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Title 3—

Proclamation 10790 of August 12, 2024

The President

To Further Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products)

By the President of the United States of America

A Proclamation

1. On January 23, 2018, pursuant to section 203 of the Trade Act of 1974, as amended (the “Trade Act”) (19 U.S.C. 2253), the President issued Proclamation 9693, imposing a safeguard measure for a period of 4 years that included both a tariff-rate quota (TRQ) on imports of certain crystalline silicon photovoltaic (CSPV) cells, not partially or fully assembled into other products, provided for in subheading 8541.40.60 (currently 8541.42.00) of the Harmonized Tariff Schedule of the United States (HTS), and an increase in duties (safeguard tariff) on imports of CSPV cells exceeding the TRQ and all imports of other CSPV products, including modules provided for in subheading 8541.40.60 (currently 8541.43.00) of the HTS. Proclamation 9693 exempted imports from certain designated beneficiary countries under the Generalized System of Preferences from the application of the safeguard measure.

2. After taking into account the United States International Trade Commission’s (USITC) report on the results of its monitoring of developments with respect to the domestic solar industry (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA–201–075 (Monitoring)) and the USITC’s report regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure, No. TA–201–075 (Modification)), and after receiving a petition from a majority of the representatives of the domestic industry with respect to each of the following modifications, on October 10, 2020, the President issued Proclamation 10101 under section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)). In Proclamation 10101, the President determined that the domestic industry had begun to make a positive adjustment to import competition, as shown by the increases in domestic module production capacity, production, and market share. Proclamation 10101 also:

(a) revoked the exclusion of bifacial modules from application of the safeguard measure on the basis that it had impaired and was likely to continue to impair the effectiveness of the safeguard action; and

(b) adjusted the safeguard tariff for the fourth year of the safeguard measure from 15 percent to 18 percent on the basis that the exclusion of bifacial modules from application of the safeguard tariff had impaired the remedial effectiveness of the 4-year action proclaimed in Proclamation 9693, and to achieve the full remedial effect envisaged in that action.

3. On November 16, 2021, the United States Court of International Trade (CIT) held in *Solar Energy Industries Association et al. v. United States* that the President acted outside of his statutory authority in issuing Proclamation 10101, and enjoined the Government from enforcing that proclamation.

However, in November 2023, a panel of the United States Court of Appeals for the Federal Circuit reversed the CIT's decision.

4. After receiving the USITC's December 8, 2021, determination and report pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), which found that the safeguard action continues to be necessary to prevent or remedy the serious injury to the domestic industry and that there was evidence that the domestic industry was making a positive adjustment to import competition (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products, Investigation No. TA-201-75 (Extension)), and after taking into account the information provided in the USITC's report and the information received from the public through the process published in the *Federal Register* on September 30, 2021 (86 FR 54279), pursuant to section 203(e)(1)(B) of the Trade Act (19 U.S.C. 2253(e)(1)(B)), I issued Proclamation 10339 on February 4, 2022. In Proclamation 10339, I determined that the safeguard action on imports of CSPV cells, whether or not partially or fully assembled into other products, continued to be necessary to prevent or remedy the serious injury to the domestic industry, and that there was evidence that the domestic industry was making a positive adjustment to import competition. I further determined to extend the safeguard measure proclaimed in Proclamation 9693, as modified by Proclamation 10101, in relevant part, as follows:

(a) continuation of the TRQ on imports of solar cells not partially or fully assembled into other products imposed by Proclamation 9693, as described in paragraph 1 of Proclamation 10339 and paragraph 1 of this proclamation, for an additional period of 4 years, with unchanging within-quota quantities of 5.0 gigawatts (GW) for each year and annual reductions in the rates of duty applicable to goods entered in excess of those quantities of cells in the fifth, sixth, seventh, and eighth years, as described in Annex I to Proclamation 10339; and

(b) continuation of the safeguard tariff on imports of modules imposed by Proclamation 9693, as described in paragraph 1 of Proclamation 10339 and paragraph 1 of this proclamation, for an additional period of 4 years, with annual reductions in the fifth, sixth, seventh, and eighth years, as described in Annex I to Proclamation 10339.

5. If an extension of an action taken under section 203 of the Trade Act (19 U.S.C. 2253) exceeds 3 years, section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)) requires the USITC to issue a report to the President and the Congress on its monitoring of developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, no later than the midpoint of the period of the extension.

6. On February 6, 2024, the USITC issued its midterm report pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)) on its monitoring of developments within the industry producing CSPV products since the President's extension of the safeguard measure (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA-201-075 (Second Monitoring)). In its report, the USITC found that the safeguard measure has resulted in positive adjustments from the domestic industry in light of increased actual and planned module production; various announcements of planned domestic cell production; and improvements in several of the domestic industry's financial, trade, and employment indicators.

