation (*e.g.,* in instances where FINRA's data validation logic identifies the reported rate as potentially erroneous) in addition to enhancing the disseminated data and its value to market participants.

*B. Reporting Securities Loan Modifications*

Proposed Rule 6530(b) would govern the reporting requirements applicable to Covered Persons for reporting Loan Modifications. Proposed Rule 6510(f) would define ''Loan Modification'' as a change to any ''Data Element'' with respect to a Covered Securities Loan (irrespective of whether such Covered Securities Loan was previously reported to SLATE), where ''Data Element'' refers to the required non-confidential data elements and modifiers reported pursuant to proposed Rule 6530(a)(2). Proposed Rule 6530(b)(1) (When and How Loan Modifications Are Reported) would require that Loan Modifications be reported within the same timeframes applicable to the reporting of Initial Covered Securities Loans. Specifically, for Loan Modifications effected on a business day at or after 12:00:00 a.m. ET through 7:45:00 p.m. ET, the required information must be reported the same day before 8:00:00 p.m. ET. For Loan Modifications effected on a business day after 7:45:00 p.m. ET, the required information must be reported no later than the next business day (T+1) before 8:00:00 p.m. ET; and Loan Modifications effected on a Saturday, a Sunday, a federal or religious holiday or other day on which SLATE is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T+1) before 8:00:00 p.m. ET.

Proposed Rule 6530(b)(2) (Loan Modifications—Information To Be Reported) would specify the items of information that must be reported to FINRA. Specifically, proposed Rule 6530(b)(2)(A) through (I) would require that each Loan Modification report contain the information below:

(1) The unique identifier assigned by FINRA to the Initial Covered Securities Loan, or, if a unique identifier has not yet been assigned by FINRA, the unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE;

(2) If the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the Covered Person responsible for reporting the Covered Securities Loan to SLATE;

(3) The MPID of the Covered Person;

(4) The date of the Loan Modification;

(5) The time of the Loan Modification;

(6) The expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the Loan Modification), or the effective date for all other Loan Modifications (if the effective date is a date other than the date of the Loan Modification); [16]

(7) Whether the Covered Person is the lender, borrower or intermediary;

(8) The modified Data Elements for a Loan Modification to a Covered Securities Loan previously reported to

[16] FINRA stated that Covered Persons must report a decrease to the loan amount resulting from a return of securities only once the securities have been delivered because returns are not considered ''effected'' until the securities are actually returned. However, Covered Persons must report all other Loan Modifications on the date that the Loan Modification was agreed upon and, in such instances, must report the effective date (pursuant to proposed Rule 6530(b)(2)(F)) unless the effective date is the same as the Loan Modification date (reported pursuant to 6530(b)(2)(D)).

SLATE or all Data Elements for a Loan Modification to a Covered Securities Loan that was not previously required to be reported to SLATE; [17]

(9) Such modifiers and indicators as required by either the Rule 6500 Series or the SLATE Participant specification.

Proposed Rule 6530.01 (Intraday Loan Modifications) addresses a Covered Person's reporting obligations when multiple Loan Modifications occur on a given day. Specifically, if a Covered Securities Loan (whether or not previously reported to SLATE) is modified multiple times throughout the day, a Covered Person must report each Loan Modification that occurs on a given day as set forth in proposed Rule 6530(b). Proposed Rule 6530.02 (Changes to the Parties of a Covered Securities Loan) provides that, with respect to a previously reported Covered Securities Loan, following the addition or removal of a party required to be identified pursuant to Rule 6530(a)(2)(O) a Covered Person must: (1) report the termination of the previously reported Covered Securities Loan as a Loan Modification pursuant to Rule 6530(b) that reflects the date and time the party was added or removed and select the terminated loan indicator; and (2) report an Initial Covered Securities Loan pursuant to Rule 6530(a) that reflects the new parties to the loan, if known (other than the customer from whom a Broker or Dealer borrows fully paid or excess margin securities pursuant to SEA Rule 15c3–3(b)(3)).

*C. Compliance With Reporting Obligations*

FINRA is proposing to adopt proposed Rule 6530(d) (Compliance with Reporting Obligations) to implement provisions regarding Covered Persons' ongoing reporting obligations and the use of third parties in meeting Exchange Act Rule 10c–1a and FINRA 6500 Rule Series obligations.[18] Specifically, proposed Rule 6530(d)(1) provides that Covered Persons (other than Covered Persons that engage a Reporting Agent) have an ongoing obligation to report Initial Covered Securities Loans and Loan Modifications to FINRA timely, accurately, and completely. In addition, a Covered Person may employ an agent for the purpose of submitting loan information to SLATE; however, unless the Covered Person has retained a Reporting Agent as permitted under Exchange Act Rule 10c–1a, the primary responsibility for the timely, accurate, and complete reporting of loan information to SLATE remains the non-delegable duty of the Covered Person with the reporting obligation. Also, similar to requirements that exist with respect to reporting obligations under other FINRA rules, proposed Rule 6530(d)(2) provides that a member's pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.[19]

FINRA also is proposing to adopt a provision to specify that, even where a member employs a Reporting Agent consistent with Rule 10c–1a(a)(2), the member must nonetheless take reasonable steps to ensure that the Reporting Agent is in fact complying with the securities lending reporting requirements of Rule 10c–1a and proposed FINRA Rule 6530 on its behalf.[20] Proposed Rule 6530(d)(3) would provide that a member relying on a Reporting Agent has an obligation under FINRA Rule 3110 (Supervision) to take reasonable steps to ensure that the Reporting Agent is complying with Rule 10c–1a and FINRA Rule 6530 on its behalf. In executing this obligation, FINRA would expect, for example, that the member review the Covered Securities Loan reporting data made available to it by the Reporting Agent or through FINRA's system to evaluate the accuracy and timeliness of the Covered Securities Loan reports submitted on its behalf by the Reporting Agent.

Proposed Rule 6530(d)(4) would provide that, if a Covered Person makes a good faith determination that it has a reporting obligation under Rule 10c–1a and this Rule 6500 Series, the Covered Person or Reporting Agent, as applicable, must report the Covered Securities Loan as provided in proposed Rule 6530. If the Reportable Security is not entered into the SLATE system, proposed Rule 6530(d)(4) would also require the Covered Person or Reporting Agent, as applicable, to promptly notify and provide FINRA Operations, in the form and manner required by FINRA, the information specified in Rule 6530(a)(2)(A) and (B), along with such other information as FINRA deems necessary to enter the Reportable Security for reporting through SLATE.

*D. Participation in SLATE*

Proposed Rule 6520 (Participation in SLATE) would establish the requirements applicable to Covered Persons and Reporting Agents with respect to participation in SLATE. Rule 6510(h) would define a ''SLATE Participant'' as ''any person that reports securities loan information to SLATE, directly or indirectly.'' ''SLATE Participant'' therefore would include both persons who connect to SLATE directly to report Covered Securities Loan information, including Reporting Agents, as well as any Covered Person who has engaged a Reporting Agent or other agent.

Paragraph (1) of proposed Rule 6520(a) (Mandatory Participation) would provide that participation in SLATE is mandatory for purposes of reporting Covered Securities Loans. Such mandatory participation would obligate a Covered Person to submit Covered Securities Loan information to SLATE in conformity with Rule 10c–1a and the FINRA Rule 6500 Series. Proposed Rule 6520(a)(2) would provide that participation in SLATE would be conditioned on the SLATE Participant's initial and continuing compliance with specified requirements. Specifically, SLATE Participants must: (1) obtain an MPID for reporting Covered Securities Loans to SLATE; (2) execute and comply with the SLATE Participant application agreement and all applicable rules and operating procedures of FINRA; and the SEC; and (3) maintain the physical security of the equipment located on the premises of the SLATE Participant to prevent unauthorized entry of information into SLATE. Proposed Rule 6520(a)(3) would provide that SLATE Participants would be obligated to inform FINRA of non-compliance with, or changes to, any of these mandatory participation requirements.

Proposed Rule 6520(b) (Reporting Agents) would set forth the participation requirements specific to Reporting Agents. Proposed Rule 6520(b) would require a SLATE Participant acting as a Reporting Agent to provide FINRA with a list naming each Covered Person on whose behalf the Reporting Agent is providing information to SLATE and any changes to the list of such persons by the end of the day on which any such change occurs, in the form and manner specified by FINRA.

[17] As defined by proposed Rule 6510(d), ''Data Element'' includes any item of information that a Covered Person must report under Exchange Act Rule 10c–1a(c) and proposed Rule 6530(a)(2)(A) through (N) and such modifiers and indicators required by proposed Rule 6530(a)(2)(Y). Accordingly, a modification to a Covered Securities Loan that would require the addition or removal of a modifier or indicator required to be reported pursuant to proposed Rule 6530(a)(2)(Y) would require a Covered Person to report a Loan Modification as set forth in proposed Rule 6530(b).

[18] *See, e.g.,* Rule 6380A(h); Rule 6622(h); Rule 6730(a)(6).

[19] *See, e.g.,* Rule 6380A(a)(4); Rule 6622(a)(4); Rule 6623; Rule 6730(f).

[20] *See* proposed Rule 6530(d)(3).

Finally, proposed Rule 6520(c) (SLATE Participant Obligations) would provide that, upon execution and receipt by FINRA of the SLATE Participant application agreement, a SLATE Participant may commence input of Covered Securities Loan reports into SLATE. Proposed Rule 6520(c) would also require that a SLATE Participant must report Covered Securities Loan information using its MPID, and would provide that a SLATE Participant may access SLATE via a FINRA-approved facility during SLATE System Hours.

*E. Dissemination of Loan Information*

Proposed Rule 6540 (Dissemination of Loan Information) would provide for the public dissemination of securities loan data reported to SLATE and information pertaining to the aggregate loan transaction activity and distribution of loan rates for each Reportable Security. The publicly available data would include: (1) next day (T+1) loan-level data dissemination for Initial Covered Securities Loans and Loan Modifications (except for the loan amount); (2) T+20 dissemination of the loan amount for Initial Covered Securities Loans and Loan Modifications; and (3) daily loan statistics (*i.e.,* aggregate loan activity and distribution of loan rates).

1. T+1 Loan-Level Data Dissemination

Under proposed Rule 6540(a) (Next Day Dissemination), for each Initial Covered Securities Loan and Loan Modification reported to SLATE on a given business day, no later than the morning of the next business day, FINRA would make publicly available: (1) the unique identifier assigned by FINRA to the Covered Securities Loan; (2) the security identifier(s) specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate; and (3) the requisite Data Elements.

With respect to each Initial Covered Securities Loan reported to SLATE, proposed Rule 6540(a)(3)(A) would specify that FINRA make publicly available no later than the morning of the next business day all other reported Data Elements, except the amount of Reportable Securities loaned (reported pursuant to Rule 6530(a)(2)(G)) and any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated.

With respect to each Loan Modification to a Covered Securities Loan reported to SLATE on the same or a prior business day, proposed Rule 6540(a)(3)(B) would specify that FINRA make publicly available no later than the morning of the next business day the modified Data Elements reported to SLATE, except the amount of Reportable Securities loaned and any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated.

In the case of a Loan Modification to a Covered Securities Loan that was not previously required to be reported to SLATE (*e.g.,* because the Initial Covered Securities Loan occurred prior to the effectiveness of the Rule 6500 Series), proposed Rule 6540(a)(3)(C) would specify that FINRA make publicly available the unique loan identifier assigned by FINRA to the loan, the security identifier, and all other reported Data Elements, except the amount of Reportable Securities loaned and any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated.

2. T+20 Loan Amount Dissemination

Pursuant to Rule 6540(b) (Delayed Dissemination), for each Initial Covered Securities Loan and Loan Modification reported to SLATE, 20 business days after the date on which the Initial Covered Securities Loan was effected or the loan amount was modified, FINRA would make publicly available: (1) the unique identifier assigned by FINRA to the Covered Securities Loan, (2) the security identifier(s) specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate, and (3) the amount of Reportable Securities loaned reported to SLATE. For Initial Covered Securities Loans, the 20-day delay period would begin the day after the Covered Securities Loan is effected (even in the case of late reports).

3. Daily Loan Statistics

In addition to T+1 loan-level data disseminated pursuant to proposed Rule 6540(a), FINRA would disseminate statistics regarding Covered Securities Loans reported to FINRA, including aggregate loan activity and distribution of loan rebate rates and lending fees.

4. Aggregate Loan Transaction Activity

Pursuant to paragraph (1) of proposed Rule 6540(c) (Aggregate Loan Transaction Activity), for each Reportable Security for which an Initial Covered Securities Loan or Loan Modification is reported to SLATE on a given business day, FINRA would disseminate, no later than the morning of the next business day, aggregated loan activity in the Reportable Security (along with the security identifier specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to identify the relevant Reportable Security). The aggregated data would include, for each Reportable Security, under proposed Rule 6540(c)(1)(A), the aggregate volume of securities (both in total and broken down by collateral type) subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned reported on the prior business day, and, under proposed Rule 6540(c)(1)(B), the aggregate volume of securities (both in total and broken down by collateral type) subject to a rebate rate or fee modification reported on the prior business day.

Pursuant to Rule 6540(c)(1)(C), FINRA would also disseminate the aggregate volume of securities subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned subject to a term loan (*i.e.,* a loan with a specified term) and subject to an open loan (*i.e.,* a loan without a specified term) reported on the prior business day. Pursuant to Rule 6540(c)(1)(D), FINRA would also disseminate the aggregate volume of securities subject to an Initial Covered securities Loan or modification to the amount of Reportable Securities loaned broken down by borrower type (as specified in proposed Rule 6530(a)(2)(N) on the prior business day. Pursuant to proposed Rule 6540(c)(1)(E), FINRA would disseminate the aggregate number of Initial Covered Securities Loans and terminated Covered Securities Loans (both in total and broken down by collateral type) reported on the prior business day.

5. Loan Rate Distributions

Pursuant to paragraph (2) of proposed Rule 6540(c) (Loan Rate Distribution Data), for each Reportable Security for which an Initial Covered Securities Loan or Loan Modification is reported to SLATE on a business day, FINRA would also disseminate, not later than the morning of the next business day, the security identifier (specified in Rule 6530(a)(2)(A) or (B)) that FINRA determines is appropriate to identify the relevant Reportable Security and information pertaining to the distribution of loan rebate rates or lending fees, as applicable, including: the highest rebate rate, lowest rebate rate, and volume weighted average of the rebate rates reported to SLATE for Initial Covered Securities Loans collateralized by cash and, separately,

for Loan Modifications collateralized by cash (where the Loan Modification involved a change to the rebate rate). FINRA would also disseminate the highest lending fee, lowest lending fee, and volume weighted average of the lending fees reported for Initial Covered Securities Loans not collateralized by cash and, separately, for Loan Modifications not collateralized by cash (where the Loan Modification involved a change to the lending fee).

Proposed Rule 6540(d) (Loan Transaction Information Not Disseminated) would specify the information reported to FINRA that would not be disseminated. As prescribed by Exchange Act Rule 10c–1a(g)(4), proposed Rule 6540(d)(1) provides that the Confidential Data Elements reported to FINRA would not be disseminated. In addition, proposed Rule 6540(d)(2) would provide that FINRA may determine not to publicly disseminate any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification. FINRA stated that it may determine not to disseminate a modifier or indicator where the use of such information is intended for regulatory purposes only or its public disclosure may otherwise be inappropriate (*e.g.,* where it may result in information leakage).

As proposed in Rule 6540.02 (Means of Data Dissemination), FINRA would make the data pursuant to proposed Rule 6540(a) through (c) available on FINRA's website free of charge for personal, non-commercial purposes only. For other uses, FINRA would publish or distribute SLATE data for fees that have been filed with the SEC pursuant to Rule 19b–4 under the Exchange Act.

*F. Other Provisions*

Proposed Rule 6550 (Emergency Authority) would provide that, as market conditions may warrant, FINRA, in consultation with the Commission, may suspend the reporting or dissemination of certain Covered Securities Loans, or the reporting of certain Data Elements or Confidential Data Elements or the dissemination of certain Data Elements for such period of time as FINRA deems necessary.

## III. Summary of Comments

The Commission received comments on the proposed rule change.[21] Some commenters stated their ''strong general support'' for FINRA's proposed rules.[22] One commenter stated that SLATE will ''aid in the protection of investors by ensuring they are appropriately informed about the terms of securities loans and the parties involved'' and that the proposed ''requirement to report comprehensive data elements will contribute to a fair and orderly market.'' [23] Another commenter stated that FINRA's proposal ''is a great idea.'' [24]

*A. Data Elements, Modifiers, and Indicators*

Some commenters stated that FINRA's proposed rules would impose on market participants reporting requirements that go beyond the Commission's requirements under Rule 10c–1a,[25] which would result in the disclosure of highly sensitive and complex information and contribute to significant increased costs and burdens for implementation and compliance.[26] Some commenters stated that the additional data and information requirements specified in the proposed Rule 6500 Series that are not specifically mentioned in Rule 10c–1a should be removed.[27]

One commenter stated that some of these additional fields and indicators ''may not currently be captured by market participants at the trade level'' and ''could not have been contemplated in the cost benefit analysis undertaken by the SEC in their analysis of the impact of Rule 10c–1a.'' [28] This commenter stated that the addition of these data elements ''would constitute an impermissible end-run around the Commission rulemaking process . . . without being subject to the public comments and economic analyses required to be performed under such rulemaking process.'' [29] Another commenter also stated that ''the significant increase in reportable fields and complexity of the Proposed Rule Change warrant a proper cost-benefit analysis as required under Federal agency rulemaking.'' [30] This commenter also stated that the increased number of reportable data fields, in turn, increases the likelihood that a covered person would need to rely on a reporting agent to fulfill its regulatory requirements.[31] Another commenter stated that ''these additional requirements may serve to increase the cost and complexity of reporting without sufficient regard for their benefits.'' [32]

One commenter stated that Rule 10c–1a requires the reporting of 18 data fields, while FINRA's proposed rules would require the reporting of 30 data fields.[33] Some commenters identified the data elements that would be required to be reported under FINRA's proposed rules that they stated were not included under Rule 10c–1a: (1) the expected settlement date of the covered securities loan; (2) the dollar cost of any fees or charges (in addition to the rebate rate or securities lending fee specifically mentioned in Rule 10c1–a); (3) whether the covered person is the lender, borrower, or intermediary; (4) the unique internal identifier assigned to the covered securities loan by the covered person responsible for reporting the loan to SLATE; (5) if the covered securities loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the covered

[21] *See supra* note 4.

[22] *See, e.g.,* Form Letter A. *See also* Letter from vetvec (May 14, 2024).

[23] Letter from Jennifer (May 15, 2024).

[24] Letter from Suzanne Shatto (May 22, 2024).

[25] *See, e.g.,* Letter from Robert Toomey, Managing Director and Associate General Counsel, and Joseph Corcoran, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, SEC (May 28, 2024) (''SIFMA Letter''), at 3; Letter from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute, to Vanessa Countryman, Secretary, SEC (May 24, 2024) (''ICI Letter 1''), at 2; Letter from Paul Cellupica, General Counsel and Kimberly Thomasson Assistant General Counsel, Investment Company Institute, to Vanessa A. Countryman, Secretary, SEC (July 30, 2024) (''ICI Letter 2''), at 2; Letter from Brian P. Lamb, CEO, EquiLend Holdings LLC, to Vanessa Countryman, Secretary, SEC (May 28, 2024) (''EquiLend Letter''), at 6–7; Letter from Fran Garrett, Head of Business, and Mark Whipple, Chairman of the Board of Directors, International Securities Lending Association Americas, to Vanessa Countryman, Secretary, SEC (July 16, 2024) (''ISLA Americas Letter''), at 4; Letter from Tony Holland, Director of Market Practice, International Securities Lending Assoc., to Vanessa Countryman, Sec'y, SEC (May 28, 2024) (''ISLA Letter 1''), at 9; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, MFA, to Vanessa A. Countryman, Secretary, SEC (July 31, 2024) (''MFA Letter''), at 2; Letter from William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group, to Vanessa A. Countryman, Secretary, SEC (July 31, 2024) (''SIFMA AMG Letter 2''), at 2.

[26] *See, e.g.,* Letter from Lindsey Weber Keljo, Esq., Head, The Asset Management Group, and William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group, to Vanessa Countryman, Secretary, SEC (May 28, 2024) (''SIFMA AMG Letter 1''), at 2; SIFMA AMG Letter 2, at 2, 4–6; SIFMA Letter, at 4; ISLA Letter 1, at 2; ISLA Americas Letter, at 4; ICI Letter 2, at 3–4; MFA Letter, at 2.

[27] *See, e.g.,* EquiLend Letter, at 1, 7; SIFMA Letter, at 4; SIFMA AMG Letter 2, at 2; ICI Letter 2, at 2–3; MFA Letter, at 7.

[28] EquiLend Letter, at 6.

[29] SIFMA Letter, at 4.

[30] ISLA Americas Letter, at 4–5.

[31] *See* ISLA Americas Letter, at 8–9.

[32] EquiLend Letter, at 1. *See also* ICI Letter 1, at 2; ICI Letter 2, at 3.

[33] *See* ISLA Letter 1, at 2–3.

person responsible for reporting the covered securities loan to SLATE; (6) the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the loan modification) or the effective date for all other loan modifications (if effective date is a date other than the date of the loan modification); and (7) such modifiers and indicators as are required by FINRA under the Rule 6500 Series or the SLATE Participant specification.[34]

Commenters also identified proposed modifiers and indicators as data elements that they stated were not addressed by Rule 10c–1a: (1) loans associated with exclusive arrangements; (2) loans with affiliates; (3) unsettled loans; (4) terminated loans; (5) loans with rate or fee adjustments; and (6) basket loans.[35] One commenter stated that the affiliate indicator required by proposed Rule 6510(a) would ''not add any additional value to the reporting and could potentially expose confidential information.'' [36] The commenter also stated that ''the intermediary negotiating the loan may not be aware of an affiliate relationship between the borrower and underlying lender,'' requiring additional resources to monitor whether an affiliate relationship was established.[37] Another commenter stated that the affiliate loan flag should be removed from the proposed required reporting and that inclusion of this requirement ''will require beneficial owners to expend additional resources to monitor and report to their lending agents the existence of an affiliate relationship'' and ''at least warrants a cost-benefit analysis.'' The commenter also stated that ''use of the affiliate indicator can also expose confidential data elements.'' [38]

One commenter stated that the reporting requirements for security issuer LEIs should be removed or made optional, stating that ''security issuer LEIs are not easily accessible and are not always available.'' [39] Another commenter stated that, because ''a large percentage of third-country issuers have not obtained LEIs . . . requirements should be amended to make the provision of the LEI's for third-country issuers optional.'' [40]

One commenter requested clarification of whether the reporting of the ''expected settlement date for modifications to the loan amount'' required by proposed Rule 6530(f) means ''contractual settlement'' or ''actual settlement.'' [41] This commenter also requested clarification of the requirement that Covered Persons ''separately report the dollar costs of any other fees or charges'' to ''make clear how to populate this field clearly and in what format.'' [42]

One commenter requested confirmation whether, if FINRA does not generate a ''UTI'' for a covered securities loan, the covered person responsible for reporting it would be required to generate a UTI.[43] The commenter also stated that ''[u]nder SFTR firms agree the UTI before you trade and agree who is going to generate and distribute the UTI beforehand.'' [44] The commenter recommended that ''FINRA should follow the SFTR waterfall protocol, where possible for generation and distribution of UTI's, as many firms will already be familiar with this method for the purposes of reporting their EU securities loans.'' [45]

*B. Timing for Reporting*

One commenter requested a ''clear and concise definition of the term 'effected.' '' [46] The commenter stated that it ''would like to understand if (A) 'effected' is equivalent to an 'event date' file *i.e.,* the event date that the trade took place (B) is the 'effected' date more similar to an execution timestamp that would carry both date and time or (C) is the 'effected[']' date when a trade is verbally agreed upon.'' [47]

Another commenter recommended that the ''interpretation for time 'effected' and 'agrees to a covered securities loan' is prior to loan settlement but only once all contractual terms, including the identity of the lender, are agreed.'' [48] The commenter further stated that ''[u]ntil all contractual terms of a securities loan (including the final details related to the identity of the lender) are agreed between the lending agent as agent for the lender and the borrower, the trading desk will view the borrower's offer discussions as a '*potential loan*'—not an actual loan'' and will book the securities loan into its system when all contractual terms are agreed.[49] This commenter stated that ''[o]nly when the securities loan is booked into the lending agent's trading system, will the lending agent view it to be 'effected'—an actual securities loan pending settlement.'' [50] Regarding allocations, this commenter stated that ''[t]his analysis applies equally to securities loans that have been settled and need to be reallocated'' and ''until the reallocation is finalized, there is no utility to requiring a covered person to report *potential* loan modifications.'' [51]

Another commenter stated that the proposed rule would require that ''all Partials and Full Returns to be checked for settlement first, prior to being reported'' and that ''[i]n contrast the EU [Securities Financing Transactions Regulation (''SFTR'')] only requests the final close out of a trade to be reported, *i.e.,* under SFTR, partials only have to be reported on a contractual settlement basis as opposed to an actual settlement basis.'' [52] The same commenter, ''encourage[d] alignment with the EU's SFTR where possible.'' [53] This commenter stated that ''market participants would have to consider how to monitor settlement separately to what they are reporting for regulatory purposes under the proposed rule'' and that ''this will create a challenge for systems from a books & records perspective.'' [54] The commenter also stated that ''[i]ncluding partials that follow the settlement driven reporting requirement *i.e.,* the need to check for successful settlement prior to regulatory reporting, is going to create several challenges for market participants.'' [55]

One commenter stated ''that including settlement status as a contextual indicator will greatly increase reporting complexity and increase the odds that reported data will be unclear or confusing.'' [56] This commenter stated that it is ''generally accepted market practice to cancel loans that remain unsettled, and since the cancelation of a previously reported trade is already contemplated elsewhere within the reporting rules, [the commenter] believe[s] this additional settled/unsettled status indicator is unnecessary and can be removed.'' [57]

[34] *See* SIFMA Letter, at 3–4. *See also* EquiLend Letter, at 6–7; ISLA Letter 1, at 2.

[35] *See, e.g.,* SIFMA Letter, at 3–4; EquiLend Letter, at 6–7.

[36] ISLA Letter 1, at 8.

[37] ISLA Letter 1, at 8.

[38] ISLA Americas Letter, at 14.

[39] ISLA Letter 1, at 7.

[40] ISLA Americas Letter, at 15.

[41] ISLA Letter 1, at 8.

[42] ISLA Letter 1, at 5.

[43] ISLA Letter 1, at 9. The proposed FINRA rules do not use the acronym ''UTI,'' which the commenter did not define but may refer to the term ''unique transaction identifier'' and, under the proposed FINRA rules, ''the unique identifier assigned by FINRA to the loan.''

[44] ISLA Letter 1, at 9.

[45] ISLA Letter 1, at 9.

[46] ISLA Letter 1, at 4.

[47] ISLA Letter 1, at 3–4.

[48] ISLA Americas Letter, at 6.

[49] ISLA Americas Letter, at 6.

[50] ISLA Americas Letter, at 6.

[51] ISLA Americas Letter, at 6.

[52] ISLA Letter 1, at 4.

[53] ISLA Letter 1, at 4.

[54] ISLA Letter 1, at 5.

[55] ISLA Letter 1, at 5.

[56] ISLA Americas Letter, at 11.

[57] ISLA Americas Letter, at 11.

*C. Reporting of Intraday Loan Modifications*

Several commenters stated that FINRA's proposed rules include a requirement that all intraday changes be reported as loan modifications, which commenters stated was not adopted as part of Rule 10c–1a because the Commission removed the proposed 15-minute intraday reporting requirement and replaced it with an end-of-day reporting requirement.[58] One commenter stated that it ''understood the Commission to be saying that a securities loan, and any subsequent modification to such loan, is not required to be reported until the end of the day when the terms have been finally agreed to by the parties.'' [59] This commenter stated that FINRA's proposed rule ''is inconsistent with the Commission's intent to eliminate the submission of 'incomplete' data that lacks 'any utility' and directly contradicts Rule 10c–1a as adopted'' [60] and that the ''inclusion of intraday activity as required reporting would be misleading to the public and inconsistent with the intent of the Commissioners who voted to adopt the final rule.'' [61]

Another commenter stated that FINRA's proposal ''seeks to require covered persons to report information on all intraday adjustments to a new or existing covered securities loan—which would effectively reinstate the reporting of interim intraday terms . . . that the Commission removed from the final SEC Rule 10c–1a as a direct result of notice and comment rulemaking.'' [62] This commenter ''urge[ed] that the reporting of intraday adjustments to initial covered securities loans or loan modifications be removed'' from the proposal and that ''FINRA instead implement the single, consolidated, end-of-day reporting requirement contemplated by SEC Rule 10c–1a.'' [63]

One commenter stated that ''[i]t is not clear that FINRA has adequately analyzed the costs and benefits of [this]'' deviation from Rule 10c–1a.[64] Another commenter also stated that the intraday reporting requirements are ''costly and burdensome'' [65] and that ''the costs and complexity of reporting these intraday loan modifications greatly undermines any purported utility.'' [66] The same commenter stated that to differentiate from ''other securities lending industry participants, such as prime brokers, engaged in intraday activities that could be reported as lifecycle events, . . . FINRA and the Commission . . . consider the inclusion of a flag that identifies a party as a lending agent, in which case, such intraday lifecycle events would not need to be reported.'' [67]

One commenter requested clarification of whether an initial loan that is modified on the same day that it is effected could have both the initial loan and modification reported together at 6:00 p.m.[68] The commenter also requested clarification of whether the termination of a loan due to a change to the parties to the loan and corresponding initiation of a new loan due to a change in the parties would require intraday reporting.[69] The same commenter also asked for clarification of whether there is a specific sequence in which firms would need to report initial loans and modifications and suggested ''sending all lifecycle events in chronological order for ease.'' [70]

*D. Disseminated Information*

Two commenters addressed the granularity of the aggregated information that FINRA would disseminate pursuant to the proposed rule. Both commenters stated that the Commission had afforded FINRA deference to determine the aggregate information that should be published publicly.[71] However, one of the commenters stated that such ''deference is limited to the manner in which aggregate data at the level of the entire dataset of reported coved securities loans is reported, and does not permit FINRA to break down the dataset into smaller published subsets, or 'slices,' based on specific criteria'' and that ''the granularity of the smaller subsets of data that the Proposed Rule Change would intend to make publicly available (*e.g.,* data broken down by borrower type) raises significant concerns that sensitive, proprietary trading strategy information may be disclosed.'' [72] Both commenters addressed the publication of more granular aggregated data potentially allowing market participants to ''extrapolate'' or ''back into'' individual loan amounts on a T+1 basis.[73] Further, one of the commenters stated that the proposed breakdown for aggregate transaction activity and distribution of loan rates ''should have been included in the SEC Proposing Release and subjected to a cost-benefit analysis and formal SEC notice and comment period.'' [74] The commenter recommended ''that FINRA reevaluate its proposed structure and instead propose a revised, less granular structure.'' [75]

Two commenters stated that the proposed rule's *de minimis* threshold [76] is set too low.[77] One of the commenters stated that the application of the threshold ''should be mandatory and not an optional exclusion for confidentiality reasons.'' [78] The other commenter requested clarification of whether ''FINRA 'will omit' or 'may omit' de minimis loan details.'' [79]

*E. Data Confidentiality, Security, and Integrity*

One commenter stated that ''it is unclear what the fee-based service and data would look like'' and that a ''more customized or enhanced data set also raises confidentiality concerns.'' [80] One commenter stated there is ''increased complexity that FINRA has introduced with its Proposed Rule Change by significantly increasing the number of reportable data fields, requiring the reporting of all intraday activity, and imposing a data validation process has created commercial opportunities for data service providers at the expense of market participants, and ultimately end investors.'' [81]

This commenter also stated that increased reliance on reporting agents raises data security issues and that ''the expansion of the number of reportable fields from fifteen to over forty'' could require covered persons ''to share with a third party very sensitive transaction level details, including the identity of each party to the transaction.'' [82] The

[58] *See* ISLA Americas Letter, at 6–7; ISLA Letter 1, at 4; SIFMA AMG Letter 1, at 2; SIFMA AMG Letter 2, at 2; SIFMA Letter, at 5; ICI Letter 1, at 2; ICI Letter 2, at 5–6.

[59] ISLA Americas Letter, at 7.

[60] ISLA Americas Letter, at 8.

[61] ISLA Americas Letter, at 8.

[62] SIFMA Letter, at 5–6. *See also* ICI Letter 1, at 2; SIFMA AMG Letter 1, at 2.

[63] SIFMA Letter, at 6.

[64] ICI Letter 1, at 2.

[65] ISLA Americas Letter, at 8.

[66] ISLA Americas Letter, at 8.

[67] ISLA Americas Letter, at 8.

[68] ISLA Letter 1, at 9.

[69] ISLA Letter 1, at 9.

[70] ISLA Letter 1, at 9–10.

[71] SIFMA Letter, at 7; ISLA Americas Letter, at 16.

[72] SIFMA Letter, at 7.

[73] SIFMA Letter, at 7; ISLA Americas Letter, at 16.

[74] SIFMA Letter, at 7.

[75] SIFMA Letter, at 7.

[76] Proposed Rule 6540 Supplementary Material .01 (De Minimis Loan Transaction Activity) would provide that FINRA may omit from the aggregate loan activity volume information for Reportable Securities for which there were three or fewer types of Initial Covered Securities Loan and Loan Modification events reported to SLATE in total on the prior business day. *See* Notice, 89 FR 38212 n.74.

[77] ISLA Letter 1, at 10; ISLA Americas Letter, at 16.

[78] ISLA Letter 1, at 10.

[79] ISLA Americas Letter, at 16.

[80] ISLA Letter 1, at 11.

[81] ISLA Americas Letter, at 9.

[82] ISLA Americas Letter, at 9.

commenter also stated that ''[s]hould this data become exposed by a data security incident, we have significant concerns that lenders would choose to restrict lending, which could negatively impact lendable supply and market liquidity.'' [83]

Another commenter requested clarification of the use of fee and rebate adjustment modifiers for data validation, and whether ''FINRA will be performing validation testing to a defined tolerance level and a rejection/correction process.'' [84] The commenter stated that if FINRA will perform such validations ''there is the potential for a large number of rejections that could result in a substantial amount of manual intervention.'' [85]

One commenter stated that ''FINRA's proposed rules introduce the concept of a Service Bureau that [it] understand[s] can provide the same service as a Reporting Agent without the oversight or regulatory responsibility of a Reporting Agent.'' [86] The commenter stated that ''the permissible activities of so-called 'Service Bureaus' demands further clarification and an express set of qualification criteria that distinguishes such permissible activities from those that are inherent in the formal 'reporting agent'/Covered Person agency relationship'' to avoid providing ''a back door through which a 'Service Bureau' can escape SEC and FINRA oversight and liability as a 'reporting agent.' '' [87]

*F. Burdens, Costs, and RNSA Fees*

Two commenters addressed Rule 6530(d)(4), which requires that if a ''Reportable Security is not entered into the SLATE system, the Covered Person or Reporting Agent, as applicable, must promptly notify and provide FINRA Operations, in the form and manner required by FINRA.'' [88] One commenter stated that ''this is a highly manual process and could lead to a time-lag when setting up new static data that does not already exist within the SLATE system.'' [89] The commenter stated that ''the current process as outlined would be highly inefficient and open to manual error.'' [90] The commenter also stated that it would ''like to understand, what agreements are in place if a vendor does not report and what liability here is placed on the covered person.'' [91]

Another commenter stated that ''it is not an appropriate delegation of duties to require a covered person . . . to notify FINRA of reportable securities not included in FINRA's SLATE system'' and that it ''would be an inefficient and burdensome manner in which to update FINRA's record of covered securities.'' [92] The commenter recommended that the notification requirement either be ''revised or removed.'' [93] The commenter stated that ''FINRA's Proposed Rule deviates from the final rule in a manner that could impact the very point of engaging a reporting agent'' because it ''shift[s] reporting compliance (outside of a written agreement and timely access to data) back to the covered person creating a reconciliation loop that will be time consuming, costly and operationally intensive.'' [94]

Another commenter stated that it ''remain[s] concerned about the disproportionate allocation of compliance costs [to lenders],'' and urged FINRA to exempt lenders from any fees associated with accessing SLATE data for commercial purposes to ''ensure that those who bear the primary costs of the SLATE system have equitable access to industry-wide data.'' [95] The commenter also requested that any data trust organized by securities lenders also be exempt from fees for the commercial use of SLATE data.[96]

One commenter stated that ''FINRA has yet to provide any clarity on what the fees will be or how they will be allocated.'' [97] The commenter also stated that the ''RNSA fees should be borne by market participants more broadly and not just Covered Persons submitting data (primarily lending agents and direct lenders).'' [98] Another commenter requested clarification regarding ''contemplated fees for commercial use of data and the differences between the 'fee' data and the 'free' data.'' [99] Another commenter stated that ''the fees and fee structure associated with registering and reporting securities lending information to FINRA have yet to be defined'' and ''the fees associated with the disseminated outbound data to commercial users been divulged,'' requesting that ''the associated comment period to allow for changes, should not be concluded until all the pieces required to understand the complexity of this regulation are revealed and understood.'' [100] Another commenter stated that ''[c]onsidering proposed RNSA fees and costs have not yet been published, any cost-benefit analysis is impossible.'' [101] This commenter recommended ''that any final rule promulgated by FINRA be conditional upon publication of proposed costs and public comment.'' [102]

*G. Foreign Securities and Jurisdictional Issues*

One commenter requested clarification of the reporting requirements for foreign securities traded within and outside the U.S. Regarding foreign securities traded within the U.S., the commenter asked whether foreign securities that have '' 'F-share' tickers'' are reportable.[103] The commenter stated its understanding that, ''[a]n 'F' share is created in the US when a broker-dealer files a Form 211 with FINRA, to create a US ticker symbol in order to report trades in the US in a foreign company's shares.'' [104] The commenter also stated its understanding that ''dual listed securities are in scope for reporting in SLATE (as they are required to be reported under CAT) and that foreign securities that are traded OTC in the US may also be reportable in SLATE.'' [105] Regarding foreign securities traded outside the U.S., the commenter asked, ''when a security has multiple Sedol's/tickers, where only one of which is CAT reportable, and the securities lending trade references one of the other Sedol/tickers (*i.e.,* the foreign ticker traded on a foreign exchange, and thus not the 'F' shares ticker[)], would the securities lending trade be reportable under 10c–1a in the US?'' [106] The commenter requested confirmation that such a transaction would not be reportable under Rule 10c–1a.[107] This commenter asked, ''from a cybersecurity perspective what processes, policies or procedures . . . FINRA members have in place and [whether] this requirement [would] appl[y] to both domestic and non-US

[83] ISLA Americas Letter, at 9.
[84] ISLA Letter 1, at 7.
[85] ISLA Letter 1, at 7.
[86] EquiLend Letter, at 1.
[87] EquiLend Letter, at 6.
[88] ISLA Letter, at 3; ISLA Americas Letter, at 15.
[89] ISLA Letter 1, at 3.
[90] ISLA Letter 1, at 3.
[91] ISLA Letter 1, at 13.
[92] ISLA Americas Letter, at 15.
[93] ISLA Americas Letter, at 15.
[94] ISLA Americas Letter, at 10.
[95] *See* Letter from David Schwartz, Executive Director, Center for the Study of Financial Market Evolution, to Vanessa Countryman, Sec'y, SEC (May 28, 2024) (''CSFME Letter''), at 2–3.
[96] CSFME Letter, at 4.
[97] ISLA Letter 1, at 12.
[98] ISLA Letter 1, at 12, 14.
[99] SIFMA Letter, at 8.
[100] EquiLend Letter, at 7.
[101] ISLA Americas Letter, at 5.
[102] ISLA Americas Letter, at 11.
[103] Letter from Tony Holland, Director of Market Practice, International Securities Lending Assoc., to Vanessa Countryman, Sec'y, SEC (July 16, 2024) (''ISLA Letter 2''), at 2–3.
[104] ISLA Letter 2, at 3.
[105] ISLA Letter 2, at 4.
[106] ISLA Letter 2, at 4. The acronym ''SEDOL'' stands for ''Stock Exchange Daily Official List,'' which is a list of security identifiers used in the United Kingdom and Ireland for clearing purposes.
[107] ISLA Letter 2, at 5.

trading parties.'' [108] This commenter requested clarity on FINRA's proposed enforcement policy on non-FINRA members, specifically as it related to ''being compliant for reporting to the SLATE system'' and ''violations or failures to pay when due and SLATE reporting fees.'' [109]

One commenter stated that there ''has been no clarity or guidance provided in the FINRA Rule regarding extraterritoriality or requirement for reporting for non-US market participants engaging in securities lending of US securities.'' [110] The commenter requested that ''FINRA confirm the extraterritorial scope requirements'' of the proposed rules and ''that FINRA confirm enforcement rules for non-US firms for incorrect reporting.'' [111] Another commenter requested additional guidance on the jurisdictional scope of the rules, including the applicability to foreign entities and foreign securities.[112]

*H. Emergency Authority*

Many of these commenters addressed the suspension of reporting or dissemination of Covered Securities Loans under proposed Rule 6550 (Emergency Authority). Commenters stated that the proposed suspension of the reporting or dissemination of certain Covered Securities Loans or Data Elements for periods deemed necessary by FINRA would undermine the transparency that the proposed FINRA Rule 6500 Series aims to promote.[113] These commenters stated that the proposed suspension ''would inadvertently create an information asymmetry, thus disadvantaging end borrowers and beneficial owners who rely on this data for making prudent investment decisions'' and ''strongly advocate[d] for stringent guidelines governing the suspension of reporting requirements to avoid undermining these goals.'' [114] Another commenter ''strongly advocate[d] for . . . the publication of the reasons and timeframe for suspension to avoid undermining [the proposed rule's] goals.'' [115]

*I. SLATE Participant Reporting Specifications*

One commenter provided recommendations for specific proposed reporting requirements in FINRA's proposed rules and the associated SLATE Participant Reporting Specs, including:

- *Lending Fees and Loan Rebate Rates:* The commenter stated that Covered Persons should be permitted ''to report lending fees and loan rebate rates as actually negotiated, rather than requiring them to report a lending fee for all non-cash collateralized loans and a loan rebate rate for all loans collateralized by cash regardless of the facts of the negotiation.'' [116]
- *Benchmark Pricing:* The commenter stated that ''[t]he Proposed Rule Change . . . requires the lending fee or the loan rebate rate to be reported as a percentage and does not afford covered persons the option to report pricing data as a spread to a reference rate.'' This commenter requests, ''flexibility in the reporting format of fees to allow covered persons to report loan fees as: (1) a lending fee, (2) a loan rebate rate, or (3) a spread to a benchmark rate along with the associated benchmark rate.'' [117]
- *Other Fees or Charges:* The commenter requested the removal of ''the requirements related to reporting of 'other fees or charges,''' because, ''it is not clear how these ''fees or charges'' relate to the fees negotiated in respect of the particular loan'' and ''[Rule 10c–1a] does not contemplate the inclusion of additional fees or charges.'' [118]
- *Rate Fee Modifier:* The commenter stated that the ''addition of a Rate Fee Modifier expands the scope of reportable information under Rule 10c–1a and exceeds FINRA's authority to 'implement rules regarding the format and manner of its collection of information described' in Rule 10c–1a(c) through (e),'' and ''such codes or modifiers should be removed.'' [119]
- *Rate Fee Override Flag:* The commenter expressed concern ''with a potential warning or rejection system regarding lending fees and/or loan rebate rates based on a tolerance level developed by FINRA from previously collected lending data that may or may not reflect the current market conditions.'' [120] The commenter stated that ''this requirement is not included in the final rule'' and ''urge[d] the Commission to recommend deletion of the requirement to report data validation flags.'' [121]
- *Event Types:* The commenter recommended that the six event types listed in the SLATE Participant Reporting Specs should be consolidated. The commenter specifically recommended consolidating the Modify and Correction Loan Events and the Cancel and Delete Loan Events. The commenter stated that such consolidations could make the reporting requirements less costly and onerous for market participants.[122]

This commenter recommended that ''FINRA develop the SLATE system so that it can accept files transmitted outside of [the SLATE system] hours for processing the following business day.'' [123] The commenter stated that its recommended timeframe for the SLATE system to accept files could be helpful to market participants with non-U.S. staff.[124]

*J. Comment Period Extension*

Commenters stated that the length of the comment period for FINRA's proposed rule change was too short, requesting that the comment period be extended.[125] One commenter stated that a longer comment period is needed because certain information ''ha[s] not been publicly shared yet, such as the technical specifications for reporting and fees for commercial use of published data.'' [126] Another commenter stated that it needed more time to provide additional comments on ''potential issues,'' including FINRA's proposal of rules relating to FINRA's maintaining of the security and confidentiality of reported confidential information as required by Rule 10c–1a(h)(4); specific details of the technical specifications proposed by FINRA in order to understand the information that must be reported (*e.g.,* how terminated loans are to be reported, including a partial termination; how ''as of'' modifications are to be reported; how changes to interest rate benchmarks should be reported; the categories for type of collateral to be reported); the proposed duty of covered persons to report to FINRA a reportable security not currently reflected in SLATE; that the ''proposed *de minimis* exclusion is set too low and also should be mandatory rather than discretionary; adjusting the proposed cutoff times for reporting of initial covered securities loans and loan modifications; the effect of the new Rule 6500 Series on the existing FINRA short interest reporting regime; the treatment of impactful corporate actions under the new

[108] ISLA Letter 1, at 13.
[109] ISLA Letter 1, at 14.
[110] ISLA Letter 1, at 2.
[111] ISLA Letter 1, at 2.
[112] SIFMA Letter, at 8.
[113] *See* Form Letter A.
[114] *See* Form Letter A.
[115] Letter from Jennifer (May 15, 2024).
[116] ISLA Americas Letter, at 12.
[117] ISLA Americas Letter, at 12.
[118] ISLA Americas Letter, at 12.
[119] ISLA Americas Letter, at 13.
[120] ISLA Americas Letter, at 13.
[121] ISLA Americas Letter, at 13–14.
[122] ISLA Americas Letter, at 17.
[123] ISLA Americas Letter, at 17.
[124] ISLA Americas Letter, at 17.
[125] *See, e.g.,* ISLA Letter 1, at 1–2; SIFMA AMG Letter 1, at 2; ICI Letter 1, at 3; SIFMA AMG Letter 2, at 2.
[126] *See* SIFMA AMG Letter 1, at 2.

reporting requirements; whether firms are expected to consume information from SLATE as part of their ordinary-course securities lending operations; and considerations regarding the reporting compliance date and firms' end-of-year code freeze.[127]

One commenter stated, ''[g]iven that FINRA's proposed SLATE rules would implement and add to the requirements of Rule 10c–1a, it is especially important for the Commission to ensure it takes the time necessary to closely review FINRA's proposed rules and obtain fulsome public feedback.'' [128] Another commenter stated that it ''hope[s] that the SEC will consider the extension request in order to appropriately address the challenges that the FINRA Rule 6500 Series presents.'' [129]

Following the Commission's publication of its *Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Adopt the FINRA Rule 6500 Series,*[130] numerous commenters submitted comments stating their concerns about (what they called) a 45-day ''delay'' in implementing the FINRA Rule 6500 Series. Some commenters opposed the Commission's designation of a longer period within which to take action on FINRA's proposed rule change.[131] Some commenters called the extension ''unacceptable'' or stated that the delay in the implementation of the FINRA rules could undermine transparency, weaken investor confidence, or undermine the market.[132]

## IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2024–007 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Exchange Act [133] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate, however, that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[134] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules 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, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest.[135] The Commission asks that commenters address the sufficiency of FINRA's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed rules.

## V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Exchange Act,[136] any request for an opportunity to make an oral presentation.[137]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 30, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 13, 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 SR–FINRA–2024–007 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–FINRA–2024–007. 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

[127] SIFMA Letter, at 7–8.

[128] ICI Letter 1, at 3.

[129] ISLA Letter 1, at 1.

[130] *See* Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)), Release No. 34–100305 (June 10, 2024), 89 FR 50644 (June 14, 2024).

[131] *See, e.g.,* Form Letter C.

[132] *See, e.g.,* Form Letter C.

[133] 15 U.S.C. 78s(b)(2).

[134] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the self-regulatory organization consents to the longer period. *See id.*

[135] 15 U.S.C. 78*o*–3(b)(6).

[136] 17 CFR 240.19b–4.

[137] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

FINRA. 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–FINRA–2024–007 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[138]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17684 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100654; File No. SR–CboeBYX–2024–021]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024.

### I. Introduction

On June 7, 2024, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–CboeBYX–2024–021) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.[4] Pursuant to section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

### II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The Exchanges states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BZX Exchange, Inc. (options and equities), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.[11]

### III. Suspension of the Proposed Rule Change

Pursuant to section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

#### *A. Exchange Statements In Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[138] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100342 (June 14, 2024), 89 FR 52132 (June 21, 2024) (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 52132–33. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBYX–2023–010). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–013. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 52133 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeBYX–2023–014). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeBYX–2023–015. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeBYX–2023–018. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeBYX–2023–019. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBYX–2024–006. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBYX–2024–012. On June 7, 2024, the Exchange withdrew that filing and submitted SR–CboeBYX–2024–021.

[7] *See* Notice, 89 FR at 52133.

[8] *See* Notice, 89 FR at 52133.

[9] *See* Notice, 89 FR at 52133 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[10] *See* Notice, 89 FR at 52133. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

[11] *See* Notice, 89 FR at 52133. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 52133 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 52133; 15 U.S.C. 78f(b).

[15] *See* Notice, 89 FR at 52133; 15 U.S.C. 78f(b)(5).

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.[16] Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when adjusted for inflation.[35] Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange

[16] *See* Notice, 89 FR at 52133.

[17] *See* Notice, 89 FR at 52133; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 52133; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 52133.

[20] *See* Notice, 89 FR at 52133. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *Id.*

[21] *See* Notice, 89 FR at 52133. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 52133 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 52133. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 52133.

[25] *See* Notice, 89 FR at 52133.

[26] *See* Notice, 89 FR at 52133.

[27] *See* Notice, 89 FR at 52133 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 52133.

[29] *See* Notice, 89 FR at 52133 (citing Securities and Exchange Release No. 83441 (June 14, 2018), 83 FR 28684 (June 20, 2018) (SR–CboeBYX–2018–006)).

[30] *See* Notice, 89 FR at 52133.

[31] *See* Notice, 89 FR at 52133 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 52133.

[33] *See* Notice, 89 FR at 52133.

[34] *See* Notice, 89 FR at 52133–34.

[35] *See* Notice, 89 FR at 52134.

[36] *See* Notice, 89 FR at 52134.

[37] *See* Notice, 89 FR at 52134.