7. On September 19, 2023, a majority of the representatives of the domestic industry submitted a petition under section 204(b) of the Trade Act (19 U.S.C. 2254(b)(1)(B)) to modify the safeguard measure by eliminating the TRQ and providing for tariff-free treatment of all imports of CSPV cells, or alternatively to increase the TRQ from 5 GW to 20 GW annually. The petition explains how the domestic industry has continued to make a positive adjustment to import competition. It also explains that expected domestic

module production coupled with current lack of sufficient domestic cell production will require domestic module producers to rely on imports in the near term, in excess of the current 5 GW within-quota TRQ amount.

8. Section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)) authorizes the President, upon submission of a petition from a majority of the representatives of the domestic industry, to reduce, modify, or terminate an action taken under section 203 of the Trade Act when the President determines that the domestic industry has made a positive adjustment to import competition.

9. After taking into account the information provided in the USITC's midterm report, and after receiving a petition from a majority of the representatives of the domestic industry requesting expansion or elimination of the TRQ on imports of certain CSPV cells, I have determined that the domestic industry has been making and is continuing to make a positive adjustment to import competition, shown by increased actual and planned module production; various announcements of planned domestic cell production; and improvements in several of the domestic industry's financial, trade, and employment indicators. Furthermore, I have determined that expected domestic module production and associated imports of CSPV cells have increased such that it is necessary to modify the action taken in Proclamation 9693, as extended by Proclamation 10339, by expanding the TRQ to unchanging within-quota quantities of 12.5 GW.

10. The in-quota quantity in each year of the TRQ described in paragraph 9 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such TRQ pursuant to clause (4) of Proclamation 10339 or paragraph 10 of Proclamation 9693.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) In order to modify the action applicable to imports of CSPV cells under HTS subheading 8541.42.0010 and other CSPV products, such as modules under HTS subheading 8541.43.0010, subchapter III of chapter 99 of the HTS is modified as set forth in Annex I to this proclamation.

(2) The modifications to the HTS made by this proclamation, including Annex I hereto, shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 1, 2024, and shall continue in effect as provided in Annex I to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated.

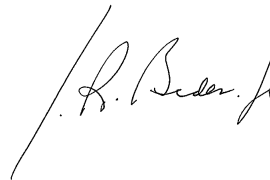
(3) CSPV products that are subject to the modifications described in clause (1) of this proclamation, and which are entered into the United States above the prior TRQ limit of 5 GW on or after August 1, 2024, shall be included within the modified TRQ limit of 12.5 GW and shall not be assessed safeguard tariffs unless they enter into the United States above the modified TRQ limit of 12.5 GW.

(4) U.S. Customs and Border Protection shall take such actions as are necessary to ensure proper application of clauses (1), (2), and (3) of this proclamation.

(5) One year from the termination of the safeguard measure referenced in this proclamation, as modified by this proclamation, the U.S. note and tariff provisions established in Annex I to this proclamation shall be deleted from the HTS.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

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

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that serves as a signature line.

ANNEX I**TO MODIFY CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE
UNITED STATES**

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 1, 2024, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as set forth herein:

1. The article description of subheading 9903.45.21 is modified by deleting “5” and by inserting in lieu thereof “12.5”.

[FR Doc. 2024–18444

Filed 8–14–24; 8:45 a.m.]

Billing code 7020–02–C

Presidential Documents

Title 3—

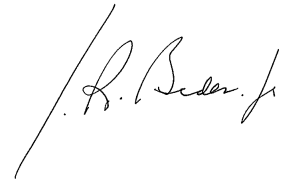
Notice of August 13, 2024

The President

Continuation of the National Emergency With Respect to Export Control Regulations

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 *et seq.*). Because the implementation of certain sanctions authorities, including sections 11A, 11B, and 11C of such Export Administration Act of 1979, consistent with section 1766(b) of Public Law 115–232, the Export Control Reform Act of 2018 (50 U.S.C. 4801 note), is to be carried out under the International Emergency Economic Powers Act, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
August 13, 2024.

Rules and Regulations

Federal Register

Vol. 89, No. 158

Thursday, August 15, 2024

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

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS–24–SFH–0001]

RIN 0575–AD28

Single Family Housing Guaranteed Loan Program Changes Related to Special Servicing Options

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is implementing changes to the Single-Family Housing Guaranteed Loan Program (SFHGLP) to amend the current regulations regarding Special Servicing Options and adjust the Mortgage Recovery Advance (MRA) process. This final rule is intended to benefit borrowers and lenders by providing lenders more flexibility in their servicing options, offering a less expensive and less cumbersome MRA process, and reduce program risk of the guaranteed loan portfolio.