[38] *See* Notice, 89 FR at 52134. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[39] *See* Notice, 89 FR at 52134.

[40] *See* Notice, 89 FR at 52134.

[41] *See* Notice, 89 FR at 52134.

member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single equities exchange has more than approximately 15% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one equities exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members.[52] The Exchange states that there is also no firm that is a Member of the Exchange only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members, IEX has 129 members and MIAX Pearl has 51 members.[54]

The Exchange states that a market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-Members also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services.[64] That is, the Exchange states that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in

[42] *See* Notice, 89 FR at 52134.

[43] *See* Notice, 89 FR at 52134.

[44] *See* Notice, 89 FR at 52134.

[45] *See* Notice, 89 FR at 52134.

[46] *See* Notice, 89 FR at 52134 (citing Cboe Global Markets U.S. Equities Market Volume Summary (June 6, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*).

[47] *See* Notice, 89 FR at 52134.

[48] *See* Notice, 89 FR at 52134.

[49] *See* Notice, 89 FR at 52134.

[50] *See* Notice, 89 FR at 52134.

[51] *See* Notice, 89 FR at 52134.

[52] *See* Notice, 89 FR at 52134.

[53] *See* Notice, 89 FR at 52134.

[54] *See* Notice, 89 FR at 52134 (citing *https://www.nyse.com/markets/nyse/membership; https://www.iexexchange.io/membership; https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf*).

[55] *See* Notice, 89 FR at 52134.

[56] *See* Notice, 89 FR at 52134.

[57] *See* Notice, 89 FR at 52134. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.25.

[58] *See* Notice, 89 FR at 52134.

[59] *See* Notice, 89 FR at 52134 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (*nasdaqtrader.com*); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 52134.

[61] *See* Notice, 89 FR at 52134. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.26.

[62] *See* Notice, 89 FR at 52134.

[63] *See* Notice, 89 FR at 52134.

[64] *See* Notice, 89 FR at 52134.

[65] *See* Notice, 89 FR at 52134–35.

connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitve rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it.[76] The Exchange explains that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitve rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading;

[66] *See* Notice, 89 FR at 52135.

[67] *See* Notice, 89 FR at 52135.

[68] *See* Notice, 89 FR at 52135.

[69] *See* Notice, 89 FR at 52135.

[70] *See* Notice, 89 FR at 52135.

[71] *See* Notice, 89 FR at 52135.

[72] *See* Notice, 89 FR at 52135.

[73] *See* Notice, 89 FR at 52135.

[74] *See* Notice, 89 FR at 52135.

[75] *See* Notice, 89 FR at 52135 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.)).

[76] *See* Notice, 89 FR at 52135.

[77] *See* Notice, 89 FR at 52135.

[78] *See* Notice, 89 FR at 52135.

[79] *See* Notice, 89 FR at 52135.

[80] *See* Notice, 89 FR at 52135.

[81] *See* Notice, 89 FR at 52135.

[82] *See* Notice, 89 FR at 52135.

[83] *See* Notice, 89 FR at 52135.

[84] *See* Notice, 89 FR at 52135 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[85] *See* Notice, 89 FR at 52135 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 52135.

[87] *See* Notice, 89 FR at 52135.

[88] *See* Notice, 89 FR at 52135.

[89] *See* Notice, 89 FR at 52135.

[90] *See* Notice, 89 FR at 52135.

[91] *See* Notice, 89 FR at 52135.

listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants.[117] The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and

[92] *See* Notice, 89 FR at 52135.

[93] *See* Notice, 89 FR at 52135.

[94] *See* Notice, 89 FR at 52135.

[95] *See* Notice, 89 FR at 52135–36 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition*) (''Mackintosh and Normyle'').

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 52136 n.31.

[97] *See* Notice, 89 FR at 52136 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 52136. The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 52136 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 52136.

[101] *See* Notice, 89 FR at 52136.

[102] *See* Notice, 89 FR at 52136.

[103] *See* Notice, 89 FR at 52136.

[104] *See* Notice, 89 FR at 52136.

[105] *See* Notice, 89 FR at 52136.

[106] *See* Notice, 89 FR at 52136.

[107] *See* Notice, 89 FR at 52136.

[108] *See* Notice, 89 FR at 52136.

[109] *See* Notice, 89 FR at 52136.

[110] *See* Notice, 89 FR at 52136.

[111] *See* Notice, 89 FR at 52136.

[112] *See* Notice, 89 FR at 52136.

[113] *See* Notice, 89 FR at 52136.

[114] *See* Notice, 89 FR at 52136.

[115] *See* Notice, 89 FR at 52136.

[116] *See* Notice, 89 FR at 52136.

[117] *See* Notice, 89 FR at 52136.

[118] *See* Notice, 89 FR at 52136.

monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports.[126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products).[127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139] The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,[143] continual auditing, and

[119] *See* Notice, 89 FR at 52136.

[120] *See* Notice, 89 FR at 52136 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port).

[121] *See* Notice, 89 FR at 52136.

[122] *See* Notice, 89 FR at 52136.

[123] *See* Notice, 89 FR at 52136.

[124] *See* Notice, 89 FR at 52136.

[125] *See* Notice, 89 FR at 52136.

[126] *See* Notice, 89 FR at 52136.

[127] *See* Notice, 89 FR at 52136–37.

[128] *See* Notice, 89 FR at 52137.

[129] *See* Notice, 89 FR at 52137.

[130] *See* Notice, 89 FR at 52137.

[131] *See* Notice, 89 FR at 52137.

[132] *See* Notice, 89 FR at 52137.

[133] *See* Notice, 89 FR at 52137.

[134] *See* Notice, 89 FR at 52137.

[135] *See* Notice, 89 FR at 52137.

[136] *See* Notice, 89 FR at 52137 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).

[137] *See* Notice, 89 FR at 52137 (citing 15 U.S.C. 78f(b)(5)).

[138] *See* Notice, 89 FR at 52137 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 52137 (citing 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 52137.

[141] *See* Notice, 89 FR at 52137.

[142] *See* Notice, 89 FR at 52137.

[143] *See* Notice, 89 FR at 52137, n.40 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To

considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid.[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity

Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

[144] *See* Notice, 89 FR at 52137.

[145] *See* Notice, 89 FR at 52137.

[146] *See* Notice, 89 FR at 52137.

[147] *See* Notice, 89 FR at 52137.

[148] *See* Notice, 89 FR at 52137.

[149] *See* Notice, 89 FR at 52137.

[150] *See* Notice, 89 FR at 52137.

[151] *See* Notice, 89 FR at 52137.

[152] *See* Notice, 89 FR at 52137.

[153] *See* Notice, 89 FR at 52137.

[154] *See* Notice, 89 FR at 52137.

[155] *See* Notice, 89 FR at 52137.

[156] *See* Notice, 89 FR at 52137.

[157] *See* Notice, 89 FR at 52137.

[158] *See* Notice, 89 FR at 52137–38.

[159] *See* Notice, 89 FR at 52138 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).

[160] *See* Notice, 89 FR at 52138. The Exchange states that 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'. . . .'' (citing *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21))).

[161] *See* Notice, 89 FR at 52138.

[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[163] *See id.*

[164] 15 U.S.C. 78f(b)(4).

[165] 15 U.S.C. 78f(b)(5).

[166] 15 U.S.C. 78f(b)(8).

fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to sections 19(b)(3)(C) [169] and 19(b)(2)(B) of the Act [170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [173] and
- Whether the Exchange has demonstrated how the proposed fee is consistent with section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [174]

As discussed in section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeBYX–2024–021 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2024–021. This

[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2024–021 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(3)(C) of the Act,[180] that File No. SR–CboeBYX–2024–021, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17701 Filed 8–8–24; 8:45 am]

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[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100659; File No. SR–CboeBZX–2024–051]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024.

## I. Introduction

On June 7, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–CboeBZX–2024–051) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

## II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The Exchanges states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100341 (June 14, 2024), 89 FR 52165 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 52166. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBZX–2023–046). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–067. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 52166 n.3. On October 2, 2023, the Exchange filed the proposed fee change (SR–CboeBZX–2023–080). On October 13, 2023, the Exchange withdrew that filing and, on business day October 16, 2023, submitted SR–CboeBZX–2023–084. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX–2023–103. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–016. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX–2024–028. On June 7, 2024, the Exchange withdrew that filing and submitted SR–CboeBZX–2024–051.

[7] *See* Notice, 89 FR at 52166.

[8] *See* Notice, 89 FR at 52166.

[9] *See* Notice, 89 FR at 52166 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port).

[10] *See* Notice, 89 FR at 52166. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

[11] *See* Notice, 89 FR at 52166. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 52166 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

### *A. Exchange Statements in Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when adjusted for inflation.[35] Accordingly,

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 52166; 15 U.S.C. 78f(b).

[15] *See* Notice, 89 FR at 52166; 15 U.S.C. 78f(b)(5).

[16] *See* Notice, 89 FR at 52166.

[17] *See* Notice, 89 FR at 52166; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 52166; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 52166.

[20] *See* Notice, 89 FR at 52166. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *Id.*

[21] *See* Notice, 89 FR at 52166. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 52166 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 52166. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 52166–67.

[25] *See* Notice, 89 FR at 52167.

[26] *See* Notice, 89 FR at 52167.

[27] *See* Notice, 89 FR at 52167 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 52167.

[29] *See* Notice, 89 FR at 52167 (citing Securities and Exchange Release No. 83442 (June 14, 2018), 83 FR 28675 (June 20, 2018) (SR–CboeBZX–2018–037)).

[30] *See* Notice, 89 FR at 52167.

[31] *See* Notice, 89 FR at 52167 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 52167.

[33] *See* Notice, 89 FR at 52167.

[34] *See* Notice, 89 FR at 52167.

[35] *See* Notice, 89 FR at 52167.

the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single equities exchange has more than approximately 15% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one equities exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members.[52] The Exchange states that there is also no firm that is a Member of the Exchange only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members, IEX has 129 members and MIAX Pearl has 51 members.[54]

The Exchange states that a market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-Members also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-

[36] *See* Notice, 89 FR at 52167.

[37] *See* Notice, 89 FR at 52167.

[38] *See* Notice, 89 FR at 52167. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[39] *See* Notice, 89 FR at 52167.

[40] *See* Notice, 89 FR at 52167.

[41] *See* Notice, 89 FR at 52167.

[42] *See* Notice, 89 FR at 52167.

[43] *See* Notice, 89 FR at 52167.

[44] *See* Notice, 89 FR at 52167.

[45] *See* Notice, 89 FR at 52167.

[46] *See* Notice, 89 FR at 52167 (citing Cboe Global Markets U.S. Equities Market Volume Summary (June 6, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*).

[47] *See* Notice, 89 FR at 52167.

[48] *See* Notice, 89 FR at 52167.

[49] *See* Notice, 89 FR at 52167.

[50] *See* Notice, 89 FR at 52167.

[51] *See* Notice, 89 FR at 52167.

[52] *See* Notice, 89 FR at 52167.

[53] *See* Notice, 89 FR at 52167.

[54] *See* Notice, 89 FR at 52167 (citing *https://www.nyse.com/markets/nyse/membership; https://www.iexexchange.io/membership; https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf*).

[55] *See* Notice, 89 FR at 52167.

[56] *See* Notice, 89 FR at 52167.

[57] *See* Notice, 89 FR at 52167. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.25.

[58] *See* Notice, 89 FR at 52167–68.

[59] *See* Notice, 89 FR at 52168 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 52168.

seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services.[64] That is, the Exchange states that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitve rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it.[76] The Exchange explains that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the Commission recognized that while some

[61] *See* Notice, 89 FR at 52168. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.26.

[62] *See* Notice, 89 FR at 52168.

[63] *See* Notice, 89 FR at 52168.

[64] *See* Notice, 89 FR at 52168.

[65] *See* Notice, 89 FR at 52168.

[66] *See* Notice, 89 FR at 52168.

[67] *See* Notice, 89 FR at 52168.

[68] *See* Notice, 89 FR at 52168.

[69] *See* Notice, 89 FR at 52168.

[70] *See* Notice, 89 FR at 52168.

[71] *See* Notice, 89 FR at 52168.

[72] *See* Notice, 89 FR at 52168.

[73] *See* Notice, 89 FR at 52168.

[74] *See* Notice, 89 FR at 52168.

[75] *See* Notice, 89 FR at 52168 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[76] *See* Notice, 89 FR at 52168.

[77] *See* Notice, 89 FR at 52168.

[78] *See* Notice, 89 FR at 52168.

[79] *See* Notice, 89 FR at 52168.

[80] *See* Notice, 89 FR at 52168.

[81] *See* Notice, 89 FR at 52168.

[82] *See* Notice, 89 FR at 52168.

[83] *See* Notice, 89 FR at 52168.

[84] *See* Notice, 89 FR at 52168–69 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were

[85] *See* Notice, 89 FR at 52169 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 52169.

[87] *See* Notice, 89 FR at 52169.

[88] *See* Notice, 89 FR at 52169.

[89] *See* Notice, 89 FR at 52169.

[90] *See* Notice, 89 FR at 52169.

[91] *See* Notice, 89 FR at 52169.

[92] *See* Notice, 89 FR at 52169.

[93] *See* Notice, 89 FR at 52169.

[94] *See* Notice, 89 FR at 52169.

[95] *See* Notice, 89 FR at 52169 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition*) (''Mackintosh and Normyle'').

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 52169 n.31.

[97] *See* Notice, 89 FR at 52169 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 52169. The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 52169 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 52169.

[101] *See* Notice, 89 FR at 52169.

[102] *See* Notice, 89 FR at 52169.

[103] *See* Notice, 89 FR at 52169.

[104] *See* Notice, 89 FR at 52169.

[105] *See* Notice, 89 FR at 52169.

[106] *See* Notice, 89 FR at 52169.

[107] *See* Notice, 89 FR at 52169.

[108] *See* Notice, 89 FR at 52169.

[109] *See* Notice, 89 FR at 52169.

[110] *See* Notice, 89 FR at 52169.

[111] *See* Notice, 89 FR at 52169.

[112] *See* Notice, 89 FR at 52169.

adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants.[117] The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports.[126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products).[127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139]

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[113] *See* Notice, 89 FR at 52169.

[114] *See* Notice, 89 FR at 52169.

[115] *See* Notice, 89 FR at 52169.

[116] *See* Notice, 89 FR at 52169.

[117] *See* Notice, 89 FR at 52169.

[118] *See* Notice, 89 FR at 52169.

[119] *See* Notice, 89 FR at 52169–70.

[120] *See* Notice, 89 FR at 52170 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[121] *See* Notice, 89 FR at 52170.

[122] *See* Notice, 89 FR at 52170.

[123] *See* Notice, 89 FR at 52170.

[124] *See* Notice, 89 FR at 52170.

[125] *See* Notice, 89 FR at 52170.

[126] *See* Notice, 89 FR at 52170.

[127] *See* Notice, 89 FR at 52170.

[128] *See* Notice, 89 FR at 52170.

[129] *See* Notice, 89 FR at 52170.

[130] *See* Notice, 89 FR at 52170.

[131] *See* Notice, 89 FR at 52170.

[132] *See* Notice, 89 FR at 52170.

[133] *See* Notice, 89 FR at 52170.

[134] *See* Notice, 89 FR at 52170.

[135] *See* Notice, 89 FR at 52170.

[136] *See* Notice, 89 FR at 52170 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).

[137] *See* Notice, 89 FR at 52170 (citing 15 U.S.C. 78f(b)(5)).

[138] *See* Notice, 89 FR at 52170 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 52170 (citing 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between

The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,[143] continual auditing, and considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid.[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.,* all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's

exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 52170.

[141] *See* Notice, 89 FR at 52170.

[142] *See* Notice, 89 FR at 52170.

[143] *See* Notice, 89 FR at 52170, n.41 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

[144] *See* Notice, 89 FR at 52170.

[145] *See* Notice, 89 FR at 52170.

[146] *See* Notice, 89 FR at 52170.

[147] *See* Notice, 89 FR at 52170.

[148] *See* Notice, 89 FR at 52171.

[149] *See* Notice, 89 FR at 52171.

[150] *See* Notice, 89 FR at 52171.

[151] *See* Notice, 89 FR at 52171.

[152] *See* Notice, 89 FR at 52171.

[153] *See* Notice, 89 FR at 52171.

[154] *See* Notice, 89 FR at 52171.

[155] *See* Notice, 89 FR at 52171.

[156] *See* Notice, 89 FR at 52171.

[157] *See* Notice, 89 FR at 52171.

[158] *See* Notice, 89 FR at 52171.

[159] *See* Notice, 89 FR at 52171 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).

[160] *See* Notice, 89 FR at 52171. The Exchange states that 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'. . . .'' (citing *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21))).

[161] *See* Notice, 89 FR at 52171.

present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [169] and 19(b)(2)(B) of the Act [170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [173] and
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [174]

As discussed in Section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect

[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[163] *See id.*

[164] 15 U.S.C. 78f(b)(4).

[165] 15 U.S.C. 78f(b)(5).

[166] 15 U.S.C. 78f(b)(8).

[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2024–051 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–051 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(3)(C) of the Act,[180] that File No. SR–CboeBZX–2024–051, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100657; File No. 4–546]**

## Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add MIAX Sapphire, LLC, as a Participant

August 5, 2024.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on July 30, 2024, MIAX Sapphire, LLC (''MIAX Sapphire'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[3] The amendment adds MIAX Sapphire as a Participant[4] to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

### I. Description and Purpose of the Amendment

The Plan requires the options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The amendment to the Plan adds MIAX Sapphire as a Participant. The other Plan Participants are BATS, BOX, BX, C2, CBOE, EDGX, Emerald, ISE, ISE Gemini, ISE Mercury, MEMX, MIAX, Nasdaq, Pearl, Phlx, NYSE MKT, and NYSE Arca. MIAX Sapphire has submitted an executed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically, Section 3(c) of the Plan provides that an Eligible Exchange[5] may become a

[3] On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX, Inc. (''Phlx''), NYSE Amex, LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (Aug. 6, 2009). *See also* Securities Exchange Act Release No. 61546 (Feb. 19, 2010), 75 FR 8762 (Feb. 25, 2010)(adding BATS Exchange, Inc. (''BATS'') as a Participant); 63119 (Oct. 15, 2010), 75 FR 65536 (Oct. 25, 2010)(adding C2 Options Exchange, Incorporated (''C2'') as a Participant); 66969 (May 12, 2015), 77 FR 29396 (May 17, 2012) (adding BOX Options Exchange LLC (''BOX Options'') as a Participant); 70763 (Oct. 28, 2013), 78 FR 65740 (Nov. 1, 2013) (adding Topaz Exchange, LLC (''Topaz'') as a Participant); 70762 (Oct. 28, 2013), 78 FR 65733 (Nov. 1, 2013) (adding MIAX International Securities Exchange, LLC (''MIAX'') as a Participant); 76823 (Jan. 5, 2016), 81 FR 1260 (Jan. 11, 2016) (adding EDGX Exchange, Inc. (''EDGX'') as a Participant); 77324 (Mar. 8, 2016), 81 FR 13425 (Mar. 14, 2016) (adding ISE MERCURY, LLC (''ISE Mercury'') as a Participant); 79896 (Jan. 30, 2017), 82 FR 9264 (Feb. 3, 2017) (adding MIAX Pearl ''Pearl'') as a Participant); 85229 (Mar. 1, 2019), 84 FR 8347 (Mar. 7, 2019) (adding MIAX Emerald, LLC (''Emerald'') as a Participant); 98303 (Sept. 6, 2023), 88 FR 62610 (Sept. 12, 2023) (adding MEMX, LLC (''MEMX'') as a Participant).

[4] The term ''Participant'' is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

[5] Section 2(6) of the Plan defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a ''Participant Exchange'' in the Options Clearing Corporation (''OCC'') (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority (''OPRA'') Plan (as defined in the OPRA Plan, Section 1); and (c) if the national

Continued

Participant in the Plan by: (i) executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.[6]

Section 4(b) of the Plan sets forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new Participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

## II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)[7] because it has been designated as involving solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or 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 Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act and the rules thereunder. 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 4–546 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 4–546. 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 4–546 and should be submitted on or before August 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17686 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. MIAX Sapphire has represented that it has met the requirements for being considered an Eligible Exchange. *See* letter from Gregory P. Ziegler, Vice President and Senior Counsel, MIAX Sapphire, to Vanessa Countryman, Secretary, Commission, dated July 30, 2024.

[6] MIAX Sapphire has represented that it has executed a copy of the current Plan, amended to include MIAX Sapphire as a Participant and has sent each current Participant a copy of the executed Plan. *See* letter from Gregory P. Ziegler, Vice President and Senior Counsel, MIAX Sapphire, to Vanessa Countryman, Secretary, Commission, dated July 30, 2024.

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(a)(1).

[9] 17 CFR 200.30–3(a)(85).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–347, OMB Control No. 3235–0393]**

## Submission for OMB Review; Comment Request; Extension: Rule 15g–4

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the existing collection of information provided for in Rule 15g–4—Disclosure of compensation to brokers or dealers (17 CRF 240.15g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 170 broker-dealers will each spend an average of approximately 87.0833333 hours annually to comply with this rule. Thus, the total time burden is approximately 14,804 hours per year.

Rule 15g–4 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self regulatory organizations of which the broker-dealer is a member.

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

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by September 9, 2024 to (i) *www.reginfo.gov/public/do/PRAMain*

and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 5, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–17652 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100651; File No. SR–CboeEDGX–2024–035]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024

### I. Introduction

On June 7, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–CboeEDGX–2024–035) to increase fees for 10 gigabit (''Gb'') physical ports (''Proposal''). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

### II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port.[6] The Exchanges states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.[7] Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 Gb circuit and $7,500 per physical port for a 10 Gb circuit.[8] The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[9] The Exchange also states that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. (''Affiliate Exchanges'').[10] The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.[11]

### III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

#### *A. Exchange Statements In Support of the Proposal*

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 100343 (June 14, 2024), 89 FR 52109 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] *See* Notice, 89 FR at 52109. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGX–2023–044). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–057. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. *See* Notice, 89 FR at 52109 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGX–2023–62). On October 13, 2023, the Exchange withdrew that filing and, on business day October 16, 2023, submitted SR–CboeEDGX–2023–065. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–079. On December 20, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–081. On February 12, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–013. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–020. On June 7, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–035.

[7] *See* Notice, 89 FR at 52109.

[8] *See* Notice, 89 FR at 52109.

[9] *See* Notice, 89 FR at 52109 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[10] *See* Notice, 89 FR at 52109. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

[11] *See* Notice, 89 FR at 52109. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. *See* Notice, 89 FR at 52109 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016)).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* Notice, 89 FR at 52109; 15 U.S.C. 78f(b).

[15] *See* Notice, 89 FR at 52109; 15 U.S.C. 78f(b)(5).

[16] *See* Notice, 89 FR at 52109.

customers, issuers, brokers, or dealers.[17] The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.[18]

The Exchange states that it operates in a highly competitive environment.[19] The Exchange states that on May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[20] As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.[21]

The Exchange states that the 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.[22] The Exchange states that exchanges themselves are platforms.[23] Particularly, the Exchange states that exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform.[24] As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior.[25] The Exchange states that nothing in the Exchange Act requires the individual examination of specific product fees in isolation.[26] Rather, the Exchange states that the Act generally requires the rules of an exchange to provide for the ''equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.'' [27]

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.[28] Further, the Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.[29] The Exchange explains that since its last increase over 6 years ago however, there has been notable inflation.[30] Particularly, the Exchange states that the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.[31] Moreover, the Exchange states that it historically does not increase fees every year, notwithstanding inflation.[32] Accordingly, the Exchange believes the proposed fee of $8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%.[33] The Exchange states that were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of $9,360, which is 10% more than the Exchange is actually proposing.[34] To further demonstrate, the Exchange notes that $8,500 in 2024 is equivalent to approximately $6,800 in 2018, when adjusted for inflation.[35] Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.,* $7,500) when adjusted for inflation.[36] The Exchange states it is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate.[37] The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[38]

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange.[39] The Exchange states that there is also no regulatory requirement that any market participant connect to any one particular exchange.[40] The Exchange explains that market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice.[41] Additionally, the Exchange states that any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.[42] The Exchange states that, moreover, direct connectivity is not a requirement to participate on the Exchange.[43] The Exchange also believes substitutable

[17] *See* Notice, 89 FR at 52109; 15 U.S.C. 78f(b)(5).

[18] *See* Notice, 89 FR at 52110; 15 U.S.C. 78f(b)(4).

[19] *See* Notice, 89 FR at 52110.

[20] *See* Notice, 89 FR at 52110. (citing Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019). The Exchange states that the Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.'' *Id.*

[21] *See* Notice, 89 FR at 52110. The Exchanges states that a substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See id.* at n.12 (citing *https://www.investopedia.com/terms/s/substitute.asp*).

[22] *See* Notice, 89 FR at 52110 (citing Fee Guidance).

[23] *See* Notice, 89 FR at 52110. The Exchanges states that the Supreme Court in *Ohio* v. *American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.,* network effects). *See id.* at n.14 (citing *Ohio* v. *American Express Co.* 138 S. Ct. 2274, 585 U.S. 529 (2018)).

[24] *See* Notice, 89 FR at 52110.

[25] *See* Notice, 89 FR at 52110.

[26] *See* Notice, 89 FR at 52110.

[27] *See* Notice, 89 FR at 52110 (citing 15 U.S.C. 78f(b)(4)).

[28] *See* Notice, 89 FR at 52110.