DATES: This final rule is effective February 11, 2025.

FOR FURTHER INFORMATION CONTACT:

Ticia Weare, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250–0784. Telephone: (314) 679–6919; or email: ticia.weare@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The USDA RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-

family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

Under the authority of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), as amended, the SFHGLP makes loan guarantees to provide low- and moderate-income persons in rural areas an opportunity to own decent, safe, and sanitary dwellings and related facilities. The RHS administers the SFHGLP that provides a 90% Loan Note Guarantee to approved lenders to reduce the lender's risk of extending loans to low- and moderate-income households in rural areas. Approved lenders make the initial eligibility determinations, and the Agency reviews those determinations to make a final eligibility decision.

This program helps lenders work with low- and moderate-income households living in rural areas to make homeownership a reality. Providing affordable homeownership opportunities promotes prosperity, which in turn creates thriving communities and improves the quality of life in rural areas.

The RHS published a proposed rule on January 27, 2023 (88 FR 5275) to amend the current regulation for the SFHGLP found in 7 CFR part 3555. This final rule will amend 7 CFR part 3555 to implement changes related to the use of Special Servicing Options for Non-Performing Loans. The changes to the current regulation will benefit borrowers by offering a less cumbersome option to eliminate documentation and eligibility challenges for borrowers who do not require payment reduction, while providing lenders more flexibility in their servicing options and reducing program risk of the guaranteed loan portfolio.

The SFHGLP is authorized by section 502(h) of the Housing Act of 1949, (42 U.S.C. 1472(h)), as amended. 7 CFR part 3555 sets forth the regulatory requirements of the SFHGLP which includes policies regarding originating, servicing, holding, and liquidating SFHGLP loans. SFHGLP approved lenders make the initial eligibility

determinations, and the Agency reviews those determinations to make a final eligibility decision. In § 3555.303, lenders are provided several traditional servicing options for Non-Performing Loans. The use of special servicing options in § 3555.304 is provided if the traditional servicing options provided in § 3555.303 have been exhausted or the lender has determined that the use of such servicing options would not resolve the delinquency.

RHS is issuing a final rule to amend §§ 3555.303 and .304 to incorporate the MRA as a part of the regular servicing options in § 3555.303 and allow for streamline servicing options in § 3555.304. This final rule also adjusts the MRA process to make it less cumbersome and eliminates documentation and eligibility challenges for borrowers who do not require payment reduction.

II. Discussion of Public Comments Received on March 28, 2023, Proposed Rule

The Agency received comments from 12 respondents, including mortgage lenders, associations, and other interested parties. Specific public comments are addressed below:

Public Comment: One respondent suggested that the Agency combine both § 3555.303 (traditional servicing options) with § 3555.304 to maintain the COVID–19 loss mitigation waterfall and provide specific guidance in HB–1–3555. Further, the respondent suggested the Agency maintain the standalone MRA as the first option in the waterfall for borrowers who do not require payment reduction; eliminate financial reviews for seriously delinquent borrowers; retain a target payment reduction of 20 percent for borrowers who cannot resume an affordable new payment; and allow the MRA to be combined with a 30 or 40 year loan modification, allowing borrowers to defer additional principal if MRA funds are available.

Agency's Response: The Agency appreciates the commenter's response. The Agency agrees changes to § 3555.303 in addition to changes in § 3555.304 may assist in loss mitigation and amends the proposed rule accordingly. The final rule incorporates the MRA into § 3555.303, maintaining the MRA as either a standalone option or combined with a loan modification. The Agency agrees additional flexibility

in servicing options may assist in preventing unnecessary foreclosures. The final rule amends § 3555.304 to provide streamline servicing options to provide the borrower with at least a 10 percent reduction to their principal and interest payment with no consideration of the borrower's financials. The Agency agrees with the respondent that the option to extend the loan term as suggested may assist in loss mitigation, therefore, the final rule provides the ability to extend the loan term after reamortization up to 40 years when necessary to demonstrate repayment ability. Additionally, the Agency will amend § 3555.303 to add section (b)(3)(vi) indicating the order in which that traditional servicing options will be established.

Public Comment: Four respondents replied that they were in favor of the proposed rule, some indicating that eliminating the subordinate lien is a worthy regulatory reform priority for post-pandemic mortgage servicing. However, they have expressed their opinion that this may place an undue burden on the lender and the borrower for collection of a balloon payment of the non-interest-bearing promissory note at the maturity of the interest-bearing loan. These respondents recommend that the Agency allow servicers to assign the servicing advance MRA to USDA at maturity of the interest-bearing original note, stating that the Agency has greater flexibility to help such homeowners avoid foreclosure.