[29] *See* Notice, 89 FR at 52110 (citing Securities and Exchange Release No. 83450 (June 15, 2018), 83 FR 28884 (June 21, 2018) (SR-CboeEDGX–2018–016)).

[30] *See* Notice, 89 FR at 52110.

[31] *See* Notice, 89 FR at 52110 (citing *https://www.officialdata.org/us/inflation/2010?amount=1*).

[32] *See* Notice, 89 FR at 52110.

[33] *See* Notice, 89 FR at 52110.

[34] *See* Notice, 89 FR at 52110.

[35] *See* Notice, 89 FR at 52110.

[36] *See* Notice, 89 FR at 52110.

[37] *See* Notice, 89 FR at 52110.

[38] *See* Notice, 89 FR at 52110. The Exchange states that Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *Id.* (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange). *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port).

[39] *See* Notice, 89 FR at 52110.

[40] *See* Notice, 89 FR at 52110.

[41] *See* Notice, 89 FR at 52110.

[42] *See* Notice, 89 FR at 52110.

[43] *See* Notice, 89 FR at 52110.

products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange.[44] The Exchange states that there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[45] The Exchange states that, based on publicly available information, no single equities exchange has more than approximately 15% of the market share.[46] The Exchange states that further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.[47] The Exchange explains that, for example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).[48]

The Exchange states that there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange.[49] The Exchange states that moreover, membership is not a requirement to participate on the Exchange.[50] The Exchange states that it is unaware of any one equities exchange whose membership includes every registered broker-dealer.[51] The Exchange explains, by way of example, that as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members.[52] The Exchange states that there is also no firm that is a Member of the Exchange only.[53] The Exchange states that further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members, IEX has 129 members and MIAX Pearl has 51 members.[54]

The Exchange states that a market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity.[55] The Exchange notes that third-party non-Members also resell exchange connectivity.[56] The Exchange explains that this indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[57] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity.[58] Unlike other exchanges, the Exchange states that it also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[59] The Exchange states that these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services.[60] The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-seller.[61] The Exchange explains that this allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity.[62] The Exchange states that these third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings.[63] The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services.[64] That is, the Exchange states, that even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relates to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options).[65] The Exchange explains that this is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan.[66] The Exchange states that these services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive.[67] Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity

[44] *See* Notice, 89 FR at 52110.

[45] *See* Notice, 89 FR at 52110.

[46] *See* Notice, 89 FR at 52110 (citing Cboe Global Markets U.S. Equities Market Volume Summary (June 6, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*).

[47] *See* Notice, 89 FR at 52110.

[48] *See* Notice, 89 FR at 52110–11.

[49] *See* Notice, 89 FR at 52111.

[50] *See* Notice, 89 FR at 52111.

[51] *See* Notice, 89 FR at 52111.

[52] *See* Notice, 89 FR at 52111.

[53] *See* Notice, 89 FR at 52111.

[54] *See* Notice, 89 FR at 52111 (citing *https://www.nyse.com/markets/nyse/membership; https://www.iexexchange.io/membership*; *https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf*).

[55] *See* Notice, 89 FR at 52111.

[56] *See* Notice, 89 FR at 52111.

[57] *See* Notice, 89 FR at 52111. The Exchange states that third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, according to the Exchange, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. The Exchange further states that many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. The Exchange explains that this may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. The Exchange further explains that this facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business. *See id.* at n.24.

[58] *See* Notice, 89 FR at 52111.

[59] *See* Notice, 89 FR at 52111 (citing Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114)).

[60] *See* Notice, 89 FR at 52111.

[61] *See* Notice, 89 FR at 52111. The Exchange states that for example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port. *Id.* at n.26.

[62] *See* Notice, 89 FR at 52111.

[63] *See* Notice, 89 FR at 52111.

[64] *See* Notice, 89 FR at 52111.

[65] *See* Notice, 89 FR at 52111.

[66] *See* Notice, 89 FR at 52111.

[67] *See* Notice, 89 FR at 52111.

is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[68] The Exchange states, for example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network.[69] The Exchange explains that these third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports.[70] The Exchange states that therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings.[71] The Exchange states that because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained.[72] The Exchange states that moreover, if the Exchange were to assess supracompetitve rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity.[73] The Exchange explains that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[74] Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[75]

Accordingly, the Exchange states that vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it.[76] The Exchange explains that in the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets.[77] The Exchange states that market participants are free to choose which exchange to use to satisfy their business needs.[78] The Exchange states that, moreover, if the Exchange were to assess supracompetitve rates, members and non-members alike, may decide not to purchase, or to reduce their use of, the Exchange's direct connectivity.[79] The Exchange states that disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange.[80] The Exchange states that, for example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues.[81] The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.[82] Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.[83]

The Exchange states that additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[84] The Exchange states that the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[85]

The Exchange states that, as noted above, exchanges also compete as platforms.[86] The Exchange explains that in the context of the competition among platforms, different exchanges operate a variety of different business models.[87] The Exchange further explains that, in fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products.[88] The Exchange states that market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data.[89] The Exchange explains that for those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices.[90] The Exchange states that further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert.[91] The Exchange explains that, for example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services.[92] As such, the Exchange states that demand for one set of platform services depends on the demand for other services and therefore to make its

[68] *See* Notice, 89 FR at 52111.

[69] *See* Notice, 89 FR at 52111.

[70] *See* Notice, 89 FR at 52111.

[71] *See* Notice, 89 FR at 52111.

[72] *See* Notice, 89 FR at 52111.

[73] *See* Notice, 89 FR at 52111.

[74] *See* Notice, 89 FR at 52111.

[75] *See* Notice, 89 FR at 52111 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.)).

[76] *See* Notice, 89 FR at 52111–12.

[77] *See* Notice, 89 FR at 52112.

[78] *See* Notice, 89 FR at 52112.

[79] *See* Notice, 89 FR at 52112.

[80] *See* Notice, 89 FR at 52112.

[81] *See* Notice, 89 FR at 52112.

[82] *See* Notice, 89 FR at 52112.

[83] *See* Notice, 89 FR at 52112.

[84] *See* Notice, 89 FR at 52112 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[85] *See* Notice, 89 FR at 52112 (citing Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19)).

[86] *See* Notice, 89 FR at 52112.

[87] *See* Notice, 89 FR at 52112.

[88] *See* Notice, 89 FR at 52112.

[89] *See* Notice, 89 FR at 52112.

[90] *See* Notice, 89 FR at 52112.

[91] *See* Notice, 89 FR at 52112.

[92] *See* Notice, 89 FR at 52112.

platform attractive to multiple constituencies, an exchange must consider inter-side externalities.[93] The Exchange explains that in assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange.[94] The Exchange states that, when accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.[95] The Exchange states that, for example, data has shown that venues with the highest explicit costs (typically inverted and fee-fee venues) have the lowest implicit costs from markouts [96] and vice versa.[97] The Exchange states that implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).[98] The Exchange further states that additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.[99] As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.[100]

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes.[101] The Exchange states that it and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform.[102] The Exchange explains that the goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs.[103] The Exchange states that, for example, the Exchange recently performed switch hardware upgrades.[104] The Exchange explains that, particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism, and the recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%.[105] The Exchange states that network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing.[106] The Exchange also believes these newer models result in less natural variance in the processing of messages.[107] The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.[108]

The Exchange states that as of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.,* Secaucus NY6 Data Center (''NY6'')), in addition to the current data centers at NY4 and NY5.[109] The Exchange states that it made NY6 available in response to customer requests in connection with their need for additional space and capacity.[110] The Exchange explains that in order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks.[111] The Exchange states it also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.[112]

The Exchange states that it also has made various other improvements since the current physical port rates were adopted in 2018.[113] The Exchanges states that, for example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs.[114] The Exchange explains that it also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.[115] Accordingly, the Exchange states that it has expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets.[116] The Exchange explains that its ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants.[117] The Exchange states that if the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants.[118] The Exchange explains that disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.[119]

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges

[93] *See* Notice, 89 FR at 52112.

[94] *See* Notice, 89 FR at 52112.

[95] *See* Notice, 89 FR at 52112 (citing Mackintosh, Phil & Normyle, Michael. ''How Exchanges Compete: An Economic Analysis of Platform Competition.'' Nasdaq, March 2024, *https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition*) (''Mackintosh and Normyle'').

[96] The Exchange explains that per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider. *See* Notice, 89 FR at 52112 n.31.

[97] *See* Notice, 89 FR at 52112 (citing Mackintosh and Normyle).

[98] *See* Notice, 89 FR at 52112.The Exchange states that, for example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. According to the Exchange, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, the Exchange states that when implicit costs are considered, the difference in cost to trade is minimized. *See id.*

[99] *See* Notice, 89 FR at 52112 (citing Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research).

[100] *See* Notice, 89 FR at 52112.

[101] *See* Notice, 89 FR at 52112.

[102] *See* Notice, 89 FR at 52112.

[103] *See* Notice, 89 FR at 52112.

[104] *See* Notice, 89 FR at 52112.

[105] *See* Notice, 89 FR at 52112.

[106] *See* Notice, 89 FR at 52112.

[107] *See* Notice, 89 FR at 52112.

[108] *See* Notice, 89 FR at 52112.

[109] *See* Notice, 89 FR at 52112–13.

[110] *See* Notice, 89 FR at 52113.

[111] *See* Notice, 89 FR at 52113.

[112] *See* Notice, 89 FR at 52113.

[113] *See* Notice, 89 FR at 52113.

[114] *See* Notice, 89 FR at 52113.

[115] *See* Notice, 89 FR at 52113.

[116] *See* Notice, 89 FR at 52113.

[117] *See* Notice, 89 FR at 52113.

[118] *See* Notice, 89 FR at 52113.

[119] *See* Notice, 89 FR at 52113.

for similar connections.[120] Indeed, the Exchange believes assessing fees at a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable.[121] The Exchange states that the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges.[122] Further, the Exchange states that Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.,* a market participant will only be assessed the proposed $8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges).[123] Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port.[124] Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).[125]

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. [126] The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products). [127] The Exchange explains that, thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers.[128] The Exchange states that, moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network.[129] The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports.[130] Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports.[131] As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.[132]

The Exchange states that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals.[133] The Exchange states that, moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices.[134] The Exchange explains that the principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities.[135] The Exchange states that Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed,'' and that other provisions of the Act confirm that intent.[136] The Exchange states that, for example, the Act provides that an exchange must design its rules ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [137] The Exchange further states that, likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [138] The Exchange explains that, in short, the promotion of free and open competition was a core congressional objective in creating the national market system.[139] The Exchange states that, indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system.[140] Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure.[141] The Exchange believes that, finally, and importantly, that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.[142] Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,[143] continual auditing, and

[120] *See* Notice, 89 FR at 52113 (citing The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.)).

[121] *See* Notice, 89 FR at 52113.

[122] *See* Notice, 89 FR at 52113.

[123] *See* Notice, 89 FR at 52113.

[124] *See* Notice, 89 FR at 52113.

[125] *See* Notice, 89 FR at 52113.

[126] *See* Notice, 89 FR at 52113.

[127] *See* Notice, 89 FR at 52113.

[128] *See* Notice, 89 FR at 52113.

[129] *See* Notice, 89 FR at 52113.

[130] *See* Notice, 89 FR at 52113.

[131] *See* Notice, 89 FR at 52113.

[132] *See* Notice, 89 FR at 52113.

[133] *See* Notice, 89 FR at 52113.

[134] *See* Notice, 89 FR at 52113.

[135] *See* Notice, 89 FR at 52113.

[136] *See* Notice, 89 FR at 52113 (citing H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added)).

[137] *See* Notice, 89 FR at 52113 (citing 15 U.S.C. 78f(b)(5)).

[138] *See* Notice, 89 FR at 52113 (citing 15 U.S.C. 78f(8)).

[139] *See* Notice, 89 FR at 52113 (citing 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'')).

[140] *See* Notice, 89 FR at 52113.

[141] *See* Notice, 89 FR at 52113–14.

[142] *See* Notice, 89 FR at 52114.

[143] *See* Notice, 89 FR at 52114, n.40 (citing letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. *See also* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change)).

considerable expense.[144] The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation.[145] Moreover, the Exchange believes that the industry could experience frequent rate increases based on escalating expense levels.[146] The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which, according to the Exchange, the Commission has historically sought to avoid.[147]

The Exchange also does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[148] The Exchange states that the proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port).[149] Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants.[150] For example, the Exchange states that market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller.[151] The Exchange states that while pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.[152] Accordingly, the Exchange states that the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.[153]

The Exchange states that the proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange.[154] Further, if the changes proposed herein are unattractive to market participants, the Exchange states that it can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result.[155] The Exchange states that it operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.[156] The Exchange states that market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading.[157] Moreover, the Exchange states that the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.[158] Specifically, the Exchange states that in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [159] The Exchange states that the fact that this market is competitive has also long been recognized by the courts.[160] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[161]

*B. Suspension*

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[162] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [163]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [164] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [165] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[166]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal to increase its 10 Gb physical port connectivity fee is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider, among other things, whether the Exchange has provided sufficient information to demonstrate that the Exchange is subject to significant competitive forces when setting the proposed port connectivity fees. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair

[144] *See* Notice, 89 FR at 52114.
[145] *See* Notice, 89 FR at 52114.
[146] *See* Notice, 89 FR at 52114.
[147] *See* Notice, 89 FR at 52114.
[148] *See* Notice, 89 FR at 52114.
[149] *See* Notice, 89 FR at 52114.
[150] *See* Notice, 89 FR at 52114.
[151] *See* Notice, 89 FR at 52114.
[152] *See* Notice, 89 FR at 52114.
[153] *See* Notice, 89 FR at 52114.
[154] *See* Notice, 89 FR at 52114.
[155] *See* Notice, 89 FR at 52114.
[156] *See* Notice, 89 FR at 52114.
[157] *See* Notice, 89 FR at 52114.
[158] *See* Notice, 89 FR at 52114.
[159] *See* Notice, 89 FR at 52114 (citing Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)).
[160] *See* Notice, 89 FR at 52114. The Exchange states that 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'. . . .'' (citing *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21))).
[161] *See* Notice, 89 FR at 52114.
[162] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').
[163] *See id.*
[164] 15 U.S.C. 78f(b)(4).
[165] 15 U.S.C. 78f(b)(5).
[166] 15 U.S.C. 78f(b)(8).

discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[167]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[168]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[169] and 19(b)(2)(B) of the Act[170] to determine whether the Exchange's proposed rule change should be approved or disapproved. 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 rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[171] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'';[172]
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers'';[173] and
- Whether the Exchange has demonstrated how the proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[174]

As discussed in Section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fee is consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fee is reasonable and equitably allocated, is not unfairly discriminatory, and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[175] The description of a proposed rule change, 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 affirmative Commission finding,[176] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[177]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fee is consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[178]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2024. Rebuttal comments should be submitted by September 13, 2024. 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 19b–4, any request for an opportunity to make an oral presentation.[179]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeEDGX–2024–035 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2024–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the

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[167] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[168] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[169] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[170] 15 U.S.C. 78s(b)(2)(B).

[171] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[172] 15 U.S.C. 78f(b)(4).

[173] 15 U.S.C. 78f(b)(5).

[174] 15 U.S.C. 78f(b)(8).

[175] 17 CFR 201.700(b)(3).

[176] *See id.*

[177] *See id.*

[178] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[179] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2024–035 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[180] that File No. SR–CboeEDGX–2024–035, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[181]

**Sherry R. Haywood**

*Assistant Secretary.*

[FR Doc. 2024–17698 Filed 8–8–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36377 (Sub-No. 8)]**

### BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition of restricted, local, trackage rights over two rail lines owned by Union Pacific Railroad Company (UP) between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines).

Pursuant to a written temporary trackage rights agreement, UP has agreed to grant restricted trackage rights to BNSF over the Lines. The purpose of this transaction is to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, which is adjacent to the Lines. The agreement provides that the trackage rights are temporary and scheduled to expire on December 31, 2024.[1]

The transaction may be consummated on or after August 25, 2024, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 16, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36377 (Sub-No. 8), 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 BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 6, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Regena Smith-Bernard,**

*Clearance Clerk.*

[FR Doc. 2024–17770 Filed 8–8–24; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No.: FAA–2024–1586]**

### Draft Advisory Circular for the Type Certification of Powered-Lift

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

**ACTION:** Notice of availability, request for comments; extension of comment period.

**SUMMARY:** On June 12, 2024, the FAA published in the **Federal Register** a notice of availability for draft Advisory Circular (AC) 21.17–04, ''Type Certification of Powered-lift''. The comment period for this document expires on August 12, 2024. By letter dated August 1, 2024, the General Aviation Manufacturers Association (GAMA) requested that the FAA extend the public-comment period deadline to September 12, 2024. GAMA stated in their request that providing more time to comment would allow member organizations to conduct a more thorough review and contribute constructively to the proposed criteria facilitating the development of robust, harmonized standards that maximize safety for powered-lift operations.

**DATES:** The comment period for the document published June 12, 2024, at 89 FR 50042, is extended. Comments should be received on or before September 12, 2024.

**ADDRESSES:** Send comments identified with ''Type Certification—Powered-lift'' and docket number FAA–2024–1586 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

[180] 15 U.S.C. 78s(b)(3)(C).

[181] 17 CFR 200.30–3(a)(57).

[1] BNSF states that, because the trackage rights are for local rather than overhead traffic, it has not filed under the Board's class exemption for temporary overhead trackage rights under 49 CFR 1180.2(d)(8). Instead, BNSF has filed under the trackage rights class exemption at § 1180.2(d)(7). BNSF concurrently filed a petition for partial revocation of this exemption, in Docket No. FD 36377 (Sub-No. 9), to permit these proposed trackage rights to expire at midnight on December 31, 2024, as provided in the agreement. The petition for partial revocation will be addressed in a subsequent decision.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments received without change to *www.regulations.gov,* including any personal information the commenter provides. DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *DocketsInfo.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** James Blyn, Product Policy Management: Airplanes, GA, Emerging Aircraft, and Rotorcraft AIR–62B, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–5762; email *james.blyn@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites the public to submit comments on the draft AC, as specified in the **ADDRESSES** section. Commenters should include the subject line ''Type Certification—Powered-lift'' and the docket number FAA 2024–1586 on all comments submitted to the FAA. The most helpful comments will reference a specific portion of the draft document, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received on or before the closing date before issuing the final advisory circular. The FAA will also consider late-filed comments if it is possible to do so without incurring expense or delay.

**Extension of the Comment Period**

The FAA recognizes that the public will benefit from adequate time to review the draft AC. Therefore, the FAA is extending the comment period for an additional 31 days to September 12, 2024.

You may examine the draft advisory circular on the agency's public website and in the docket as follows:

• At *www.regulations.gov* in Docket FAA–2024–1586.

• At *www.faa.gov/aircraft/draft_docs/.*

Issued in in Kansas City, Missouri, on August 6, 2024.

**Patrick R. Mullen,**

*Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.*

[FR Doc. 2024–17720 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final State Agency Actions on US 60 (Grand Avenue)/35th Avenue/Indian School Road Traffic Intersection Improvements in Maricopa County, Arizona in Maricopa County, Arizona

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT)

**ACTION:** Notice.

**SUMMARY:** The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project US 60 (Grand Avenue)/35th Avenue/Indian School Road Traffic Intersection Improvements in Maricopa County, Arizona (AZ). The actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before January 6, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 205 S 17th Avenue, MD EM02, Phoenix, Arizona 85007; telephone: (480) 202–6050, email: *solmsted@azdot.gov.* The Arizona Department of Transportation normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain Standard Time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 205 S 17th Avenue, MD EM02, Phoenix, Arizona 85007; telephone: (480) 356–2893, email: *POBrien@azdot.gov.*

**SUPPLEMENTARY INFORMATION:** Effective June 25, 2024, the FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of Arizona: US 60 (Grand Avenue)/35th Avenue/Indian School Road Traffic Intersection Improvements in Maricopa County, AZ. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)—approved on May 31, 2024, and in other documents in the administrative record. The EA and other project records are available by contacting ADOT at the addresses provided above. Project information is also available online at: *https://azdot.gov/planning/transportation-studies/grand-35-study.*

This notice applies to all ADOT and other relevant Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious

Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Water:* Clean Water Act 33 U.S.C. 1251–1387.

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

*Authority:* 23 U.S.C. 139(l)(1).

**Anthony N. Sarhan,**

*Arizona Acting Division Administrator, Phoenix, Arizona.*

[FR Doc. 2024–17666 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on a Proposed Transportation Project in Kentucky

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by FHWA and other Federal agencies that are final. The actions relate to the Mountain Parkway Expansion in Magoffin and Floyd counties (Project) proposed by the Kentucky Transportation Cabinet. The Project consists of 14 miles of the Mountain Parkway (KY–114) realignment from the east side of Salyersville in Magoffin County to west side of Prestonsburg in the Floyd County, State of Kentucky. The actions grant licenses, permits, or approvals for the Project. The Supplemental Environmental Assessment (SEA), and Revised Finding of No Significant Impact (R–FONSI) under the National Environmental Policy Act (NEPA), and other documents in the Project file provide details on the Project and FHWA's actions.

**DATES:** By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 6, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Shundreka R. Givan, Division Administrator, Federal Highway Administration, John C. Watts Federal Building, 300 West Broadway, Frankfort, Kentucky 40601, Office Hours: 8:00 a.m. to 4:30 p.m., Telephone: (502) 223–6721, email address: *Shundreka.Givan@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FHWA and other Federal agencies have taken final agency action(s) subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Kentucky: The Mountain Parkway Expansion in Magoffin and Floyd counties (Project). The project realigns (widens and reconstructs) 14.0 miles of The Mountain Parkway (KY–114) from US 460 on the east side of Salyersville in Magoffin County, Kentucky to KY–114, milepoint #14.1, just west of Prestonsburg in Floyd County, Kentucky. The project completes the final construction segment of the 46.0-mile Mountain Parkway Expansion Project from Campton, Kentucky to Prestonsburg, Kentucky. The Federal project number is #0061082. It includes Kentucky Items #10–169 and #12–1.

The actions by the agencies, and the laws under which such actions were taken, are described in the Supplemental Environmental Assessment (EA) for the project, approved on January 18, 2024, in the Revised Finding of No Significant Impact (FONSI) issued on May 28, 2024, and in other documents in the project records. The Supplemental Environmental Assessment and the Revised Finding of No Significant Impact, and other project records are available by contacting the FHWA at the address provided above. The Supplemental Environmental Assessment and Revised of No Significant Impact (FONSI) can be viewed and downloaded from the project website at *https://mtnparkway.com/magoffin-floyd-section/,* or obtained from any contact listed above.

This notice applies to all Federal agency decision that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601–4 *et seq.*].; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act [16 U.S.C. 668–668c].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306101 *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 *et seq.*]; Americans with Disabilities Act of 1990 [42 U.S.C. 12101]; Noise Control Act of 1972 [42 U.S.C. 4901 *et seq.;* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675].

7. *Wetlands and Water Resources:* Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f) *et seq.*]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

8. *Executive Orders:* E.O 11990; Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112

Invasive Species; E.O. 13166 Improving Access to Services for Persons with Limited English Proficiency; E.O. 13045 Protection of Children From Environmental Health Risks and Safety Risks; E.O. 14096 Revitalizing Our Nation's Commitment to Environmental Justice for All.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112–141, 126 Stat. 405).

**Shundreka R. Givan,**

*Division Administrator, Federal Highway Administration, Frankfort, Kentucky.*

[FR Doc. 2024–17787 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0106]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FLAMANT (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 9, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0106 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0106 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0106, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel FLAMANT is:

*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters, sunset and sightseeing cruises.

*Geographic Region Including Base of Operations:* California, Hawaii. Base of Operations: Honolulu, Hawaii.

*Vessel Length and Type:* 39.3′ Sail.

The complete application is available for review identified in the DOT docket as MARAD 2024–0106 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0106 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17703 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0110]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SERENITY (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 9, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0110 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0110 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0110, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel SERENITY is:

*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters, leisure and sunset cruises.

*Geographic Region Including Base of Operations:* Florida. Base of Operations: Miami Beach, Florida.

*Vessel Length and Type:* 51.4′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2024–0110 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0110 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17706 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0111]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ASHA (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 9, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0111 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0111X and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0111, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel ASHA is:

*Intended Commercial Use of Vessel:* Requester intends to offer charters.

*Geographic Region Including Base of Operations:* Florida, Georgia, South Carolina, North Carolina, Virginia, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine, Puerto Rico. Base of Operations: Miami Beach, Florida.

*Vessel Length and Type:* 69.9′ Motor yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0111 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0111 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17705 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD–2024–0101]**

### Updated Notice of Availability for the Arthur Kill Terminal Programmatic Agreement Under Section 106 of the National Historic Preservation Act

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The Maritime Administration (MARAD) is funding the Arthur Kill Offshore Wind Terminal Project (Project) which will develop an offshore wind staging and assembly port in Staten Island, New York to facilitate the development of offshore wind farms in the New York Bight. In accordance with the National Historic Preservation Act (NHPA) and its implementing regulations, MARAD has determined that a Programmatic Agreement (Agreement) must be prepared in accordance with the requirements of the NHPA in conjunction with the Project and invites public comments on the Agreement.