Agency's Response: The Agency appreciates the support, as well as the suggested revision. It is anticipated that only a small percentage of loans will reach maturity. The Agency has not amended the final rule as recommended; however, the Agency is amending § 3555.303 to allow an MRA to be combined with up to a 40-year loan modification term, allowing borrowers to defer the additional principal if MRA funds are available. The opportunity to defer the additional principal will ensure borrowers are able to achieve the target payment. Additionally, the Agency is not opposed to allowing the servicer additional collection time if the lien is not released prior to the loan, including the MRA, being paid in full. The Agency will continue to work with the industry to provide alternative solutions.

Public Comment: Four respondents requested that clarification be provided in the rule to allow lenders to provide multiple MRAs throughout the life of the loan.

Agency's Response: The Agency appreciates the commenters' responses,

as well as the suggested revision. The Agency has amended the rule to allow multiple MRAs and to clarify what conditions must be present to allow additional MRAs.

Public Comment: One respondent suggested that the Agency exempt small servicers from the provisions of the new rule, explaining that requiring servicers to collect the unsecured debt the homeowner owes to USDA puts them in the position of becoming third party debt collectors and creates a different relationship than what a Housing Finance Agency servicer agreed to when their agency agreed to offer and service SFHGLP loans as part of their single-family program offerings.

Agency's Response: The Agency appreciates the commenter's response. It is anticipated that only a small percentage of loans will reach maturity. The Agency has not amended the rule as recommended; however, the Agency is amending the CFR to allow an MRA to be combined with up to a 40-year loan modification term, allowing borrowers to defer the additional principal if MRA funds are available. The opportunity to defer the additional principal will ensure borrowers are able to achieve the target payment. Additionally, the Agency is not opposed to allowing the servicer additional collection time if the lien is not released prior to the loan, including the MRA, being paid in full. The Agency will continue to work with the industry to provide alternative solutions.

Public Comment: One respondent suggested that the Agency require borrowers to execute a standard MRA agreement.

Agency's Response: The Agency appreciates the commenter's response. The Agency understands it is important that variances in State laws are considered. An optional attachment for use by the lender will be made available on the Agency's LINC Training and Resource Library, located at rd.usda.gov/resources/usda-linc-training-resource-library.

Public Comment: One respondent suggested that the Agency allow servicers to recover incentives after completing an MRA.

Agency's Response: The Agency appreciates the commenter's response. The Agency agrees that an incentive for completing the MRA is a reasonable request and will consider them in the future.

Public Comment: One respondent suggested that the Agency provide guidance that specifies how funds are to be applied when the servicer receives funds in excess of the Principal, Interest, Taxes and Insurance (PITI).

Agency's Response: The Agency appreciates the commenter's response. The Agency agrees that it is more beneficial to the borrower to apply any additional funds to the interest-bearing loan first, however, the Agency does not feel it should dictate to the servicer and borrower how partial prepayments should be applied.

Public Comment: One respondent suggested that the Agency provide guidance that specifies how the MRA should be addressed in the event of a short sale or foreclosure bidding process.

Agency's Response: The Agency appreciates the commenter's response. The Agency agrees that guidance should be provided. Such guidance will be provided in Handbook-1-3555.

Public Comment: Two respondents suggested that the Agency permit servicers to modify the repayment date of the MRA.

Agency's Response: The Agency appreciates the commenters' response. The Agency is amending § 3555.303 to allow an MRA to be combined with up to a 40-year loan modification term, allowing borrowers to defer the additional principal if MRA funds are available. The opportunity to defer the additional principal will ensure borrowers are able to achieve the target payment. The Agency is not opposed to allowing the servicer additional collection time if the lien is not released prior to the loan, including the MRA, being paid in full. The final rule revises § 3555.303 to indicate that the MRA may be paid to the Agency when the payment is received from the borrower; or when the mortgage lien is released; or when the borrower transfers title to the property by voluntary or involuntary means.

Public Comment: One respondent suggested that the Agency provide guidance to servicers instructing them to notify borrowers that the MRA balance is coming due no later than six months prior to the maturity of their mortgage and that the Agency provide potential solutions for paying off the remaining MRA balance and that this be included in § 3555.304.

Agency's Response: The Agency appreciates the commenter's response. The Agency agrees that servicers providing advanced notice of the MRA payoff obligation could prevent unnecessary foreclosures and will provide such guidance.

Public Comment: One respondent suggested that the Agency reassess the loss mitigation regulations in § 3555.303 and § 3555.304 to allow for more flexible servicing options to provide

borrowers with effective solutions to quickly resolve financial hardships.