**DATES:** All comments on the Agreement are due on or before September 23, 2024. MARAD will consider comments filed after this date to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following ways:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* insert the docket number (MARAD–2024–0101) in the keyword box and click ''Search.'' Select the ''Docket'' tab, locate the Notice, and click on ''comment'' to begin the comment submission process. Follow the online instructions.
- *Mail:* Dockets Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* W12-l40 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. E.T., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.
- *Instructions:* To properly identify your comments, please include the agency name and the docket number at the beginning of your comments. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Wendy Coble, (202) 366–5088 or via email at *marad.history@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question. You will receive a reply during normal business hours. You may send mail to the Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

#### Background

The U.S. Department of Transportation (DOT) awarded funds to the New York State Urban Development Corporation d/b/a Empire State Development under the Fiscal Year 2022 Port Infrastructure Development Program for construction of the Arthur Kill Terminal. The project is located on Staten Island, New York.

The project proposes to develop an offshore win staging and assembly port in Staten Island, New York to facilitate the development of offshore wind farms in the New York Bight (the ''Project''). The project entails the construction of an approximately 32.5-acre port facility and an approximately 18-acre ship basin along the Arthur Kill waterfront in Staten Island to include the following:

- Dredging of an approximately 18-acre navigable Dredge Basin to a depth of –35 dredge bottom plus 1′ of allowable over dredge to allow cargo vessels to access the berths at the proposed facility.
- Construction of a port facility with a 1,365 linear foot (lf) quay, an approximately 28.5-acre laydown and storage area upland of the quay, as well as a two-story (48-foot-tall including mechanical bulkhead) tenant building located at the northeast corner of the Project Site containing warehouse space (for tools, spare parts, and consumables) and accessory office space, totaling approximately 22,472 gross square feet (gsf), with 111 accessory parking spaces, and the adaptive reuse of an existing two-story (33-foot-tall) 4,212 gsf residential structure (the ''Cole House'') at the southeast corner of the site as a visitor center and owner office with 12 accessory parking spaces;

MARAD has defined the Project's area of potential effects (APE) as the boundary of the property upon which the Arthur Kill terminal will be constructed, totaling approximately 32.5 acres, of which approximately 23.6 acres are upland area, 3.31 acres are freshwater wetlands, and 8.9 acres are submerged lands between the shoreline and Federal Bulkhead Line.

#### Identification of Historic Properties

The analysis conducted for this project included revisiting previously collected archaeological data, additional research, and site investigations. This work concluded that two previously identified multicomponent sites are single component sites. One of those sites, the Area 1 West Site, contained some Precontact cultural material at disparate locations and all the colonial period artifacts, save two, were found in contexts with more recent disturbances. The Precontact period component of the other multicomponent site, the Dissoway/Totten/Starr Site, was previously dismissed as fill, as were two of the suspected foundation segments. However, it is possible other structural remains of the house site remain beneath the fill.

The final previously identified site is the Catbriar Site, dating to the late Middle Woodland period (circa A.D. 800–A.D.1000) and the late Bowmans Brook—early Clasons Point period (circa A.D. 1200–A.D. 1400), based on recovery pottery sherds. However, many of those sherds also exhibited erosion and fragmentation which are potentially indicative of exposure and/or churning. Therefore, these pieces may have derived from disturbed contexts. The presence of fill at the Catbriar Site is suspected based on geotechnical evaluation and prior descriptions of the site as being in a plow zone. To determine if this is a true site or if it is merely a pervasive fill deposit, additional site investigations will be needed. If a site exists, even preserved beneath fill, then it is possible the Area 1 West Precontact Site may be part of the Catbriar Site based on proximity. The New York State Historic Preservation Office (SHPO) has indicated that all three sites are eligible or likely eligible for listing on the Nation Register of Historic Places.

No other potentially significant sites were identified during this research, and no further archaeological work beyond the three previously identified sites is recommended. The offshore portions of the project area were assessed, and archaeological potential is low in the tidal flats which will be filled and absent in the deeper waters which will be dredged.

#### Affected Historic Properties

Archaeological work was conducted at the Arthur Kill Terminal property

when it was under development by a previous project sponsor for a different purpose. That work included three episodes of archaeological field investigations and multiple reports which were reviewed by the New York State Historic Preservation Office (SHPO) and the New York City Landmarks Preservation Commission (LPC). The earlier work encompassed only the upland portions of the AKT property. Archaeological fieldwork included approximately 750 shovel test pits, 5 backhoe trenches, and 5 excavation units. The excavation produced over 5000 artifacts, with about 15% of those dating to the Precontact period.

Most of the artifacts previously recovered came from three loci which were identified as potentially significant archaeological sites. These were called the Catbriar Site, the Area 1 West Site, and the Dissoway/Totten/Starr Site. The Catbriar Site is a Precontact period site. The Area 1 West Site has both Precontact and historic period components, and the Dissoway/Totten/Starr Site is a historic site originally thought to also contain a Precontact site.

The Catbriar and Area 1 West Sites are in the northern tier of tier of the AKT property, approximately 250 feet from Outerbridge Crossing southward. The Dissoway/Totten/Starr Site is located approximately 2250 feet south of the other two sites. All three sites are within Block 7620. The SHPO has indicated that all three sites are either eligible or likely eligible for listing on the Nation Register of Historic Places.

**Project Impacts on Historic Properties**

The Catbriar Site may be affected by ground improvement along its southern side and by cutting in most of the remainder of the site up to 15 feet (5 m). The Area 1 West Site will primarily be covered with 0–15 feet (0–5 m) of fill but will also have two storm drainage lines crossing the area. The Dissoway/Totten/Starr Site will also be filled with 2–10 feet (1–3 m) of material and will contain one storm drainage line.

**Adverse Effects, Avoidance, Minimization and Mitigation**

MARAD, in coordination with SHPO, determined that this project would require the development of a Programmatic Agreement to address the potential for adverse effects. As of this public notice, MARAD, SHPO, Empire State Development, Delaware Nation, Delaware Tribe of Indians, Shinnecock Indian Nation and Stockbridge-Munsee Community have all agreed to be signatories to the Agreement; New York City Landmarks Preservation Commission (NYCLPC) and Arthur Kill Terminal LLC will be concurring parties. The draft Agreement is available for review by going to *www.regulations.gov,* and search using docket number ''MARAD–2024–0101.'' An Archaeological Work Plan (AWP) to address the potential for the Project to adversely effect the Catbriar Site, Area 1 West Precontact Site, and the Dissoway/Totten/Starr Site has also been prepared in consultation with SHPO and NYCLPC.

**Catbriar Site**

The AWP requires two separate archaeological hand excavation units to be placed in the areas of highest density of cultural material previously recovered from testing at the site, which measures approximately 10 x 20 feet (3 x 6 meters (m)) in area, to look for intact strata with additional cultural remains and to determine if any features are present in those locations which may relate to the site. The two archaeological hand excavation units will be 3-foot (approximately 1 m) square excavations units each and will be excavated stratigraphically. If the identified strata are greater than 4 inches (10 cm), the excavation will be conducted arbitrarily in 4-inch (10 cm) levels. All soil will be screened for the recovery of cultural material. The work will be recorded on forms, mapped on the site drawing, and measured field drawings will be done of significant resources and selected unit profiled, at least one from each unit. Soils will be described using the Munsell Soil Color Charts and soil textures will be recorded. Photographs will be taken as appropriate. Artifacts will be recovered by provenience. Excavation will continue to either the depth of intact strata or 4 feet (122 centimeters (cm)), whichever is encountered first.

Should no intact strata be encountered in the units, the AWP requires either additional borings or backhoe trenching to identify the depth of fill in the recorded site area. The additional work to be done will be determined by an on-site archaeologist.

If intact strata are identified, then additional excavation will be recommended to determine the extent of the intact deposits and if any archaeological features are present. If that is the case and artifacts are retained, that additional recommendation will also include a curation plan.

If it is determined during this survey that the Catbriar Site cannot be avoided and there are intact deposits associated with the Catbriar Site encountered, a plan will be developed for Phase 3 Data Recovery.

**Area 1 West Site**

Should the work at the Catbriar Site conclude intact strata containing Precontact period cultural material exists, then the footprint of the Area 1 West Site will be included as part of the recommendations for additional investigations to define the extent of the Catbriar Site. Should utility excavation of the Area 1 West Site penetrate the fill, excavation would be monitored.

**Dissoway/Totten/Starr Site**

As currently proposed, the Project will cover this site in fill. However, there may be plans to penetrate the fill during excavation for utilities. Should construction include plans to penetrate fill at this site, then archaeological monitoring of utility excavation is recommended to identify any potential structural remains or features associated with the historic occupation of the property. Should utility excavation at Dissoway/Totten/Starr Site penetrate fill, excavation would be monitored.

**Public Participation**

MARAD may provide additional information and documents concerning the project. This information, along with any comments received, can be found at the above docket number. Please check the notice specific docket for this information. It is requested that all public comments be submitted for consideration within 45 calendar days from the posting of this notice.

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online as described in the **ADDRESSES** section above. MARAD recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that MARAD can contact you if there are questions regarding your submission.

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices*, the comments are

searchable by the name of the submitter. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17676 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0107]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ENDLESS SUMMER (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 9, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0107 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0107 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0107, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel ENDLESS SUMMER is:

*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters.

*Geographic Region Including Base of Operations:* Florida. Base of Operations: Miami, Florida.

*Vessel Length and Type:* 30′ Cruiser.

The complete application is available for review identified in the DOT docket as MARAD 2024–0107 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0107 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17704 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0112]**

### Request for Comments on the Renewal of a Previously Approved Information Collection: Voluntary Intermodal Sealift Agreement (VISA)

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0532 (Voluntary Intermodal Sealift Agreement (VISA)) is used by MARAD and United States Transportation Command (USTRANSCOM) to assess an applicant's eligibility for participation in VISA. The form is being updated to reflect changes in statute and to better align with current program operations. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments must be submitted on or before October 8, 2024.

**ADDRESSES:** You may submit comments identified by Docket No. MARAD–2024–0112 through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Instructions:* All submissions must include the agency name and docket number for this rulemaking.

**Note:** All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

*Comments are invited on:* (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** David Hatcher, 202–366–0688, Director, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W25–310, Mail Stop 1, Washington, DC 20590, Email: *David.Hatcher1@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Voluntary Intermodal Sealift Agreement (VISA).

*OMB Control Number:* 2133–0532.

*Type of Request:* Revision of a Currently Approved Collection.

*Abstract:* The collection is in accordance with the operation of a voluntary agreement and plan of action established under section 708 of the Defense Production Act, 1950, as amended (50 U.S.C. 4558), under which participants agree to provide commercial sealift capacity and associated intermodal shipping services and systems necessary to meet national defense requirements in times of armed conflict or national emergency. To meet national defense requirements, the Government must assure the continued availability of commercial sealift resources. The information collection is needed by MARAD and the Department of Defense, including representatives from USTRANSCOM, to evaluate and assess the applicants' eligibility for participation in the VISA program.

*Respondents:* Owners and operators of qualified U.S.-Flag dry cargo vessels.

*Affected Public:* Business or other for-profit entities.

*Estimated Number of Respondents:* 40.

*Estimated Number of Responses:* 1.

*Estimated Hours per Response:* 5.

*Annual Estimated Total Annual Burden Hours:* 200.

*Frequency of Response:* Once Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17702 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0108]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HAMMERCATCH (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 9, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0108 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0108 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0108, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel HAMMERCATCH is:

*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters.

*Geographic Region Including Base of Operations:* Florida. Base of Operations: Fort Lauderdale, Florida.

*Vessel Length and Type:* 35.1′ Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0108 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0108 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17708 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0109]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FOLLOW THE SUN (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 9, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0109 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0109 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0109, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel FOLLOW THE SUN is:

*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters and sunset cruises.

*Geographic Region Including Base of Operations:* Florida, North Carolina, Texas. Base of Operations: Hollywood, Florida.

*Vessel Length and Type:* 53′ Sail.

The complete application is available for review identified in the DOT docket as MARAD 2024–0109 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0109 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17707 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD–2024–0102]**

### Updated Notice of Availability for the Camden County Programmatic Agreement Under Section 106 of the National Historic Preservation Act

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The Maritime Administration (MARAD) is funding the Camden County Port of Camden Access and Infrastructure Resiliency Project (Project) which will reconstruct and improve several roadways within the City of Camden Port District to increase access between the Port of Camden and nearby interstates, while also improving infrastructure resiliency within a historically disadvantaged community. In accordance with the National Historic Preservation Act (NHPA) and its implementing regulations, MARAD has determined that a Programmatic Agreement (Agreement) must be prepared in accordance with the requirements of the NHPA in conjunction with the Project and invites public comments on the Agreement.

**DATES:** All comments on the Agreement are due on or before September 23, 2024. MARAD will consider comments filed after this date to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following ways:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* insert the docket number (MARAD–2024–0102) in the keyword box and click ''Search.'' Select the ''Docket'' tab, locate the Notice, and click on ''comment'' to begin the comment submission process. Follow the online instructions.
- *Mail:* Dockets Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* W12–l40 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. E.T., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.
- *Instructions:* To properly identify your comments, please include the agency name and the docket number at the beginning of your comments. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Wendy Coble, (202) 366–5088 or via email at *marad.history@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question. You will receive a reply during normal business hours. You may send mail to the Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Department of Transportation (DOT) awarded funds to Camden County under the Fiscal Year 2022 Port Infrastructure Development Program for roadway improvements and reconstruction. The project is located in the City of Camden, Camden County, New Jersey.

The project proposes to reconstruct and improve several roadways within the City of Camden Port District including Atlantic Avenue between 1–676 and Ferry Avenue (0.7 miles), Broadway (County Route 551) from Atlantic Avenue to the railroad overpass (between Chelton Avenue and Morgan St) (0.9 miles), Ferry Avenue (County Route 603) from Broadway to Atlantic Avenue (0.6 miles), and South 2nd Street from Clinton Avenue to Atlantic Avenue (0.8 miles). These improvements will consist of the following:

- New pavement, milling, and resurfacing which will improve roadway conditions and reduce the need for additional maintenance;
- New sidewalks, ADA-compliant curb ramps, curb extensions, pedestrian countdown timers and push buttons which will improve pedestrian safety and accessibility;
- Adjusted curb radii and intersection markings which will discourage trucks from accessing residential streets and encourage them to more safely access truck routes; reduced turn radii will improve safety;
- Additional wayfinding signage and dynamic messaging signs which will improve traffic flow and better direct motorists, pedestrians, and cyclists to their destinations;
- New and upgraded street lighting which will improve safety and comfort;
- New drainage lines utilizing existing outfalls, and repairing existing damaged sewer which will capitalize on existing infrastructure to improve sewage; and
- Green infrastructure which will improve drainage and create a more appealing pedestrian environment.

MARAD has defined the Undertaking's area of potential effects (APE) as the boundary of the property of South 2nd Steet, Atlantic Avenue, Ferry Avenue and Broadway, which encompasses approximately three roadway miles.

**Identification of Historic Properties**

The analysis conducted for this project included revisiting previously collected archaeological data, additional research, and site investigations. This work included the completion of a Phase1A Cultural Resource Reconnaissance Survey Report specifically done for this project. The report, and consultations with the New Jersey State Historic Preservation Office (NJSHPO), concluded that the project will likely have adverse impacts on one historic resource that is listed on the National Register of Historic Places (NRHP), the South Camden Historic District, and historic resources, the 1907 Line Ditch timber sewer system and nineteenth century brick sewers, that will be evaluated for eligibility on the NRHP during the course of the project. It was also determined that the project's APE overlaps with the New York Shipbuilding Historic District, Bergen Square Historic District, and West Jersey & Seashore Lines Historic District, but these resources will not be adversely impacted by the project. The New York Shipbuilding Historic District has previously been determined eligible for the NRHP, while the Bergen Square Historic District and West Jersey & Seashore Lines Historic District have not yet been reviewed for eligibility on the NRHP.

**Affected Historic Properties**

The South Camden Historic District's period of significance is 1815–1930 and consist of numerous contributing elements, such as standing historic buildings. Cobblestone pavers within the Historic District are most directly linked to this project and currently lie beneath asphalt roadways within the district's boundaries.

The 1907 Line Ditch timber sewer system and nineteenth century brick sewers contributed to the early development of the City of Camden. The method of construction associated with these resources is common in other nearby cities, thus making the entire City of Camden sewer system likely ineligible for the NRHP as a historic district. However, this does not preclude portions of the sewer system from being contributing elements to historic districts. Additionally, some elements may be individually eligible. This includes the 1907 Line Ditch timber sewer system due to its ties to locally significant persons such as Aaron Ward and unique construction during a period in which sewer construction methodologies were becoming standardized.

**Project Impacts on Historic Properties**

The South Camden Historic District may be affected due to the proposed removal of cobblestone pavers, which currently lie underneath asphalt paving on the roadways within the district. The 1907 Line Ditch timber sewer system and nineteenth century brick sewers may be adversely impacted by the project because the project proposes to repair and/or replace some of the sewers for improved drainage and stormwater management.

**Adverse Effects, Avoidance, Minimization, and Mitigation**

MARAD, in coordination with NJSHPO, determined that this project would require the development of a Programmatic Agreement to address the potential for adverse effects. As of this public notice, MARAD, SHPO, and Camden County have all agreed to be signatories to the Agreement; The Delaware Tribe of Indians and Camden City Historic Preservation Commission will be concurring parties. The draft Agreement is available for review by going to *www.regulations.gov,* and search using docket number ''MARAD–2024–0102.''

To mitigate the potential for the project to cause adverse effects, the Agreement will require Camden County to complete the following mitigation measures:

- Prepare and install signage detailing the history and significance of the New York Shipbuilding and South Camden Historic Districts;
- Document any unearthed cobblestone to Level III equivalent standards of the Historic American Engineering Record (HAER);
- Recover and securely store cobblestones for later use within the historic district;
- Conduct a documentation-and-video-based survey (Phase 1B/II) of any affected below ground sewer systems; and
- Based on the Phase 1B/II survey, recommend and implement a work plan for the evaluation, monitoring, documentation, protection, and/or treatment of any historic properties within the project's APE that may be adversely impacted by the project.

**Public Participation**

MARAD may provide additional information and documents concerning the project. This information, along with any comments received, can be found at the above docket number. Please check the notice specific docket for this information. It is requested that all public comments be submitted for consideration within 45 calendar days from the posting of this notice.

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You

may submit your comments and material online as described in the **ADDRESSES** section above. MARAD recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that MARAD can contact you if there are questions regarding your submission.

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices*, the comments are searchable by the name of the submitter. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–17677 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. DOT–OST–2024–0092]**

### Battery Safety Post-Incident Stakeholder Meeting

**AGENCY:** Office of the Assistant Secretary for Transportation Policy, Department of Transportation (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of Transportation will convene a meeting on August 27, 2024, as an opportunity to share information with the public on activities regarding lithium-ion battery safety in a post-incident scenario. At this event, which will be broadcast virtually for the audience, representatives from DOT and other agencies and organizations will discuss electric vehicles and fire safety topics related to lithium-ion batteries. The format will include presentations with an opportunity for the audience to ask questions after each topic. Materials presented will be available on the DOT web page after the event.

**DATES:** DOT will hold the public meeting on August 27, 2024, from 9 a.m. to 12:30 p.m. eastern time. Registration to attend the meeting must be received no later than August 26, 2024. There is no cost to register. Registration can be completed at *https://usdot.zoomgov.com/webinar/register/WN_yhD1XAMYTeSp4xi5gbt2Aw.*

**ADDRESSES:** The online access link to the meeting will be available upon registration. Details regarding the agenda and speakers will be added to the DOT web page prior to the event, at *https://www.transportation.gov/battery-safety-post-incident-stakeholder-meeting.* The material presented at the meeting will also be added to the DOT web page.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the public meeting, please contact Elizabeth Machek at 781–483–2415 or by email at *batterysafety@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Registration is required for all attendees.* Attendees should register at *https://usdot.zoomgov.com/webinar/register/WN_yhD1XAMYTeSp4xi5gbt2Aw* by August 26, 2024.

DOT is committed to providing equal access to this meeting for all participants. Persons with disabilities in need of an accommodation should contact Mirna Providence at 617–494–3344, or via email at *Mirna.Providence@dot.gov,* with your request as soon as possible and no later than August 16, 2024. Closed captioning services will be available.

Should it be necessary to cancel or reschedule the event due to an unforeseen circumstance, DOT will take all available measures to notify registered participants as soon as possible. The event will be recorded, and a recording will be posted to the DOT web page after the event.

*Privacy Act:* As this event will be recorded and made available to the public, any comments you make or questions you ask at this meeting will be included in the publicly available information. For information on DOT's compliance with the Privacy Act, see *https://www.transportation.gov/privacy.*

Across the federal government, experts are working to assure the safety of operators, occupants, passersby, and emergency response personnel with regard to post-incident lithium-ion battery-powered vehicles. DOT hosted an Electric Vehicle Summit in the summer of 2022 and again in the summer of 2023 to bring together stakeholders and establish an ongoing discourse regarding the safety of these vehicles. DOT is hosting this event on August 27, 2024, to continue that discussion and update stakeholders and the public.

The Battery Safety Post-Incident Stakeholder meeting will convene experts across DOT Operating Administrations and other Federal agencies responsible for vehicle and fire safety, as well as organizations and members of the public with expertise or interest in areas of battery safety, electrical standards, and emergency management services. Topics will include stranded energy, fire incident response, heavy vehicle consideration, damaged EV response, EV water immersion, and emerging battery technologies. Sessions will include presentations from individuals or panels and, as time allows, an opportunity for attendees to ask questions. DOT is not seeking consensus advice or recommendations on any topic from attendees at the meeting. Presentations will be displayed during the sessions and added to the DOT web page after the meeting.

**Scott Goldstein,**

*Deputy Assistant Secretary for Transportation Policy.*

[FR Doc. 2024–17786 Filed 8–8–24; 8:45 am]

**BILLING CODE 4910–9X–P**


# FEDERAL REGISTER

Vol. 89 Friday,
No. 154 August 9, 2024

Part II

## Environmental Protection Agency

40 CFR Part 52
Air Plan Approval; Wisconsin; Second Period Regional Haze Plan; Proposed Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2021–0545; FRL–12100–01–R5]**

## Air Plan Approval; Wisconsin; Second Period Regional Haze Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the Wisconsin regional haze state implementation plan (SIP) revision submitted by the Wisconsin Department of Natural Resources (Wisconsin or WDNR) on July 30, 2021. In the alternative, EPA is proposing to approve the Wisconsin regional haze SIP in its entirety so long as WDNR provides evidence to EPA that operation of coal-fired cyclone Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased. In the event evidence is provided confirming the federally enforceable and permanent shutdown of the Ahlstrom-Munksjö—Rhinelander Mill Boiler B26, EPA proposes to find that Wisconsin'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, and also addresses other applicable requirements for the second implementation period of the regional haze program. EPA is taking this action pursuant to sections 110 and 169A of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before September 9, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0545 at *https://www.regulations.gov* or via email to *langman.michael@epa.gov.* For comments submitted at *https://www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be confidential business information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

### Table of Contents



### I. What action is EPA proposing?

On July 30, 2021, WDNR submitted a revision to its SIP to address regional haze for the second implementation period. WDNR made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and the Regional Haze Rule (RHR) at 40 CFR 51.308(f). EPA is proposing to partially approve and partially disapprove the Wisconsin regional haze SIP. In the alternative, EPA is proposing to approve the Wisconsin regional haze SIP in its entirety in the event that WDNR provides sufficient evidence to EPA, before final action in this rulemaking, that coal-fired cyclone Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased operating, which typically includes evidence that Boiler B26 is being dismantled and/or decommissioned. In the event that WDNR is able to provide sufficient evidence of the federally enforceable and permanent shutdown of the Ahlstrom-Munksjö—Rhinelander Mill Boiler B26, EPA is proposing to find that the Wisconsin regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and thus proposes to approve Wisconsin's submission into its SIP. However, without evidence that the Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased operation of Boiler B26, EPA proposes to partially approve and partially disapprove the Wisconsin regional haze SIP for the second implementation period. In the event that WDNR does not provide sufficient evidence of the federally enforceable and permanent shutdown of Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill, EPA is proposing, for the reasons described in this document, to approve the elements of Wisconsin's regional haze SIP related to requirements contained in 40 CFR 51.308(f)(1), (f)(3) through (6), (g)(1)

through (5), and (i)(2) through (4), and disapprove the elements of Wisconsin's SIP related to the requirements of 40 CFR 51.308(f)(2) due to insufficient information regarding cessation of operations at Boiler B26.

## II. Background and Requirements for Regional Haze Plans

### *A. Regional Haze Background*

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[1] CAA 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA 169A(a)(1). The CAA further directs EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA 169A(a)(4). On December 2, 1980, 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 EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA 169B. EPA promulgated the 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 EPA's comprehensive visibility protection program for Class I areas.

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$), and, in some cases, volatile organic compounds (VOC) and ammonia ($NH_3$)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[3]

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. CAA 169A(b)(2);[4] *see also* 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR 35714 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 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. 64 FR 35714 at 35768, July 1, 1999. EPA established in the 1999 RHR that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area''; therefore, all states must submit regional haze SIPs.[5] 64 FR 35714 at 35721, July 1, 1999.

Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I areas establish reasonable progress goals (RPGs) that are measured in deciviews (dv) and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states' long-term strategies. The first implementation period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of

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

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

[3] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction ($b^{ext}$) is a metric used to for expressing visibility and is measured in inverse megameters ($Mm^{-1}$). 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 deciview, since it is not a logarithmic function. See, *e.g.,* 2019 Guidance at 16, 19, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period,* EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is $10 \ln (b^{ext})/10\ Mm - 1$). 40 CFR 51.301.

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

[5] In addition to each of the fifty states, 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).

baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.[6] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that states' long-term strategies must include the ''enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, *see* 40 CFR 51.308(g),(h), and to consult with the Federal Land Manager(s)[7] (FLMs) responsible for each Class I area according to the requirements in CAA 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, 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. 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.

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, EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[8] On July 8, 2021, EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[9] Additionally, 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 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. EPA 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, EPA 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 (NAAQS) and Prevention of Significant Deterioration (PSD) programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.[12]

[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 35714 at 35731–32, July 1, 1999. That is, the URP and the 2064 date are not enforceable targets but are rather tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078 at 3084, January 10, 2017).

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

[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* 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.* 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/sites/default/files/2021-03/documents/tracking.pdf* 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* 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

*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. To address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[13] which include representation from state and Tribal governments, 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 Lake Michigan Air Directors Consortium (LADCO) is the Midwest RPO, and includes the states of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. LADCO's work 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 Midwest corridor of the United States. The Federal partner members of LADCO are EPA, U.S. National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (USFS).

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

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis [14] and (f)(4) through (6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the 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. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [15] that states must consider in developing their long-term strategies. *See* 40 CFR 51.308(f)(2). A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2) and (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 40 CFR 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. See CAA 169A(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If EPA finds that a state fails to make a required SIP revision, or if EPA finds that a state's SIP is incomplete or disapproves the SIP, the Agency must promulgate a Federal implementation plan that satisfies the applicable requirements. CAA 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, EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR 35714 at 35720–22, July 1, 1999, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether states should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' 64 FR 35714 at 35721, July 1, 1999.

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

of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas'').

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

[14] EPA explained in the 2017 RHR Revisions that the Agency was 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 3078 at 3091, January 10, 2017).

[15] The five ''additional factors'' for consideration in section 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.

does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the state is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

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

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in 40 CFR 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this section apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. EPA's 2018 Visibility Tracking Guidance [16] provides recommendations to assist states in satisfying their obligations under 40 CFR 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. *See* 82 FR 3078 at 3103–05, January 10, 2017.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20 percent clearest (the 20 percent of monitored days in a calendar year with the lowest values of the deciview index) and 20 percent most impaired days (the 20 percent 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 percent clearest and 20 percent 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 to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in dv, that would need to be achieved during each implementation period 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, 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 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 3078 at 3107 footnote 116, January 10, 2017.

EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in 40 CFR 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

*C. Long-Term Strategy for Regional Haze*

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is 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 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

[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://www.epa.gov/sites/default/files/2021-03/documents/tracking.pdf.*

[17] This action also refers to the 20 percent clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[18] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two 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 3078 at 3098, January 10, 2017: ''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 3078 at 3093, January 10, 2017.

analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures. To this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As EPA previously explained, consistent with the first implementation period, EPA generally expects that each state will analyze at least $SO_2$ and $NO_X$ in selecting sources and determining control measures. *See* 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

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

EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[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 169A(g)(1). EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA's reasonable progress mandate.'' 82 FR 3078 at 3091, January 10, 2017. 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. 82 FR 3078 at 3088, January 10, 2017. 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 emissions 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 emissions rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emissions 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. 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

[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).

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

[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 3078 at 3088, January 10, 2017. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

information on the four factors with regard to each option identified. 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 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, 40 CFR 51.308(f)(2)(i) provides that a state ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, 40 CFR 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's long-term strategy and in its SIP.[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 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 emissions rate, it may not be necessary to have those measures in the long-term strategy to prevent future emissions increases and future visibility impairment. EPA's 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source's existing measures are not necessary to make reasonable progress. *See* 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source's existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and 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 51.308(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

[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.

[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 3078 at 3108–09, January 10, 2017 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

[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 Nat'l Parks Conservation Ass'n* v. *EPA,* 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep't of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 485, 490 (2004).

[26] The five ''additional factors'' for consideration in section 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.

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 implementation period owing to other ongoing air pollution control programs or merely 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, 40 CFR 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies. Additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines 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). 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*

RPGs ''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 3078 at 3091, January 10, 2017. Their primary purpose is to assist the public and 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) and (iv). States in which Class I areas are located must establish two RPGs, both in dv—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. RPGs are not enforceable targets. 40 CFR 51.308(f)(3)(iii). Rather, they ''provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. *See* 40 CFR 51.308(f)(1)(i), 82 FR 3078 at 3097–98, January 10, 2017.

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

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain

[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, control determinations by other states, and 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.

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 3078 at 3093, 3099–3100, January 10, 2017; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

*E. Monitoring Strategy and Other State Implementation Plan Requirements*

40 CFR 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this section 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 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), and (iv). The IMPROVE monitoring data is used to determine the 20 percent most anthropogenically impaired and 20 percent 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 40 CFR 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [30] Under this provision, if 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.

[28] *See* ''Step 8: Additional requirements for regional haze SIPs'' in 2019 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.

*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 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 at 26950 (May 4, 2016), (82 FR 3078 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, 40 CFR 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions to assess progress made to date. *See* 40 CFR 51.308(g)(3)(ii). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. *See* 40 CFR 51.308(f)(5) and (g)(3)(iii). 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(f)(5) and (g)(4). 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 explain whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

### *G. Requirements for State and Federal Land Manager Coordination*

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). For 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 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. EPA's Evaluation of Wisconsin's Regional Haze Submission for the Second Implementation Period

### *A. Background on Wisconsin's First Implementation Period SIP Submission*

Wisconsin submitted its regional haze SIP for the first implementation period for 2009 through 2018 to EPA on January 18, 2012. EPA approved Wisconsin's first implementation period regional haze SIP submission on August 7, 2012 (77 FR 46952, August 7, 2012). EPA's approval included, but was not limited to, the portions of the plan that address the reasonable progress requirements, Wisconsin's implementation of BART on eligible sources, and adoption of limitations as necessary to implement a long-term strategy for reducing visibility impairment. The requirements for regional haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e). See 40 CFR 51.308(b). WDNR met the requirements of 40 CFR 51.308(g) by submitting its five-year progress report for the first implementation period on March 17, 2017. EPA approved this progress report as a revision to the Wisconsin SIP on June 15, 2018 (83 FR 27910, June 15, 2018).

### *B. Wisconsin's Second Implementation Period SIP Submission and EPA's Evaluation*

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), on July 30, 2021, WDNR submitted a revision to the Wisconsin SIP to address its regional haze obligations for the second implementation period, which runs through 2028. Wisconsin provided a public comment period on the regional haze SIP for the second implementation period from April 29 through June 2, 2021. Wisconsin received and responded to public comments and included the comments and responses to those comments in appendix 8 of its submission. Subsequently, Wisconsin provided additional information regarding the likely permanent cessation of coal-fired cyclone Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill.

The following sections describe Wisconsin's SIP submission, including Wisconsin'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. Also described is the additional information which Wisconsin provided on November 10, 2023, and January 3, 2024, regarding the newly planned retirement of two sources evaluated under the four-factor analysis and the current retirement plan for a third source. The following section also contains EPA's evaluation of Wisconsin's submission against the requirements of the CAA and the 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 51.308(f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

Wisconsin has no Class I areas within its borders that are among the 156 mandatory Class I Federal areas where EPA deemed visibility to be an important value.[31] *See* 40 CFR part 81, subpart D. Thus, WDNR only considered out-of-state mandatory Class I areas covered under the RHR.

Wisconsin is a member of LADCO and participated in LADCO's regional approach for developing a strategy for making reasonable progress towards national visibility in the northern Midwest Class I areas. WDNR reviewed technical analyses conducted by LADCO to determine which Class I areas outside the state are affected by Wisconsin emission sources. For the second regional haze implementation period, to determine LADCO member state contributions to impaired visibility in all Class I areas, LADCO used the Comprehensive Air quality Model with extensions Particulate Matter Source Apportionment tool (PSAT). LADCO tagged states and regions as well as individual point sources and inventory source groups to apportion emissions to states and regions. LADCO assessed

[31] Rainbow Lake Wilderness Area is a mandatory Class I Federal area located in Wisconsin but has not been identified by the Secretary of the Interior in consultation with other FLMs as an area where visibility is an important value. 44 FR 69122, November 30, 1979. Therefore, Rainbow Lake Wilderness Area is not among the list of areas to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D.

relative visibility impacts in 2028 by projecting representative emissions inventories and known emission controls from 2016.[32] For modeling purposes, 2016 was chosen as the base year. A group of RPOs, states, and EPA established 2016 as the base year for a national air quality modeling platform for future ozone, $PM_{2.5}$ and regional haze SIP development because of fairly typical ozone conditions and wildfire conditions.[33] LADCO relied upon EPA's inventory estimates from the 2016 modeling platform for most emission sectors. For Electric Generating Units (EGUs), LADCO used forecasts from the Eastern Regional Technical Advisory Committee (ERTAC) based on continuous emissions monitoring data from 2016 instead of the Integrated Planning Model used in EPA's 2016 modeling platform. LADCO also incorporated state-reported changes to EGUs received through September 2020 to estimate 2028 EGU emissions, which was considered by LADCO to be the best available information on EGU forecasts for the Midwest and Eastern U.S. available at the time.

Wisconsin identified affected Class I areas where progress toward natural visibility conditions may be impacted by emissions from sources in Wisconsin. Wisconsin used LADCO's modeled emissions projections for 2028 as a framework to assess the potential for future growth in visibility-impairing emissions. Like the metrics used in the first implementation period, WDNR retained the 2 percent light extinction threshold for determining Wisconsin's contribution to visibility at Class I areas for the second regional haze implementation period. LADCO's modeling results showed that a 2 percent light extinction threshold applied to all six LADCO states as well as seven other states would account for 92 percent or more of the total light extinction at the Class I areas located in the LADCO states on the most impaired days. Using a 2 percent total light extinction threshold, WDNR determined that Wisconsin emissions continue to impact visibility impairment at Isle Royale National Park (Isle Royale) and Seney Wilderness Area (Seney) in Michigan and Boundary Waters Canoe Wilderness Area (Boundary Waters) in Minnesota. Although Wisconsin's contribution to total light extinction at Voyageurs National Park (Voyageurs) in Minnesota is 1 percent based on LADCO's 2016-based PSAT projections for 2028, Wisconsin included Voyageurs because it met the 2 percent threshold during the first regional haze implementation period. These four Class I areas in Michigan and Minnesota are collectively referred to as the ''LADCO Class I Areas.'' During the first implementation period, LADCO estimated Wisconsin's average annual impact on visibility in the LADCO Class I Areas ranged from 6 to 16 percent, whereas LADCO's 2028 projections forecast a reduction in Wisconsin's average annual impact on visibility of 1 to 6.2 percent for the second implementation period.

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

The regulation at 40 CFR 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. Section 51.308(f)(1) 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).

Wisconsin has no mandatory Federal Class I areas identified in 40 CFR part 81, subpart D, located within the state to which the requirements of the visibility protection program apply. Therefore, 40 CFR 51.308(f)(1) and its requirements do not apply.

*E. Long-Term Strategy for Regional Haze*

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA 169A(b)(2)(B). As explained in the Background section of this preamble, 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 40 CFR 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)(iii).

1. Selection of Sources for Analysis

States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under 40 CFR 51.308(f). States may also satisfy the requirement of 40 CFR 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

This section summarizes how Wisconsin's SIP submission addresses the requirements of 40 CFR 51.308(f)(2)(i) of the RHR. Specifically, it describes the criteria WDNR used to determine the selection of sources or groups of sources it evaluated for an analysis of potential emission control measures.

WDNR considered $NO_X$, $SO_2$, $PM_{2.5}$, and $NH_3$ in selecting sources to determine possible additional control measures during the second

[32] *See* appendix 2 of WDNR's SIP submittal. Details of the analysis and source-apportioned visibility contributions at Class I areas within the LADCO region for regional haze second implementation period are documented in LADCO's modeling technical support document (TSD), dated June 17, 2021.

[33] *See* ''Base Year Selection Workgroup Final Report,'' April 5, 2017.

implementation period. To assist states with their source selection, using the 2016 base year emissions, LADCO generated source lists based on total process-level emissions (Q) divided by distance (d) to the nearest Class I area, where Q/d is used as a quantitative metric of visibility impact. Total emissions of Q refer to the sum of $NO_X$, $SO_2$, $PM_{2.5}$, and $NH_3$. The National Emissions Inventory (NEI) Collaborative 2016 alpha inventory was selected by participants in the LADCO Regional Haze Technical Workgroup for the Q/d analysis in 2018 as the best available inventory at that time. LADCO identified unit level sources above Q/d thresholds of 1, 4, and 10, providing key information the states could use to select potential sources to be subject to the four-factor analysis. For details on the data and methods used in the Q/d analysis, see section 5 of LADCO's Technical Support Document ''Modeling and Analysis for Demonstrating Reasonable Progress for the Regional Haze Rule 2018—2028 Planning Period,'' contained in appendix 2 of Wisconsin's SIP submission.

WDNR used the Q/d information developed by LADCO to select emission units with a Q/d threshold greater than a value of 10 for a four-factor analysis. WDNR set the Q/d threshold of 10 to capture the significant point source emissions in Wisconsin for analysis. WDNR identified units with a Q/d threshold greater than a value of 10 at three facilities: Alliant Energy—Edgewater Generating Station; Ahlstrom-Munksjö NA Specialty Solutions, LLC—Kaukauna Kraft Pulp and Paper Mill (Ahlstrom-Munksjö Kaukauna Mill); and the Ahlstrom-Munksjö NA Specialty Solutions, LLC—Rhinelander Paper Mill (Ahlstrom-Munksjö—Rhinelander Mill). The emission units selected at each facility meeting WDNR's threshold for four-factor analysis are described below. Consistent with the first regional haze implementation period, WDNR focused on $NO_X$ and $SO_2$ emissions in considering potential additional control measures at these facilities since they lead to the formation of the particulate species of nitrate and sulfate that currently contribute more to visibility impairment in the LADCO Class I Areas than $PM_{2.5}$, $NH_3$, and VOC as demonstrated by the analysis in LADCO's Technical Support Document of the IMPROVE monitoring data. As shown in Tables 6, 12 and A2–2 of its submittal, WDNR's selected sources represent more than 38 percent of the total $SO_2$ emissions and 13 percent of the total NOx emissions for Wisconsin point sources with a Q/d greater than 1 based on 2016 emissions, with the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills representing 23 percent and 6 percent of the $SO_2$ emissions, respectively, and 1 percent of the NOx emissions each.

Alliant Energy—Edgewater

Alliant Energy is a coal-fired electric generating facility located in Sheboygan, Wisconsin. WDNR selected coal-fired Boilers B24 and B25 for the control analysis. Boiler B25 has a nameplate capacity of 380 MW. Boiler B24 was retired in 2018.

Ahlstrom-Munksjö—Kaukauna Mill

The Ahlstrom-Munksjö—Kaukauna Mill is a kraft pulp and paper mill located in Kaukauna, Wisconsin that manufactures unbleached pulp. For the control analysis, WDNR selected single cyclone steam Boiler B09, which has a fuel capacity of 192 million British Thermal Units per hour (MMBtu/hr), and twin cyclone Boiler B11, which has a fuel capacity of 379 MMBtu/hr. Boilers B09 and B11 operate in tandem and share a common stack S09. Boilers B11 and B09 are used to produce steam for the mill production process and electricity generation, and both are capable of combusting multiple fuels that include bituminous coal, pet coke, natural gas, #6 fuel oil, paper broke, or tire derived fuel.

Ahlstrom-Munksjö—Rhinelander Mill

The Ahlstrom-Munksjö—Rhinelander Mill is a paper mill located in Rhinelander, Wisconsin producing a variety of specialty papers including greaseproof, label backing, and wet strength papers. For the control analysis, WDNR selected coal-fired cyclone Boiler B26 which has a fuel capacity of 300 MMBtu/hr. Boiler B26 is used to produce steam for the manufacturing operations.

Other Sources

During the FLM consultation period, the USFS and NPS encouraged WDNR to lower the Q/d source selection threshold to 4 on a facility-wide basis, thereby identifying the following additional facilities for further analysis: WE Energies—Oak Creek Power Plant, Wisconsin Public Service Corporation—Weston Power Plant, Wisconsin Rapids Paper Mill, Catalyst Paper—Biron Mill, Graymont Superior, Ahlstrom-Munksjö—Mosinee Mill, and Calumet Superior Refinery.[34]

The USFS and NPS recognized that the Wisconsin Rapids Paper Mill has been idled and that the Wisconsin Public Service Corporation—Weston Power Plant and the WE Energies—Oak Creek Power Plant are effectively controlled. However, USFS and NPS recommended that WDNR perform a four-factor analysis for Catalyst Paper—Biron Mill, Graymont Superior, Ahlstrom-Munksjö—Mosinee Mill, and Calumet Superior Refinery.[35]

WDNR provided information in appendices 2 and 3 demonstrating that while the additional sources identified by the FLMs exhibited Q/d values greater than 4 on a facility-wide basis, none of the Q/d values on a unit basis were greater than 4.3 for the EGUs or 4 for the non-EGUs except Catalyst Paper—Biron Mill Boiler B23 with a Q/d of 7. Although WDNR's source selection threshold based on unit Q/d greater than 10 did not identify these sources for further analysis, WDNR provided information in appendix 3 as summarized below, describing that these sources flagged by the FLMs are already well-controlled and have federally enforceable limits in title V operating permits.

The Wisconsin Public Service Corporation—Weston Power Plant is subject to limits of 0.10 pounds per million British thermal units (lbs/MMBtu) $NO_X$ and 0.08 lbs/MMBtu $SO_2$. The WE Energies—Oak Creek Power Plant utilizes selective catalytic reduction (SCR) and wet flue gas desulfurization (FGD), is subject to limits of 0.07 lbs/MMBtu $NO_X$ and 0.03 lbs/MMBtu $SO_2$ and will retire four of its six boilers in 2025. The Wisconsin Rapids Paper Mill has been idled since 2020, but in the event the facility resumes operation, the units are subject to permit limits of 1.2 lbs/MMBtu $SO_2$ and 0.80 lbs/MMBtu $NO_X$, low sulfur coal requirements, and $SO_2$ modeling to demonstrate compliance with the 2010 1-hour $SO_2$ NAAQS. For Catalyst Paper—Biron Mill, Boiler B23 switched to natural gas in 2017. For Graymont Superior, units are subject to Best Available Control Technology (BACT) for $NO_X$ as well as permit requirements based on $SO_2$ modeling to demonstrate compliance with the 2010 1-hour $SO_2$ NAAQS. For the Ahlstrom-Munksjö—Mosinee Mill, Boiler B20 is subject to a permit limit of 3.2 lbs-$SO_2$/MMBtu as well as permit requirements based on $SO_2$ modeling to demonstrate compliance with the 2010 1-hour $SO_2$ NAAQS. Calumet Superior Refinery is

[34] Comments from USFS and NPS referenced by WDNR with a provided link in the Regional Haze SIP submittal are provided in the docket.

[35] Wisconsin provided a link to WDNR's website with comments from USFS and NPS, which are included in the docket.

subject to a Federal consent decree with limits that were incorporated into its title I construction permit 11–DCF–138 and title V operating permit to achieve $NO_X$ and $SO_2$ reductions from boilers, fluid catalytic cracking units, and heaters.

Additionally, Wisconsin noted that the Alliant Energy—Columbia Power Plant has two units, B21 and B22, each with a Q/d of 6, that are also well-controlled and scheduled to shut down in 2025. Although not selected for further analysis, Wisconsin indicated that for $NO_X$, B21 has low $NO_X$ burners (LNB) and over-fire air (OFA) with a 0.15 lbs/MMBtu limit, and B22 has SCR/LNB/OFA with a 0.07 lbs/MMBtu limit. For $SO_2$, both B21 and B22 have dry FGD with a 0.075 lbs/MMBtu limit, well below the $SO_2$ limit of 0.2 lbs/MMBtu in the Mercury and Air Toxics Standards (MATS) rule for coal-fired EGUs. Wisconsin also pointed out that the planned shutdown of Alliant Energy—Columbia was not relied upon in assessing visibility impacts in the LADCO modeling.

*2. Emission Measures Necessary To Make Reasonable Progress*

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. The emission reduction measures that are necessary to make reasonable progress must be included in the long-term strategy. 40 CFR 51.308(f)(2).

Wisconsin's plan initially relied on four-factor analyses compiled by LADCO in 2015 for the second implementation period, which evaluated potential control scenarios for various types of coal-fired industrial boilers at pulp and paper mills that could be implemented by LADCO states to reduce emissions from large sources of $NO_X$ and $SO_2$ to make reasonable progress toward visibility goals. LADCO evaluated control options for $NO_X$ that included combustion modifications consisting of boiler tuning, LNB, ultra-low $NO_X$ burners (ULNB), LNB and flue gas recirculation, and LNB and OFA, as well as post-combustion controls consisting of SCR, selective noncatalytic reduction, and regenerative selective catalytic reduction (RSCR). For $SO_2$, LADCO evaluated control options for conventional dry FGD and dry sorbent injection (DSI), conventional dry FGD and spray dryer, advanced FGD, and wet FGD. LADCO's four-factor analyses included ranges in values for removal efficiencies and cost effectiveness based on retrofitting controls on boilers from various sources, noting that the actual costs depend on utilization and size of the boiler as well as capital costs. LADCO also provided analyses for the other statutory factors: time necessary for compliance, energy and non-air impacts, and remaining useful life.

To build upon the 2015 LADCO four-factor analyses with site specific data, WDNR conducted four-factor analyses specifically for the sources selected during the second implementation period: the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills.[36] The four-factor analyses examined control options and costs for $SO_2$ and $NO_X$ by drawing on a BART analysis that WDNR performed during the first implementation period for the Georgia Pacific—Broadway Mill in Green Bay, another Wisconsin paper mill with a boiler of similar design and configuration to those at the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills. WDNR examined control options for $SO_2$ that included DSI, dry FGD, and wet FGD as well as options for $NO_X$ that included OFA, RSCR, and OFA/RSCR. WDNR scaled the boiler size and associated costs from the Georgia Pacific—Broadway Mill to fit the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills. WDNR also adjusted the cost figures from 2007 to 2019 using the 2020 Chemical Engineering Plant Cost Index as recommended by EPA's Control Cost Manual.[37]

After submitting its plan on July 30, 2021, WDNR indicated on November 10, 2023, and January 3, 2024, updates on the delayed retirement of a boiler at Alliant Energy—Edgewater and the newly planned retirements of boilers at the Ahlstrom-Munksjö—Rhinelander and Kaukauna Mills. As described below, WDNR's additional information documented existing effective measures for Alliant Energy—Edgewater and the enforceable retirement of Boiler B11 at the Ahlstrom-Munksjö—Kaukauna Mill, and described WDNR's plans to issue a title V permit with the enforceable retirement of Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill in 2024.

Alliant Energy—Edgewater

Of the two coal-fired boilers selected for further analysis by WDNR at Alliant Energy—Edgewater, Boiler B24 was retired in 2018. Then WDNR noted that in 2020, Alliant Energy publicly announced plans to close the Edgewater electrical generation facility and retire the remaining coal-fired boiler, Boiler B25, by the end of 2022. Since Boiler B25 was expected to retire in 2022, WDNR initially determined no further analysis of additional or new emission control measures was necessary. However, in June 2022, Alliant Energy announced the retirement of Boiler B25 would be delayed until June 2025. Therefore, on November 10, 2023, WDNR updated EPA with additional information, described below, explaining its decision to forgo a full four-factor analysis on the basis that the existing controls for Boiler B25 are effective and not necessary for reasonable progress.

The coal-fired Boiler B25 has operated a dry flue gas desulfurization scrubber for $SO_2$ control since 2016 and an SCR system for $NO_X$ control since 2014. Based on Clean Air Markets Program Data for Boiler B25 in 2022, $SO_2$ control performance of 0.0515 lbs/MMBtu is among the top 20 percent nationally, and $NO_X$ control performance of 0.0499 lbs/MMBtu is among the top 10 percent nationally for dry bottom wall-fired boilers with FGDs and SCRs. In addition, as part of a Federal consent decree, the $SO_2$ and $NO_X$ emissions for Boiler B25 are both subject to permanent and enforceable plant-wide tonnage limitations as well as a 30-day rolling average limit of 0.075 lbs/MMBtu of $SO_2$ and 0.080 lbs/MMBtu of $NO_X$ and a 12-month rolling average limit of 0.070 lbs/MMBtu of $SO_2$ and 0.070 lbs/MMBtu of $NO_X$. *See* 85 FR 28550 (May 13, 2020). The conditions of this consent decree were made permanent by inclusion in the title I construction permit No. 13–POY–154–R1 and are also contained in the facility's current title V Federal operating permit No. 460033090–P31. With $SO_2$ limits below those in the 2012 MATS rule for power plants, and controls that were recently installed, including an FGD for $SO_2$ control that has been operating since 2016 and an SCR for $NO_X$ control that has been operating since 2014, an analysis of control measures would be unlikely to conclude that more stringent controls are necessary for reasonable progress. As such, even with the delay in retirement, WDNR determined that no further analysis of additional or new emission control measures was necessary and reiterated in the additional information that WDNR considers Boiler B25 effectively controlled.

[36] Details derived from the 2015 LADCO four-factor analysis and BART analysis can be found in appendices 2 and 4 of Wisconsin's plan.

[37] See ''EPA Air Pollution Control Cost Manual, section 1, Chapter 2, Cost Estimation: Concepts and Methodology,'' November 2017, available at: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

As explained in EPA's July 8, 2021, Clarifications Memo (section 4.1), a source's existing measures are generally needed to prevent future visibility impairment (*i.e.,* to prevent future emission increases) and are thus necessary to make reasonable progress. Measures that are necessary to make reasonable progress must be included in the SIP. However, 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 require those measures under the regional haze program in its long-term strategy or SIP in order to prevent future emission increases.