Agency's Response: The Agency appreciates the commenter's response. The Agency agrees that additional flexibility in servicing options may assist in preventing unnecessary foreclosure. The final rule amends § 3555.303 to incorporate the MRA into traditional servicing options and amends § 3555.304 to provide streamline servicing options when traditional servicing options have been exhausted, the borrower is at least 90 days delinquent, and prior to any acceleration or foreclosure action.

Public Comment: One respondent suggested that the Agency ensure modified loans with a deferred balance be redelivered to Ginnie Mae.

Agency's Response: The Agency appreciates the commenter's response and agrees that preserving access to liquidity is an important component to preserving affordable homeownership. The Agency will continue to work with Ginnie Mae and others to provide options that preserve liquidity.

III. Summary of Changes to Rule

The following changes were included in the proposed rule:

In § 3555.304(b)(3), remove language pertaining to title search and recording fees as these services will no longer be utilized by the lender.

Additional Changes to Rule as a Result of Comments Received

As a result of the comments received, § 3555.303 will be amended as follows:

Move (b)(3)(iv) to (b)(3)(i) to emphasize that the lender's lien priority cannot be affected by providing a loan modification. This will renumber the remaining section.

Revise section (b)(3)(iii), formerly (ii), to clarify that fees and costs associated with the delinquency may be included in the loan modification.

Revise section (b)(3)(iv), formerly (iii), to extend the repayment term for up to 40 years from the date of modification.

Add section (b)(3)(vi) indicating that traditional servicing options will be used in the order established to incorporate the addition of the MRA in the traditional servicing waterfall.

Add section (b)(3)(vii) to clarify that a mortgage recovery advance may be considered if the targeted income to ratio mortgage payment cannot be reached.

Add section (b)(4) to incorporate the MRA as a part of traditional servicing options.

Add section (b)(4)(V) to clarify that the lender may file a claim for reimbursement of reasonable title search and/or recording fees.

As a result of the comments received, § 3555.304 will be further amended as follows:

Revise the title of § 3555.304 to change "Special" to Streamline" and replace throughout the section.

Revise (a)(1) to clarify that the lender must exhaust all traditional loss mitigation options prior to offering the streamline servicing options.

Revise (a)(3) to indicate the streamline servicing options must provide the borrower with at least a 10 percent reduction to their principal and interest payment.

Remove (a)(4) since it is no longer applicable to streamlined servicing options.

Revise (b)(1) to eliminate the ratio cap for total debt to income and add that the borrower must be at least 90 days delinquent and streamline servicing shall be considered prior to initiation of any legal acceleration or foreclosure action.

Revise (b)(3) to remove the sentence on fees associated with foreclosure due to the requirement that streamline servicing must occur prior to any legal foreclosure action commencing.

Revise (c) to allow the servicer to extend the repayment term to 40 years, unless limited to 30 years by the investor.

Revise (c)(1) to remove reference to foreclosure fees and costs, as well as tax and insurance advances since foreclosure will not have commenced under the streamline option.

Revise (c)(3) to allow the servicer to extend the repayment term to 40 years, unless limited to provide the borrower a principal and interest reduction of at least 10 percent.

Revise (c)(4) to clarify that if the targeted mortgage payment reduction cannot be achieved using a modification as described in this section, the loan is not eligible for streamline loan servicing and acceleration, or foreclosure may be initiated.

Delete (d) as the section provides guidance for the MRA requirements and procedures, and this entire section has been modified and reincorporated into § 3555.303(b)(4).

This final rule continues the Agency's on-going efforts to improve delivery and mitigate risk of the SFHGLP.

IV. Regulatory Information

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 [42 U.S.C. 1480(k)], as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12866, Regulatory Planning and Review

This final rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all state and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this rule.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. This rule does not impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required and a federal summary impact statement is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Agency has determined that this final rule does not, to our knowledge, have tribal implications that require formal tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Rural Housing Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures to state, local, or tribal governments; in the aggregate, or to the private sector of \$100 million or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f);

(ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual’s income being derived from any public assistance program. This final rule is within a Guarantee-based program. Guarantees are not covered under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments Act of 1972, as amended, when the Federal assistance does not include insurance or interest credit loans. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

Assistance Listing

The program affected by this final rule is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0179. This final rule contains no new reporting or recordkeeping requirements that would

require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.*, Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at usda.gov/sites/default/files/documents/ad-3027.pdf from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 3555

Administrative practice and procedure, Business and industry, Conflicts of interest, Credit environmental impact statements, Fair housing, Flood insurance, Grant programs—housing and community development, Home improvement, Housing, Loan programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Mortgage insurance, Mortgages, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency is amending 7 CFR part 3555 as follows:

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart G—Servicing Non-Performing Loans

■ 2. Revise and republish § 3555.303 to read as follows:

§ 3555.303 Traditional servicing options.

(a) *Eligibility*. To be eligible for traditional servicing, all the following conditions must be met:

(1) The borrower presently occupies the property;

(2) The borrower is in default or facing imminent default for an involuntary reason. A borrower is “facing imminent default” if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. The borrower must be able to document the cause of the imminent default, which may include, but is not limited to, one or more of the following types of hardship:

(i) A reduction in or loss of income that was supporting the mortgage loan;

(ii) A change in household financial circumstances;

(3) The borrower demonstrates a reasonable ability to support repayment of the debt in the future;

(4) There are no adverse property conditions that inhibit the inhabitability or use of the property; and

(5) The borrower has not received assistance due to the submission of false information by the borrower.

(b) *Servicing options*. The lender must consider traditional servicing options in the following order to resolve the borrower's default or imminent default:

(1) *Repayment agreement*. A repayment agreement is an informal plan lasting 3 months or less to cure short-term delinquencies.

(2) *Special forbearance agreement*. A special forbearance agreement is a longer-term formal plan to cure a delinquency not to exceed the equivalent of 12 months of PITI. The agreement may gradually increase monthly payments in an amount sufficient to repay the arrearage over a reasonable amount of time and/or temporarily reduce or suspend payments for a short period. If the borrower is at least 3 months delinquent, the special forbearance agreement may resume normal payments for several months followed by a loan modification.

(3) *Loan modification plan*. A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current. A loan modification must be a written agreement. (i) The lender's lien priority cannot be adversely affected by providing a loan modification.

(ii) Loan modifications must be a fixed interest rate and cannot exceed the market interest rate at the time of modification.

(iii) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs associated with the delinquency, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(iv) If necessary to demonstrate repayment ability, the loan term after reamortization may be extended for up to 40 years from the date of the loan modification.

(v) Lenders may require that borrowers complete a trial payment plan prior to making scheduled payments amended by the traditional loan servicing loan modification.

(vi) Traditional servicing options shall be used in the order established in this section to reduce the borrower's mortgage payment to income ratio as close as possible to 31 percent of gross monthly income.

(vii) If the targeted mortgage payment to income cannot be achieved using a loan modification alone, the lender may consider a mortgage recovery advance under this section in addition to the loan modification.

(4) *Mortgage recovery advance*. A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage and reduce principal.

(i) Borrowers may be eligible for multiple Mortgage Recovery Advances up to a cumulative amount that is less than or equal to 30 percent of the unpaid principal balance as of the date of the initial default.

(ii) If the borrower's total monthly mortgage payment is within a reasonable percent of the borrower's ability to repay prior to an extended term loan modification, the mortgage recovery advance can be used to cure the borrower's delinquency without changing the terms of the promissory note.

(iii) The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income.

(iv) If the borrower is eligible for a mortgage recovery advance, the servicer will advance the funds to the borrower's account and create a non-interest-bearing recoverable servicing advance. The balance is to be provided on the mortgage statements along with the principal balance of the loan, but no payment arrangement will be required.

(v) Prior to making a mortgage recovery advance, the lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

(vi) The lender may request reimbursement from the Agency for a mortgage recovery advance. The lender shall repay any such reimbursement as provided in this section.

(vii) The following terms apply to the repayment of a mortgage recovery advance:

(A) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(B) The borrower is responsible for payment of the mortgage recovery advance to the lender in full at the earlier of the following:

(1) When the first lien mortgage and guaranteed note are paid off; or

(2) When the borrower transfers title to the property by voluntary or involuntary means.

(C) The lender shall remit to the agency the amount mortgage recovery advance reimbursed by the Agency for a mortgage recovery advance, as described in this part, at the earliest of the following:

(1) When the lender receives payment is received from the borrower; or

(2) When the mortgage lien is released; or

(3) When the borrower transfers title to the property by voluntary or involuntary means.

(i) The Agency will collect this Federal Debt from the lender. The Agency may use the debt collection and administrative offset process to collect money owed.

(ii) In the event of a loss claim, the mortgage recovery advance will be considered in calculating the claim paid by the Agency. The total amount paid cannot exceed the maximum loss payment described in § 3555.351(b).

(iii) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(c) *Terms of loan note guarantee.* Use of traditional servicing options does not change the terms of the loan note guarantee except when the traditional servicing option meets the requirements of paragraph (b)(3)(iv) of this section. The loan guarantee will apply to loan terms extending beyond the 30-year loan term from the date of origination when a loan modification meets the criteria set forth in paragraph (b)(3)(iv).

■ 3. Revise and republish § 3555.304 to read as follows:

§ 3555.304 Streamline servicing options.