WDNR provided a weight-of-evidence demonstration as described in the 2021 Clarifications Memo to demonstrate that the source has consistently implemented its existing measures and has achieved, using those measures, a reasonably consistent emission rate. This demonstration included heat input and emission rates for Boiler B25 from 2017 through 2022, ranging from 0.0435 to 0.0557 lbs/MMBtu for $SO_2$ and from 0.0336 to 0.0499 lbs/MMBtu for $NO_X$, while remaining below the limits in the Federal consent decree across a range of heat inputs from 12,373,316 to 25,629,492 MMBtu. With historical data from 2016 through 2022 showing reasonably consistent emission rates, WDNR demonstrated that $NO_X$ and $SO_2$ emission rates for Boiler B25 are not expected to increase in the future since consent decree emission limits and associated control technologies will remain in place and compliance with the emission rate limits have already been demonstrated under a wide range of heat input conditions.[38] With the combination of recently installed $SO_2$ and $NO_X$ controls along with limits in the Federal consent decree that ensure emission rates will not increase, including an $SO_2$ limit well below the $SO_2$ limit of 0.2 lbs/MMBtu in the MATS rule for coal-fired EGUs, WDNR determined the existing measures are not necessary to make reasonable progress or prevent future emission increases and, thus, do not need to be included in the regulatory portion of the SIP.

Ahlstrom-Munksjö—Rhinelander Mill

At the Ahlstrom-Munksjö—Rhinelander Mill, coal-fired Boiler B26 is equipped with an electrostatic precipitator (ESP) for control of particulate matter and a DSI system for hydrochloric acid control to achieve Boiler Maximum Achievable Control Technology (MACT) limits and some $SO_2$ control as a co-benefit. The $SO_2$ emissions from Boiler B26 were previously limited during the first implementation period to 3.50 lbs/MMBtu under a consent order issued by WDNR and then later to 3.00 lbs/MMBtu, averaged over 24 hours, included in title V Federal operating permit No. 744008100–P21, which became effective in 2017.

In December 2020, the Ahlstrom-Munksjö—Rhinelander Mill was identified as a primary source of $SO_2$ emissions in the Rhinelander area, and EPA designated a portion of Oneida County as nonattainment for the 2010 1-hour $SO_2$ NAAQS. The Ahlstrom-Munksjö—Rhinelander Mill was subject to $SO_2$ modeling requirements to demonstrate compliance with the $SO_2$ NAAQS in the Rhinelander area pursuant to Wisconsin's air pollution control rule Chapter NR 404 of the Wisconsin Administrative Code. On March 29, 2021, Wisconsin submitted a SIP and an attainment plan for the 2010 $SO_2$ NAAQS. On July 28, 2021, WDNR submitted a request for EPA to redesignate the Rhinelander nonattainment area to attainment of the 2010 $SO_2$ NAAQS. On October 22, 2021, EPA approved Wisconsin's attainment plan for the Rhinelander area, which relied on federally enforceable and permanent emissions limits specified in title I Air Pollution Control Construction Permit Revision 15–DMM–128–R1 [39] with a more stringent $SO_2$ limit (2.38 lbs/MMBtu on a 24-hour average basis) than the previously permitted limit (3.00 lbs/MMBtu on a 24-hour average basis) as well as a heat input limit of 260 MMBtu/hr. WDNR's Preliminary Determination for permit 15–DMM–128–R1 demonstrated that the new limits for $SO_2$ and heat input reduce the potential to emit $NO_X$ by 13 percent and $SO_2$ by 31 percent. These limits were incorporated into Wisconsin's SIP at 40 CFR 52.2570(144)(i). 86 FR 58577 (October 22, 2021). Effective January 12, 2022, EPA redesignated the Rhinelander area to attainment. 87 FR 1685 (January 12, 2022).

For Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill, WDNR's four-factor analysis compiled information from the 2015 LADCO four-factor analysis and previous BART analysis on boilers with similar design and configuration that assessed cost-effectiveness of retrofitting controls onto industrial coal boilers at paper mills. For $SO_2$, WDNR found the analysis indicated that operating existing DSI equipment at full capacity or installing wet or dry flue gas desulfurization (FGD) could be cost-effective for addressing visibility impairment. For $NO_X$, WDNR found that use of OFA, RSCR, or OFA/RSCR could also be cost-effective for addressing visibility impairment. During Wisconsin's public review period of its regional haze SIP for the second implementation period, however, members of the public commented that many of the $NO_X$ and $SO_2$ control technologies, the least expensive of which was estimated at $8,696,521 in capital costs and $2,952,350 in annual operating costs for $SO_2$ controls, may not be affordable to facilities and could force facility closure.

While WDNR found that additional $SO_2$ and $NO_X$ controls for the Ahlstrom-Munksjö—Rhinelander Mill could be cost effective, WDNR did not find it necessary to determine a cost-effectiveness threshold for point sources during the second implementation period. In considering the potential costs, WDNR evaluated potential reductions from the additional controls alongside those resulting from the new limits on $SO_2$ emissions and heat input as well as trends in actual emissions.

For $SO_2$, DSI would provide a maximum reduction of 40 percent at a cost effectiveness of $3,854/ton, while wet FGD and dry FGD would provide a maximum reduction of 95 percent and 93 percent at $5,463/ton and $3,804/ton, respectively. For $NO_X$, OFA would offer 50 percent control efficiency at a cost effectiveness of $225/ton, RSCR would provide 70 percent control efficiency at $2,389/ton, and OFA/RSCR would provide a control efficiency of 85 percent at $1,678/ton. Comparing actual emissions from 2016 to 2019 during the first implementation period when the $SO_2$ limits changed from 3.5 to 3.0 lbs/MMBtu with an allowable heat input of 300 MMBtu, WDNR documented a decrease in $SO_2$ of 33 percent from 1,596 to 1,067 tons/year with a corresponding decrease in $NO_X$ from 1,145 to 811 tons/year. With the new lower limits for $SO_2$ of 2.38 lbs/MMBtu and heat input of 260 MMBtu that were incorporated into the SIP in 2021, WDNR expected 2028 emissions would be at or below the 2019 actual emissions. After weighing the results of the four-factor analysis against the 2028 projected emissions with the new 2021 limits along with the five additional factors discussed below, WDNR concluded that the new 2021 limits provide reductions beyond those

[38] See November 10, 2023, supplemental information.

[39] Documents referenced by WDNR for the title I Construction Permit 15–DMM–128–R1 are provided in the docket.

included in the first implementation period and that requiring additional controls would be unnecessary to demonstrate reasonable progress in the second implementation period. Subsequently, on November 10, 2023, WDNR provided additional information on recent significant operational changes that occurred at the Ahlstrom-Munksjö—Rhinelander Mill. Specifically, the Ahlstrom-Munksjö—Rhinelander Mill stopped operating its coal-fired cyclone Boiler B26 in 2022 and decided to retire it. In its place, the facility intends to install a new natural gas fired Boiler B40 under title I construction permit 22–MMC–035 that WDNR issued in May 2022.[40] The facility's applications for the construction permit indicate that Boiler B26 will be retired, and WDNR stated that the shutdown of Boiler B26 will be reflected under the list of emissions units that have ceased operation in the title V operating permit renewal 74400810A–P30. WNDR indicated the title V operating permit renewal is scheduled to be issued in 2024. WDNR explained that when finalized, the retirement of Boiler B26 will be reflected in the permitting action and would serve to reduce emissions of $NO_X$ and $SO_2$ from the Ahlstrom-Munksjö—Rhinelander Mill impacted Class I areas.

Furthermore, WDNR explained that if the Ahlstrom-Munksjö—Rhinelander Mill were to resume the operation of Boiler B26 or replace it with a comparable coal-fired boiler after the title V operation permit 74400810A–P30 is renewed, either boiler would be considered a new source and the emissions would be limited by WDNR's construction permitting process requiring a PSD review and BACT.

Ahlstrom-Munksjö—Kaukauna Mill

At the Ahlstrom-Munksjö—Kaukauna Mill, Boilers B09 and B11 are equipped with a multi-cyclone and an ESP in series for control of particulate matter, and a DSI system for control of $SO_2$. Boiler B11 shares the ESP and exhaust stack with Boiler B09, which was below WDNR's source selection threshold with a Q/d of 4. The combined $SO_2$ emissions from each of the Boilers B09 and B11 were limited to 5.5 lbs/MMBtu, averaged over 30 days, in title V permit 445031180–P22. Beginning in April of 2019, the mill has fired only natural gas in Boiler B09, which lowered the unit's Q/d below the FLM's threshold of 4 for further consideration.

For Boiler B11 at the Ahlstrom-Munksjö—Kaukauna Mill, WDNR's four-factor analysis compiled information from the 2015 LADCO four-factor analysis and applied site-specific information to the previous BART analysis from the Georgia Pacific—Broadway Mill. WDNR's analysis found that installing new controls could be cost-effective for addressing visibility impairment. For $SO_2$, DSI would provide a maximum reduction of 40 percent at a cost effectiveness of $2,466/ton, while wet FGD and dry FGD would provide a maximum reduction of 95 percent and 93 percent at $3,807 and $1,968/ton, respectively. For $NO_X$, OFA would offer 50 percent control efficiency at a cost effectiveness of $316/ton, RSCR would provide 70 percent control efficiency at $2,770/ton, and OFA/RSCR would provide a control efficiency of 85 percent at $2,130/ton. While WDNR found that additional $SO_2$ and $NO_X$ controls for the Ahlstrom-Munksjö—Kaukauna Mill could be cost effective, WDNR did not find it necessary to determine a cost-effectiveness threshold, similar to its decision for the Ahlstrom-Munksjö—Rhinelander Mill. In considering the potential costs, WDNR evaluated potential reductions from the additional controls alongside those resulting from anticipated new limits on $SO_2$ emissions, which WDNR expected would require a commitment to lower $SO_2$ emissions below 2016 base year levels. After weighing the results of the four-factor analysis against the potential for new lower limits for $SO_2$, WDNR concluded that the anticipated $SO_2$ limits would provide reductions beyond those included in the first implementation period and that requiring additional controls would be unnecessary to demonstrate reasonable progress in the second implementation period.

In its initial SIP submission, WDNR planned to address a lower $SO_2$ permit limit for Boiler B11 when EPA designated portions of Outagamie County, Wisconsin as a nonattainment area for the 2010 1-hour $SO_2$ NAAQS on December 21, 2020, but EPA withdrew the nonattainment designation when Wisconsin provided data showing attainment before the effective date of the designation. *See* 86 FR 16055 (March 26, 2021), 86 FR 19576 (April 14, 2021).

On November 10, 2023, and January 3, 2024, WDNR provided information on operational changes at Boiler B11. Specifically, Boiler B11 experienced a boiler tube failure that caused an explosion in August 2022, and is no longer in operation. The Ahlstrom-Munksjö—Kaukauna Mill made the decision not to bring Boiler B11 back into operation and to retire the unit due to the damage.

The Ahlstrom-Munksjö—Kaukauna Mill is replacing coal-fired Boiler B11 with a natural gas-fired package boiler. A title I construction permit 23–JAM–079[41] was issued on October 4, 2023, to construct a new natural gas-fired package boiler (Unit B84) with rated heat input capacity of 286 MMBtu/hour. Boiler B84 will be equipped with LNB and FGR to minimize $NO_X$ emissions. In addition to the installation of Boiler B84, WDNR issued a title I construction permit 23–JAM–017 in 2022 to the Ahlstrom-Munksjö—Kaukauna Mill to replace a portion of the steam previously supplied by Boiler B11 by increasing the usage of two smaller natural gas-fired package boilers (B82 and B83).

WDNR's Analysis for Preliminary Determination for the Boiler B84 construction permit 23–JAM–079, which was noticed for public comment on September 2, 2023, determined that the combined potential emissions from Boilers B82, B83, and B84 minus the emissions from Boiler B11 results in a decrease of contaminants regulated under New Source Review (NSR). This determination was based on potential emissions from new Boiler B84 (0.74 tons per year (tpy) $SO_2$, 45.1 tpy $NO_X$) along with the increased use of B82 (0.257 tpy $SO_2$ and 15.7 tpy $NO_X$) and B83 (0.257 $SO_2$ and 15.7 $NO_X$) minus the emissions from retired Boiler B11 based on 2018–2019 actual emissions (3,968 tpy $SO_2$ and 965 tpy $NO_X$).

On January 2, 2024, WDNR issued the title V operation permit renewal 44503118A–P30 for the Ahlstrom-Munksjö—Kaukauna Mill, which lists coal-fired cyclone Boiler B11 under ''Emissions units that have ceased operation.''[42] The title I Construction Permit 23–JAM–079 for the new natural gas-fired Boiler B84 sets forth the Ahlstrom-Munksjö—Kaukauna Mill's reasons and intent to retire Boiler B11. Under Wisconsin Administrative Code NR 407.09(2)(d), operation permits must contain provisions consistent with any condition in a previously issued permit if the provisions are still applicable to the source. As such, when conditions in a previously issued construction permit

[40] The title I construction permit 22–MMC–035 documents WDNR referenced are included in the docket.

[41] The title I Construction Permit 23–JAM–079 for the new natural gas-fired Boiler B84 at the Ahlstrom-Munksjö—Kaukauna Mill and the Preliminary Determination referenced by WDNR are included in the docket for this rulemaking.

[42] The title V Operation Permit 44503118A–P30 for the Ahlstrom-Munksjö—Kaukauna Mill referenced by WDNR is included in the docket for this rulemaking.

are not included in the operation permit, those conditions are no longer applicable. WDNR explained that this permitting action is federally enforceable and permanent and if Ahlstrom-Munksjö—Kaukauna Mill seeks to resume operation of Boiler B11 or replace it with a comparable coal-fired boiler, either would be considered a new source and the emissions would be limited by WDNR's construction permitting process, requiring a PSD review and BACT. WDNR explained that this change reflected in the permitting action serves to reduce emissions of $NO_X$ and $SO_2$ from the Ahlstrom-Munksjö—Kaukauna Mill impacting Class I Areas.

3. Wisconsin's Long-Term Strategy

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). After considering information regarding existing effective controls, analyses under the four statutory factors in 40 CFR 51.308(f)(2)(i), and the five additional factors in 40 CFR 51.308(f)(2)(iv) in addition to other requirements in 40 CFR 51.308(f)(2)(ii) described below, WDNR determined the state's long-term strategy for the second implementation period is comprised of the following measures. These measures represent reductions beyond those planned in the first implementation period, changes in emissions since the first implementation period, as well as emission reductions due to ongoing air pollution control programs, source retirements, and replacements. All the following measures are either incorporated into the regulatory portion of Wisconsin's SIP at 40 CFR 52.2570(c) or are otherwise federally enforceable and permanent except where noted.

- On-the-books retirements at Wisconsin coal-fired EGUs: These include retirements that go beyond those planned during the first implementation period. The retirements are reflected in revoked title V permits and title V operation permits as emissions units that have ceased operation: WPL—Edgewater Unit B24 (2018), WE Energies—Pleasant Prairie Units B20 and B21 (2018); Dairyland Power Coop Alma Site Units B23 and B24 (2014); Wisconsin Public Service Corp—JP Pulliam Plant Units B26 and B27 (2018); Dairyland Power Coop Genoa Station-Eop Unit B20 (2021); and E J Stoneman Station Units B21 and B22 (2015).
- On-the-books controls affecting Wisconsin mobile sources: These include state and Federal regulations for onroad and nonroad mobile sources, which continue to reduce emissions nationwide as fleets turn over to newer vehicles and engines. For onroad mobile sources, WDNR cited to Federal regulations for passenger vehicles, trucks, motorcycles, compression engines, ignition engines, air toxics, and light duty vehicle corporate average fuel economy (CAFE) standards. Among the controls for onroad mobile sources was the Wisconsin-administered Federal inspection and maintenance (I/M) program, codified at Wisconsin Administrative Code NR 485 and Trans 131, that limits onroad VOC and $NO_X$ emissions for southeastern counties of the state and continues to provide incremental reductions as fleets turn over to new vehicles. For nonroad mobile sources, WDNR cited to Federal regulations limiting $NO_X$ emissions and fuel sulfur content for various aircraft, marine, locomotive, recreational, and hand-held engines that continue to lower emissions as equipment fleets turn over and older, higher-emitting equipment is removed from service.
- Permitted control requirements and shutdowns at non-EGU point sources: For non-EGU point sources below WDNR's Q/d source selection threshold listed in appendix 3 of Wisconsin's plan, permitted control requirements and shutdowns are not intended to be included in the regulatory portion of the SIP. For permitted control requirements, this includes an annual heat input limitation for the Ahlstrom-Munksjö—NA Specialty Solutions LLC—DePere Boilers B23 and B24 (2017) as well as a switch from coal to natural gas for Catalyst Paper—Biron Mill Boiler B23 (2017), Georgia-Pacific Green Bay Boilers B26 and B28 replacements (2019), Green Bay Packaging Inc Mill Division Boiler B26 replacement (2019), and Domtar A W LLC Nekoosa Boilers B20, B21, and B24 (2014). For shutdowns at non-EGU point sources, this includes Georgia-Pacific Green Bay Boilers B27, B29, B26, and B28 (2015, 2018, 2019), Green Bay Packaging Inc. Mill Division Boiler B26 (2019), Procter & Gamble Paper Products Co. B06 (2015), and Packaging Corporation of America—Tomahawk Boilers B24, B27, and B28 (2015). For shutdowns at non-EGU point sources above WDNR's Q/d source selection threshold, this includes the retirement of Boiler B11 at the Ahlstrom-Munksjö—Kaukauna Mill with the issuance of the title V Operation Permit 44503118A–P30 on January 2, 2024. This provision of the long-term strategy would also include the retirement of coal-fired cyclone Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill when WDNR provides sufficient evidence that Boiler B26 has permanently ceased operation.
- $SO_2$ NAAQS requirements for the Ahlstrom-Munksjö—Kaukauna Mill, Ahlstrom-Munksjö—Rhinelander Mill, and other Wisconsin non-EGU point sources: Although WDNR initially listed the Ahlstrom-Munksjö—Kaukauna Mill Boiler B11 under this provision, the provision above for shutdowns at non-EGU point sources became applicable when it retired. For the Ahlstrom-Munksjö—Rhinelander Mill Boiler B26, this includes limits on heat input of 260 MMBtu/hr and $SO_2$ of 2.38 lb/MMBtu (24-hour average), which are included in title I Construction Permit 15–DMM–128–R1 and are incorporated into Wisconsin's SIP at 40 CFR 52.2570(144)(i). For other Wisconsin non-EGUs, WNDR's plan at appendix 3 lists those that are subject to required $SO_2$ modeling in title V permits to demonstrate compliance with the 2010 $SO_2$ NAAQS pursuant to Wisconsin Administrative Code NR 404. However, they are below WDNR's Q/d source selection threshold and are not intended to be made permanent by incorporation into the regulatory portion of the SIP. These include Wisconsin Rapids Paper Mill, Ahlstrom-Munksjö—Mosinee, Graymont LLC Superior, Domtar A W LLC—Nekoosa, Flambeau River Papers LLC, Appleton Coated LLC, and Ahlstrom-Munksjö NA Specialty Solutions LLC—DePere.

4. EPA's Evaluation of Wisconsin's Compliance With 40 CFR 51.308(f)(2)(i)

EPA is proposing to determine that WDNR's source selection was reasonable and consistent with the requirements of 40 CFR 51.308(f)(2)(i). WDNR's source selection methodology targeted the sources with the highest potential to impair visibility at mandatory Class I areas. WDNR included a thorough description of its source selection methodology. Using a unit Q/d greater than 10, WDNR selected four units for further analysis, including three non-EGUs at the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills and one EGU at WPL—Edgewater. WDNR conducted four-factor analyses on two of the non-EGUs for the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills. The sources WDNR selected for further analysis represented more than 38 percent of the total $SO_2$ emissions and 13 percent of the total NOx emissions for Wisconsin point sources with a Q/d greater than 1 based on 2016 emissions. Of the sources with facility Q/d greater than 4 and less than 10,

Wisconsin provided adequate justification for its decision not to perform further analysis. For non-EGUs, all but two were below a unit Q/d of 4 based on 2016 emissions, and those two have since instituted enforceable measures for reductions: Catalyst Paper—Biron Boiler B23 switched to natural gas in 2017, and Cardinal FG—Menomonie Boiler P01 installed SCR in 2020. For EGUs, there are three with a unit Q/d between 4 and 10. Two EGUs are scheduled to shut down in 2025, at WPL—Columbia, B21 and B22. The third EGU is located at JP Madgett where B25 has LNB/SCR with a NOx limit of 0.14 lbs/MMBtu and DSI with an $SO_2$ limit of 0.09 lbs/MMBtu. The $SO_2$ limit is below the limit of 0.2 lbs/MMBtu specified in the MATS rule for coal-fired EGUs.

Wisconsin's plan shows that the existing measures will achieve $SO_2$ and NOx emission reductions beyond those included in its first implementation period and LADCO's modeled 2028 projections. WDNR determined than no additional controls would be necessary for reasonable progress based on its source selection process, shutdowns, and consideration of existing effective controls that have achieved a reasonably consistent emission rate and will continue to be implemented.

WDNR identified shutdowns, committed controls, and replacement or fuel switching for coal-fired boilers to natural gas-fired boilers for several units below WDNR's Q/d source selection threshold, including sources flagged by the FLMs, that were not relied upon in assessing visibility impacts included in LADCO's 2028 modeling but will contribute to lower emissions than those projected. In section 3.3.3 of its submittal, WDNR adjusted LADCO's 2028 projections lower for these EGUs and non-EGUs by 7,787 tpy NOx and 5,960 tpy $SO_2$ by considering reductions at the following sources:

- Alliant Energy—Columbia shutdown of boilers B21 and B22 (2025)
- WE Energies—Oak Creek Power Plant shutdown of Boilers B25, B26, B27, and B28 (2023–2024)
- Georgia-Pacific Green Bay Broadway Mill—retirement of coal Boiler B29 (2018) as well as replacement of coal Boilers B26 and B28 with three natural gas boilers (2019–2020)
- Catalyst Paper—Biron Mill—coal Boiler B23 fuel switch to natural gas (2017)
- Cardinal FG—Menominee—installation of SCR (2020)
- Cardinal FG—Portage—installation of SCR (2019)
- Green Bay Packaging Inc. Mill—replacement of coal-fired Boiler B26 with two natural gas boilers (2019)
- Ahlstrom-Munksjö—De Pere Mill—10 percent annual heat input limitation for coal Boilers B23 and B24 (2017).

The shutdowns, committed controls, replacements of coal-fired boilers with natural gas-fired boilers, and fuel switching from coal to natural gas at other boilers contribute to Wisconsin's emission reductions and the associated visibility improvements at the affected LADCO Class I Areas for the second implementation period. Except for Alliant Energy—Columbia, since these units were below WDNR's Q/d source selection threshold and not selected for a further analysis, WDNR did not rely on the reductions from these sources to make reasonable progress.

The retirement of coal-fired Boiler B11 at the Ahlstrom-Munksjö—Kaukauna Mill serves to minimize emissions from this source moving forward. Coal-fired Boiler B11 is being replaced by natural gas-fired boilers B82, B83, and B84. This replacement results in greater than a 92 percent decrease in $NO_X$ and greater than a 99 percent decrease in $SO_2$ emissions, surpassing the reductions that would have been achieved with the addition of controls evaluated in the four-factor analysis that WDNR considered potentially cost effective. As a result, the retirement of Boiler B11 constitutes reasonable progress. EPA proposes to find that since B11 experienced a catastrophic failure, is no longer permitted to operate, has been replaced by natural gas units, the retirement is already federally enforceable and permanent, and it does not need to be included in the regulatory portion of the SIP.

The pending retirement of coal-fired Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill will also provide federally enforceable and permanent emission reductions from another one of Wisconsin's largest sources. Ahlstrom-Munksjö—Rhinelander Mill plans to rely on the retirement of coal-fired Boiler B26 and replacement with a lower emitting natural-gas fired Boiler B40, reducing the potential to emit $NO_X$ by 13 percent and $SO_2$ by 31 percent.

While the Ahlstrom-Munksjö—Rhinelander Mill proceeds with retirement as the actual control measure in lieu of reliance on new limits or new control systems for Boiler B26, EPA finds that Wisconsin must provide sufficient evidence that Boiler B26 has permanently ceased operation and incorporate this measure into the long-term strategy to make reasonable progress. As such, EPA proposes to find that the retirement of Boiler B26 is necessary for reasonable progress and must be included in the SIP or made federally enforceable and permanent elsewhere.

Without evidence that Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased operation, EPA proposes to partially approve and partially disapprove the Wisconsin regional haze SIP for the second implementation period. In the event that WDNR does not provide sufficient evidence of the federally enforceable and permanent shutdown of Boiler B26 at the Ahlstrom Munksjo—Rhinelander Mill, EPA proposes to approve the elements of Wisconsin's regional haze SIP related to requirements contained in 40 CFR 51.308(f)(1), (f)(3) through (6), (g)(1) through (5), and (i)(2) through (4), and disapprove the elements of Wisconsin's SIP related to the requirements of 40 CFR 51.308(f)(2) due to insufficient information regarding cessation of operations at Boiler B26. EPA proposes to find that Wisconsin has not satisfied the requirements of 40 CFR 51.308(f)(2) related to evaluating and determining the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis, because Wisconsin's analysis determined that additional controls would be appropriate at Boiler 26 of the Ahlstrom-Munksjö—Rhinelander Mill if that boiler were to continue operating. At the time of this action, Boiler 26 is still permitted to operate.