(a) *General.* (1) Lenders must exhaust traditional servicing options outlined in this part without received a completed package to be used in evaluating the borrower for traditional servicing options and have sent a demand letter in accordance with § 3555.306 to the borrower prior to consideration of streamline servicing options.

(2) Use of streamline loan servicing does not change the terms of the loan note guarantee.

(3) Streamline options may be provided to the borrower with at least a 10 percent reduction to their principal and interest payment with no consideration of the borrower's financials.

(b) *Conditions for streamline servicing options.* In addition to the requirements in § 3555.303(a), the following

conditions apply to all special loan servicing:

(1) The borrower must be at least 90 days past due and prior to initiation of any acceleration or foreclosure action.

(2) The borrower must successfully complete a trial payment plan of sufficient duration, as determined by the Agency, to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing.

(3) Expenses related to streamline loan servicing including, but not limited to, title search and recording fees, shall not be charged to the borrower.

(4) Capitalization of late charges and lender fees is not permitted in the special loan servicing option.

(c) *Extended streamline loan modification.* The Lender may modify the loan by reducing the interest rate to a level at or below the maximum allowable interest rate and extending the repayment term to 40 years from the date of loan modification. The servicer may limit the extension to 30 years if limited by any investor or pooling restrictions. The loan guarantee will apply to loan terms extending beyond the 30-year loan term from the date of origination when a loan modification meets the criteria set forth in this section.

(1) Streamline loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including, tax and insurance advances and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.

(2) Streamline loan modifications must be a fixed interest rate and cannot exceed the current market interest rate at the time of modification. When reducing the interest rate, the maximum rate is subject to paragraph (c)(3) of this section.

(3) The term shall be extended to a maximum of 40 years as noted above to provide the borrower with at least a 10 percent reduction in their principal and interest payment.

(4) If the targeted mortgage payment reduction cannot be achieved using a modification as described in this section, the loan is not eligible for streamline loan servicing and foreclosure may be initiated.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024-18291 Filed 8-14-24; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2023-2502; Airspace Docket No. 23-ASO-15]

RIN 2120-AA66

Establishment of United States Area Navigation (RNAV) Route Q-108 and Revocation of RNAV Route Q-104; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) Route Q-108 and revokes RNAV Route Q-104 in the eastern United States. This action supports the Northeast Corridor Atlantic Coast Routes (NEC ACR) Optimization Project to improve the efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC, October 31, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a NPRM for Docket No. FAA 2023–2502 in the **Federal Register** (89 FR 2525; January 16, 2024), proposing to establish United States RNAV Route Q–108 and revoking RNAV Route Q–104 in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

United States Area Navigation routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV Route Q–108 and revoking Q–104 in the eastern United States. This action supports the NEC ACR Optimization Project to improve the efficiency of the NAS. The amendments are described below.

Q–104: Prior to this final rule, Q–104 extended between the ACORI, AL, waypoint (WP), and the St Petersburg, FL (PIE), Very High Frequency Omnidirectional Range/Tactical Air

Navigation (VORTAC). Air Traffic Control (ATC) no longer uses the route. The FAA removes the route in its entirety.

Q–108: Q–108 is a new RNAV route that extends between the Louisville, KY (IIU), VORTAC and the Sea Isle, NJ (SIE), VORTAC. The route overlays Jet Route J–526 between the Louisville VORTAC and the Beckley, WV (BKW), VOR/Distance Measuring Equipment (VOR/DME); RNAV Route Q–34 between the SITTR, WV, WP and the MAULS, VA, WP; RNAV Route Q–97 between the SAWED, VA, WP and the BYSEL, MD, Fix; and RNAV Route Q–439 between the BYSEL Fix and the HOWYU, DE, WP. The new RNAV route provides connectivity between the Louisville, KY area and the Atlantic City, NJ area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of establishing RNAV Route Q–108 and revoking RNAV Route Q–104 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas,

airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review “Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .”. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–104 [Removed]

* * * * *

Q–108 Louisville, KY (IIU) to Sea Isle, NJ (SIE) [New]

Louisville, KY (IIU)	VORTAC	(Lat. 38°06′12.47″ N, long. 085°34′38.77″ W)
ZIEBR, KY	FIX	(Lat. 37°37′58.24″ N, long. 082°45′10.76″ W)
SITTR, WV	WP	(Lat. 37°46′49.13″ N, long. 081°07′23.70″ W)
DENNY, VA	FIX	(Lat. 37°52′00.15″ N, long. 079°44′13.75″ W)
MAULS, VA	WP	(Lat. 37°52′49.36″ N, long. 079°19′49.19″ W)
QUART, VA	WP	(Lat. 37°31′25.15″ N, long. 077°42′53.29″ W)
HURTS, VA	WP	(Lat. 37°27′41.87″ N, long. 076°57′17.75″ W)