In the alternative, if WDNR provides sufficient evidence that the Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased operation of Boiler B26 before final action of this rulemaking, EPA proposes to find that Wisconsin has satisfied the requirements of 40 CFR 51.308(f)(2)(i) related to evaluating and determining the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis. EPA proposes to find that Wisconsin's SIP submission, including sufficient evidence that Boiler 26 has ceased operation, indicates that WDNR reasonably applied the Q/d source selection process in relying on the closest Class I areas and the emissions of $NO_X$, $SO_2$, $PM_{2.5}$, $NH_3$ and VOC. EPA proposes to find that WDNR examined a reasonable set of sources, including sources flagged by FLMs. EPA proposes to find that WDNR adequately demonstrated that selecting additional sources below Wisconsin's selected threshold for four-factor analysis as

suggested by FLMs would not have resulted in additional emission reduction measures being determined to be necessary to make reasonable progress for the second implementation period based on information provided by WDNR that the sources are already well-controlled, currently retired, or retiring by 2025.

EPA proposes to find that WDNR adequately explained its decision to focus on the two pollutants, $SO_2$ and $NO_X$, that currently drive visibility impairment within the LADCO region. In the event that Wisconsin provides evidence that Boiler 26 at Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased operation, EPA proposes to find that WDNR adequately supported its conclusions for its top-impacting sources in determining new controls would not be necessary for reasonable progress. EPA would base this proposed finding on the state's examination of the existing effective controls at its largest operating EGU Alliant Energy—Edgewater, the retirement at its non-EGU source Ahlstrom-Munksjö—Kaukauna Mill, which are both federally enforceable and permanent, as well as the pending retirement at the Rhinelander Mill. EPA proposes to find the state's approach reasonable because it demonstrated that the sources with the greatest modeled impacts on visibility, as well as other sources above Q/d of 4 and below the state's Q/d threshold, either have shut down, reduced their emissions significantly, or are subject to stringent emission control measures.

5. Consultation With States

The consultation requirements of 40 CFR 51.308(f)(2)(ii), provides that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 40 CFR 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

WDNR consulted with other LADCO states to develop a coordinated emission management approach to its regional haze SIP and address Wisconsin's impact on nearby Class I areas. Wisconsin participated in the LADCO Regional Haze Technical Workgroup meetings beginning in January 2018. These meetings are on-going. WDNR, through LADCO, also participated in intra and inter-RPO informal discussions.

No states have notified WDNR that they identified emissions from Wisconsin sources as contributing to visibility impairment at their Class I areas. There were no requests of Wisconsin from other states to undertake specific emissions reductions necessary to make reasonable progress for the second regional haze implementation period.

WDNR has met the 40 CFR 51.308(f)(2)(ii)(A) and (B) requirements with its participation in the LADCO consultation process plus its individual consultation meetings with contributing states. There were no disagreements with another state, so 40 CFR 51.308(f)(2)(ii)(C) does not apply to Wisconsin. EPA proposes that Wisconsin has satisfied the consultation requirements of 40 CFR 51.308(f)(2)(ii).

The requirements of 40 CFR 51.308(f)(2)(iii) provide that a state must document the technical basis for its decision making to determine the emission reductions measures that are necessary to make reasonable progress. WDNR has documented the technical basis, including the modeling, monitoring, cost, engineering, and emissions information that was relied on in determining the emission reduction measures that are necessary to make reasonable progress. As described in more detail above, WDNR documented the modeling done by LADCO to determine visibility projections and contributions to impairment at the Class I areas, including justification for the 2016 base year selection and the 2028 emission projections based on ERTAC forecasts and state-reported changes. For monitoring, Wisconsin documented the statewide monitoring network, which is maintained by WDNR along with its Tribal partners, to measure various air pollutants, including those that contribute to visibility impairment at Class I areas, and to report data used to determine area attainment with the NAAQS. For emissions information, WDNR provided annual emissions by source category for 2005, 2011, 2016, 2017, and 2019 plus emissions for sources selected for a four-factor analysis from 2005, 2016, and 2019 emissions, as well as 2028-projected statewide emissions by unit and source category. In addition, WDNR provided annual emissions data for Alliant Energy—Edgewater B25 for 2016—2022. For costs and engineering, WDNR provided four-factor analyses complied by LADCO, which evaluated potential control scenarios and costs for coal-fired industrial boilers at pulp and paper mills as well as site-specific four-factor analyses for the Ahlstrom-Munksjö—Kaukauna and Rhinelander Mills. Such documentation of the technical basis of the long-term strategy satisfies the requirements of 40 CFR 51.308(f)(2)(iii).

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to EPA (or a more recent year), with a 12-month exemption period for newly submitted data. As previously mentioned above, WDNR participated in the development of technical analyses, including emission inventory information, by LADCO and its member states, and is relying in part on those analyses to satisfy the emission inventory requirements. WDNR explained, in section 3.5.4 of its submission, that emissions for the 2016 base year and the 2028 projected year used in LADCO modeling address elements of section 51.308(f)(6)(v) of the RHR, which requires that states provide recent and future year emissions inventories of pollutants anticipated to contribute to visibility impairment in any Class I areas. WDNR's SIP submission also included 2017 NEI emission data, as it corresponds to the year of the most recent triennial NEI, required under 40 CFR 51.308(f)(2)(iii) of the RHR. Based on Wisconsin's consideration and analysis of the 2017 emission data in its SIP submittal, EPA proposes to find that WDNR has satisfied the emissions information requirement in 40 CFR 51.308(f)(2)(iii).

6. Five Additional Factors

In addition to the four statutory factors, states must also consider the five additional factors listed in 40 CFR 51.308(f)(2)(iv) in developing their long-term strategies.

Pursuant to 40 CFR 51.308(f)(2)(iv)(A), WDNR noted that ongoing state and Federal emission control programs that have and will continue to contribute to Wisconsin's emission reductions through 2028 would impact emissions of visibility impairing pollutants from point, nonpoint, and mobile sources in the second implementation period. For point sources, this includes Federal transport rules for $NO_X$ and $SO_2$, Wisconsin $NO_X$ Reasonable Available Control Technology (RACT) and Reasonable Available Control Measures (RACM), Boiler MACT, title V

permitting actions, and 2010 $SO_2$ NAAQS requirements. For onroad mobile sources, Wisconsin cited to Federal regulations for passenger vehicles, trucks, motorcycles, compression engines, ignition engines, air toxics, and light duty vehicle CAFE standards. Among the controls for onroad mobile sources was the Wisconsin-administered Federal I/M program, codified at Wisconsin Administrative Code NR 485 and Trans 131, that limits onroad VOC and $NO_X$ emissions for southeastern counties of the state and continues to provide incremental reductions as fleets turn over to new vehicles. For nonroad mobile sources, Wisconsin cited to Federal regulations for engines, including aircraft, locomotive, recreational vehicle, compression ignition, marine compression ignition, marine spark ignition, large spark ignition, and small spark ignition. WDNR included in their SIP comprehensive lists of control measures with their effective dates, pollutants addressed, and corresponding Wisconsin Administrative Code provisions.[43]

As required by 40 CFR 51.308(f)(2)(iv)(B), Wisconsin's consideration of measures to mitigate the impacts of construction activities includes, in section 3.5.2 of its SIP submission, a list of measures that WDNR has implemented to mitigate the impacts from such activities. WDNR has implemented standards that reduce fugitive dust emissions from construction, including rules ensuring that permitting of new and modified sources through WDNR's NSR program is consistent with making reasonable progress toward the visibility goals of the second implementation period haze SIP.

Pursuant to 40 CFR 51.308(f)(2)(iv), source retirements and replacement schedules are addressed in section 3.5.3 and appendix 3 of WDNR's SIP submission as well as the additional information WDNR provided on November 10, 2023, and January 3, 2024. Wisconsin point source EGU and non-EGU retirements and on-the-books controls as of September 2020 were considered in developing the 2028 emission projections for LADCO's modeling. However, retirements and replacements for several units listed in section 3.3.3 of Wisconsin's SIP submission along with the Ahlstrom-Munksjö Rhinelander and Kaukauna Mills were not listed, making the modeled 2028 projections conservative. These retirements and replacements contribute to Wisconsin's emission reductions and the associated visibility improvements at the affected LADCO Class I Areas for the second implementation period.

In considering smoke management for prescribed burns as required in 40 CFR 51.308(f)(2)(iv)(D), WDNR explained, in section 3.5.4 of its submission, that WDNR has worked with land managers in Wisconsin to prepare a plan to address controllable fire activities that can impact visibility locally. Appendix 6 contains the ''Wisconsin Smoke Management Plan: Best Management Practices for Prescribed Burns'' (April 2021).

As required by 40 CFR 51.308(f)(2)(iv), WDNR considered the anticipated net effect on visibility improvements at the LADCO Class I Areas due to projected changes in emissions in section 3.5.5 of its plan. The visibility improvement expected during the second implementation period is calculated from LADCO's 2028 modeled emission projections (appendix 2 of WDNR's submission), which accounts for on-the-books and on-the-way controls, including scheduled EGU shutdowns that were publicly announced as of September 2020. Current visibility conditions at the LADCO Class I Areas on the most impaired days are below their respective glidepaths (Figure 3 of WDNR's submission). LADCO's 2028 projections are similarly below the glidepath at the end of the second implementation period (Figure 3 of WDNR's submission). Also, WDNR's submission shows that current visibility conditions on the clearest days have resulted in continued improvement relative to baseline conditions (Figure 2 of WDNR's submission). Table 18 of WDNR's submission lists the expected improvement in visibility on the most impaired days over the course of the second implementation period at the LADCO Class I Areas. As noted in section 3.7 of WDNR's submission, an even larger improvement in visibility will be achieved by the end of the second implementation period than is presented in Table 18 of WDNR's submission due to the implementation of additional control measures in Wisconsin that are not included in LADCO's 2028 Modeled emissions.

Beyond the additional controls noted in section 3.3.3 of Wisconsin's plan, WDNR also considered the net effect on visibility improvements at the LADCO Class I Areas with the hypothetical elimination of emissions from Boilers B26 and B11 at the Ahlstrom-Munksjö—Rhinelander and Kaukauna Mills, two of Wisconsin's largest sources. Boilers B26 and B11 accounted for 6 percent and 23 percent of Wisconsin's total 2028 modeled $SO_2$ emissions, respectively. WDNR estimated that eliminating the emissions from boilers B26 and B11 that contribute to particulate sulfate and nitrate would yield a cumulative visibility improvement of $0.65 Mm^{-1}$ (~0.14 dv), accounting for approximately 9 percent of Wisconsin's total contribution to visibility impairment in the LADCO Class I Areas.[44]

WDNR concludes that, when weighing the four-factor analyses and the five additional required factors along with the retirement of Boiler B11 at Ahlstrom-Munksjö—Kaukauna and the planned retirement of Boiler B26 Ahlstrom-Munksjö—Rhinelander Mill both in 2024, it is not necessary to require any additional controls at the these facilities to meet second implementation period regional haze SIP requirements.[45] EPA proposes to find that Wisconsin reasonably considered and satisfied the requirements for each of the five additional factors in 40 CFR 51.308(f)(2)(iv) in developing its long-term strategy, with the exception of the control measures for Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill unless WDNR meets the condition specified above to provide evidence of the permanent shutdown of Boiler B26 before final action in this rulemaking.

*F. Reasonable Progress Goals*

The provision 40 CFR 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Section 51.308(f)(3)(i) requires a state in which a mandatory Class I area is located to establish RPGs—one each for the most impaired and clearest days-reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under 40 CFR 51.308(f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section

[43] *See* section 3.5.1 of the Wisconsin Regional Haze SIP for the Second Implementation Period 2018–2028 (July 30, 2021).

[44] *See* appendix 2, Table A2–3 of the Wisconsin Regional Haze Plan for the Second Implementation Period 2018–2028 (July 30, 2021).

[45] *See* sections 3.2, 3.3, and 3.5 of the Wisconsin Regional Haze Plan for the Second Implementation Period 2018–2028 (July 30, 2021).

51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the URP calculated under 40 CFR 51.308(f)(1)(vi). Under 40 CFR 51.308(f)(3)(ii)(A), if the state in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the state must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(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, the upwind state must provide the same demonstration. Because Wisconsin has no mandatory Class I areas within its borders to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D, Wisconsin is subject only to 40 CFR 51.308(f)(3)(ii)(B), but not 40 CFR 51.308(f)(3)(i) or (f)(3)(ii)(A).

Under 40 CFR 51.308(f)(3)(ii)(B), a state that contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another state for which a demonstration by the other state is required under 40 CFR 51.308(f)(3)(ii)(B) must demonstrate that there are no additional emission reduction measures that would be reasonable to include in its long-term strategy. WDNR's SIP submission included glidepath checks for LADCO Class I Areas, which show that the RPG for the 20 percent most impaired days for the affected LADCO Class I Areas are not above the URP glidepath, and that the RPG for the 20 percent clearest days shows no degradation. In addition, LADCO's visibility projections at the LADCO Class I Areas show that the visibility projections for 2028 for the most impaired days are below the respective points for 2028 on the URPs.[46] Therefore, we propose it is reasonable that the demonstration requirement under 40 CFR 51.308(f)(3)(ii)(B) as it pertains to these areas will not be triggered.

EPA proposes to determine that WDNR has satisfied the applicable requirements of 40 CFR 51.308(f)(3) relating to RPGs.

*G. Monitoring Strategy and Other Implementation Plan Requirements*

40 CFR 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this section is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the IMPROVE network.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether RPGs to address regional haze for all mandatory Class I Federal areas within the state are being achieved. Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the state. As noted above, Wisconsin has no mandatory Federal Class I areas identified in 40 CFR part 81, subpart D, located within the state to which the requirements of the visibility protection program apply. Therefore, 40 CFR 51.308(f)(6)(i) and (ii) do not apply.

Section 51.308(f)(6)(iii) requires states with no Class I areas to include procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states. States with Class I areas must establish a monitoring program and report data to EPA that is representative of visibility at the Class I Federal areas. The IMPROVE network meets this requirement. WDNR stated that, as a participant in LADCO, it reviewed information about the chemical composition of baseline monitoring data at LADCO Class I Areas to understand the sources of haze causing pollutants. WDNR does not operate any monitoring sites under the Federal IMPROVE program and, therefore, does not require approval of its monitoring network under the RHR. WDNR commits to continuing support of ongoing visibility monitoring in Class I Federal areas, agrees that the IMPROVE network is an appropriate monitoring network to track regional haze progress, and commits to working with neighboring states and FLMs to meet the goals of the IMPROVE program. WDNR also commits to using monitoring data and procedures consistent with EPA's guidance to review progress and trends in visibility at Class I Federal areas that may be affected by emissions from Wisconsin, both for comprehensive periodic revisions of this implementation plan and for periodic reports describing progress towards the RPGs for those areas.[47]

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state. As noted above, Wisconsin does not have any mandatory Class I Federal areas located within its borders to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D, and, therefore, 40 CFR 51.308(f)(6)(iv) does not apply.

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. Wisconsin provides for emissions inventories and estimates for future projected emissions by participating in the LADCO RPO and complying with EPA's AERR. In 40 CFR part 51, subpart A, the AERR requires states to submit updated emissions inventories for criteria pollutants to EPA's Emissions Inventory System every three years. The emission inventory data is used to develop the NEI, which provides for, among other things, a triennial statewide inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment. Section 3.3.2 of Wisconsin's submission includes a table of NEI data. The source categories of the emissions inventories included are: (1) point sources, (2) nonpoint sources, (3) nonroad mobile sources, and (4) onroad mobile sources. The point source category is further divided into EGU point sources and non-EGU point sources. Wisconsin included NEI emissions inventories for 2017 for the following pollutants: $SO_2$, $NO_X$, $PM_{2.5}$, VOCs, and $NH_3$. Wisconsin also provided a summary of $SO_2$, $NO_X$, $PM_{2.5}$, VOCs, and $NH_3$ emissions for the same source categories sources for 2016 that LADCO used in developing the 2016 base year emissions inventory to

[46] *See* section 3.2.2, 3.7, and appendix 2 of the Wisconsin Regional Haze Plan for the Second Implementation Period 2018–2028 (July 30, 2021).

[47] *See* section 3.9 of the Wisconsin Regional Haze SIP for the Second Implementation Period 2018–2028 (July 30, 2021).

project emissions to year 2028 as well a summary of 2005 and 2019 $SO_2$ and $NO_X$ emissions for EGU and non-EGU point sources.[48]

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. For future projected emissions, Wisconsin relied on the LADCO modeling and analysis, which estimated 2028 projected emissions of $SO_2$ and $NO_X$ for specific facilities in the LADCO states to provide an assessment of expected future year air quality based on 2016 emissions and ERTAC forecasts. WDNR also adjusted the 2028 projections to account for additional emission reductions from retirements and committed controls for several units that were not included in LADCO's modeling. WDNR commits to periodically updating Wisconsin's emissions inventories for pollutants anticipated to cause or contribute to visibility impairment in Class I areas to support future regional haze progress reports and SIP revisions.

No further elements are necessary for Wisconsin to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

EPA proposes to find that Wisconsin has met the requirements of 40 CFR 51.308(f)(6) as described above, including through its continued participation in LADCO, its statewide emissions inventory, and its emissions reporting to EPA.

*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 each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Section 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

Wisconsin's progress report for the first implementation period, submitted on March 17, 2017, documented emissions of $SO_2$ and $NO_X$ from 2005–2015. EPA published a final rule approving the Wisconsin regional haze progress report as a revision to the Wisconsin SIP on June 15, 2018 (83 FR 27910). For the second implementation period SIP submittal, the 2019 Guidance recommends the progress report cover the first full year that was not incorporated into the previous progress report through a year that is as close as possible to the submission date of the 2021 SIP.

To address the progress report elements of 40 CFR 51.308(g)(1) and (2), sections 3.3.2 and 3.3.3 of Wisconsin's SIP recounts the measures and emissions reductions achieved from 2016, the first year following its previous progress report, through 2017, the most recent NEI year available at the time for sector level emissions. During the first implementation period, measures that WDNR relied upon in developing its long-term strategy focused on reducing $NO_X$ and $SO_2$ emissions. WDNR describes these measures in section 3.5.1 of Wisconsin's submittal, including RACT, RACM, MACT, 2010 $SO_2$ NAAQS requirements, and the Cross-State Air Pollution Rule to satisfy certain BART requirements for EGUs. The status of each of these measures is ongoing, and WDNR summarizes the emissions reductions achieved. Table 8 of the progress report documents emissions changes from 2016 to 2017 for the point-EGU, point-non-EGU, area, onroad, and nonroad sectors, showing overall emission reductions in $NO_X$ and $SO_2$ despite increases in point-EGU and nonroad sectors. For point-EGUs and non-EGUs, table 10 of WDNR's submission further demonstrates the emission reductions in $NO_X$ and $SO_2$ from 2005 to 2016 to 2019. EPA proposes to find that WDNR 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.

Section 51.308(g)(3) requires states to assess RPGs, including current visibility conditions and changes, for any Class I areas within the state. As described above, Wisconsin has no mandatory Class I Federal areas within its borders that are among the 156 mandatory Class I Federal areas where EPA deemed visibility to be an important value. Therefore, 40 CFR 51.308(g)(3) does not apply.

Pursuant to 40 CFR 51.308(g)(4), in section 3.3.2 and 3.3.3 of their submission, WDNR provided an analysis tracking the change in emissions of $NO_X$, $SO_2$, $PM_{2.5}$, $NH_3$, and VOC from all sources and activities, including from point, nonpoint, nonroad mobile, and onroad mobile sources from 2016 through 2017, the most recent NEI year available at the time for sector level emissions. As discussed above, Table 8 shows overall emission reductions in $NO_X$ and $SO_2$ despite increases in point-EGU and nonroad sectors. While overall emissions showed increases in $PM_{2.5}$, $NH_3$, and VOC due primarily to point-EGU and nonroad sectors, WDNR notes that these pollutants contribute less to visibility impairment than emissions of $NO_X$ and $SO_2$ and that the increases are outweighed by emission reductions in $NO_X$ and $SO_2$. In further analysis under table 10, WDNR summarized emissions from the EGU and non-EGU sectors for 2005, 2016, and 2019, demonstrating reductions of 62 percent in $NO_X$ and 86 percent in $SO_2$ from 2005 to 2016 and additional reductions of 18 percent in $NO_X$ and 41 percent in $SO_2$ from 2016 to 2019. WDNR also compared 2018 projected emissions from the first implementation period to the 2028 modeled emissions for the second implementation period that had been adjusted for shutdowns and committed controls not included in the LADCO modeling, showing reductions of 58 percent in $NO_X$ and 85 percent in $SO_2$.

[48] *See* section 3.3.3 of the Wisconsin Regional Haze SIP for the Second Implementation Period 2018–2028 (July 30, 2021).

EPA is proposing to find that Wisconsin has satisfied the requirements of 40 CFR 51.308(g)(4) by tracking the change in emissions of $NO_X$, $SO_2$, $PM_{2.5}$, VOCs, and $NH_3$ identified by type of source since the first progress report.

To address 40 CFR 51.308(g)(5), WDNR assessed significant changes in anthropogenic emissions since the first implementation period, whether they were anticipated, and their impact on progress in improving visibility. Tables 8 and 10 of Wisconsin's plan summarize actual and projected emission reductions from 2016 to 2017, 2019, and 2028. Additional information summarizing process level emissions and visibility improvements can be found in appendix 2 and appendix 3 of Wisconsin's submittal. The 2028 projected emissions modeled by LADCO included shutdowns and other on-the books controls for EGUs as of September 2020, while the non-EGU projections were primarily carried forward from the 2016 base year emissions. In addition, section 3.3. and appendix 3 of Wisconsin's submittal, WDNR lists emission reductions from unit shutdowns, fuel switches, and controls measures in Wisconsin that were not included in LADCO's 2028 modeled emissions. As such, WDNR developed 2028 adjusted emission projections. However, at the time, WDNR did not anticipate the retirement of Boilers B26 and B11 at the Ahlstrom-Munksjö—Rhinelander and Kaukauna Mills and the resulting greater reductions in $SO_2$ and $NO_X$ as described in the November 10, 2023, and January 3, 2024, additional information. The reductions identified in LADCO's projections and WDNR's adjusted projections have led to improvements in visibility at the LADCO Class I Areas as described in section 3.5.5 of Wisconsin's submittal. Further improvements in visibility are anticipated with the emission reductions to be realized by the retirement of Boilers B26 and B11. The emissions trend data in Wisconsin's SIP submission and the subsequent clarifying information support an assessment that anthropogenic haze-causing pollutant emissions in Wisconsin have decreased during the reporting period and that changes in emissions have not limited or impeded progress in reducing pollutant emissions and improving visibility. EPA is proposing to find that Wisconsin has met the requirements of 40 CFR 51.308(g)(5).

*I. Requirements for State and Federal Land Manager Coordination*

CAA section 169A(d) 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, 40 CFR 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs' can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least 60 days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

On February 22, 2021, WDNR provided its draft regional haze plan to the USFS, FWS, and the NPS for a 60-day review and comment period pursuant to 40 CFR 51.308(i)(2). A consultation meeting between the FLMs and representatives of WDNR was held on March 23, 2021. NPS sent a comment letter on July 11, 2021. To address 40 CFR 51.308(i)(3), Wisconsin's submittal summarized FLM comments and included WDNR's responses in appendix 7. In addition, WDNR summarized additional written comments from the National Park Service during the public comment period and provided responses in appendix 8. EPA proposes to find that WDNR 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.[49]

The public notice for WDNR's second implementation period regional haze SIP was scheduled following the FLM comment period to meet the minimum 60-day FLM consultation period required under 40 CFR 51.308(i)(2). The public comment period was from April 28, 2021, to June 2, 2021. A virtual public hearing was held on June 1, 2021, at 3:00 p.m. CDT online via Zoom and open conference call. No verbal comments were received at the public hearing. As noted above, appendix 8 of Wisconsin's plan contains WDNR's responses to the written comments received during the public comment period from EPA, NPS, and the Ahlstrom-Munksjö—Rhinelander Mill. WDNR considered input from FLMs and the public when finalizing this SIP revision.

Wisconsin's SIP submission includes a commitment to revise and submit a regional haze SIP by July 31, 2028, and every ten years thereafter. The state's commitment includes submitting periodic progress reports in accordance with 40 CFR 51.308(f) and a commitment to evaluate progress towards the reasonable progress goal for each mandatory Class I Federal area located outside the state that may be affected by emissions from within the state in accordance with 40 CFR 51.308(g).

## V. Proposed Action

EPA is proposing to partially approve and partially disapprove Wisconsin's July 30, 2021, SIP submission. In the alternative, in the event that WDNR provides sufficient evidence to EPA, before final action in this rulemaking, that coal-fired cyclone Boiler B26 at the Ahlstrom-Munksjö—Rhinelander Mill has permanently ceased operating, EPA proposes to approve Wisconsin's SIP submission, including the information regarding the permanent cessation of operations at Boiler 26, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f).

## 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). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions

[49] *See* section 3.8 of Wisconsin's July 30, 2021 Regional Haze SIP submission.

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

WDNR did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

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Dated: July 31, 2024.

**Debra Shore,**

*Regional Administrator, Region 5.*

[FR Doc. 2024–17279 Filed 8–8–24; 8:45 am]

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