SAWED, VA	WP	(Lat. 37°32′00.73″ N, long. 075°51′29.10″ W)
KALDA, VA	WP	(Lat. 37°50′31.06″ N, long. 075°37′35.34″ W)
ZJAAY, MD	WP	(Lat. 38°03′09.95″ N, long. 075°26′34.27″ W)
BYSEL, MD	FIX	(Lat. 38°15′02.70″ N, long. 075°16′52.87″ W)
ACTUP, DE	FIX	(Lat. 38°42′12.11″ N, long. 075°11′10.30″ W)
Sea Isle, NJ (SIE)	VORTAC	(Lat. 39°05′43.83″ N, long. 074°48′01.24″ W)

* * * * *

Issued in Washington, DC, on August 5, 2024.
Frank Lias,
Manager, Rules and Regulations Group.
[FR Doc. 2024–17722 Filed 8–14–24; 8:45 am]
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DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0157; Airspace
Docket No. 23–ASO–32]
RIN 2120–AA66

Establishment and Amendment of
Multiple United States Area Navigation
(RNAV) Routes; and Revocation of
RNAV Route T–204; Eastern United
States

AGENCY: Federal Aviation
Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) Routes T–489, T–491, T–493, and T–495; amends RNAV Routes T–210, T–336, T–341, and T–349; and revokes RNAV Route T–204 in the eastern United States. This action supports FAA Next Generation Air Transportation System (NextGen) efforts to provide a modern RNAV route structure to improve the safety and efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC, October 31, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a NPRM for Docket No. FAA–2024–0157 in the **Federal Register** (89 FR 14602; February 28, 2024), proposing to establish United States RNAV Routes T–489, T–491, T–493, and T–495; amending RNAV Routes T–210, T–336, T–341, and T–349; and revoking RNAV Route T–204 in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to publication of the NPRM, the FAA identified that RNAV Route Q–102 is a non-regulatory air traffic service route that transits international airspace, and which are modified outside of the regulatory process. The FAA removes the amendment of RNAV Route Q–102 from this action.

The FAA inadvertently omitted from the proposed changes that numerous route points would be removed from the route descriptions of RNAV Routes T–210 and T–336 due to those segments forming a turn of less than one degree. The route points remain depicted on aeronautical charts for reference but are removed from the description of each route. The MRUTT, FL, waypoint (WP) and the GUANO, FL, Fix are removed from the description of RNAV Route T–210. The FUTSY, FL, WP; OMMNI, FL, WP; VIZTA, FL, WP; and YONMA, FL, Fix are removed from the description of RNAV Route T–336. This final rule corrects these omissions.

Incorporation by Reference

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

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV Routes T–489, T–491, T–493, and T–495; amending RNAV Routes T–210, T–336, T–341, and T–349; and revoking RNAV Route T–204 in the eastern United States. This action supports the FAA’s NextGen efforts to provide a modern RNAV route structure to improve the safety and efficiency of the NAS. The amendments are described below.

T–204: Prior to this final rule, T–204 extended between the Taylor, FL (TAY), Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Brunswick, GA (SSI), VORTAC. The FAA removes the route in its entirety.

T–210: Prior to this final rule, T–210 extended between the HADDE, FL, Fix, and the VARZE, FL, WP. The FAA extends T–210 to the west between the HADDE Fix and the MILLP, FL, Fix and

to the south between the VARZE Fix and the WEZER, FL, WP. The route extension to the west provides RNAV connectivity to the Marianna, FL, area, and the route extension to the south provides more efficient air traffic control clearances in the Lakeland, FL, area. Additionally, the MRUTT, FL, WP and GUANO, FL, Fix are removed from the route description as they form a turn of less than one degree. As amended, the route extends between the MILLP Fix and the WEZER WP.

T-336: Prior to this final rule, T-336 extended between the TROYR, FL, WP and the VALKA, FL, Fix. The FAA extends T-336 to the northwest between the MILLP, FL, Fix and the TROYR WP. The route overlays VOR Federal Airway V-521 between the Marianna, FL (MAI), VORTAC and the Cross City, FL (CTY), VORTAC. The route extension provides RNAV connectivity to the Marianna, FL, area. The FUTSY, FL, WP; OMMNI, FL, WP; VIZTA, FL, WP; and YONMA, FL, Fix are removed from the route description as they form a turn of less than one degree. Additionally, the FAA changes the TROYR WP name to the CCITY, FL, WP. As amended, the route extends between the MILLP Fix and the VALKA Fix.

T-341: Prior to this final rule, T-341 extended between the MEAGN, FL, WP and the MARQO, FL, WP. The FAA extends T-341 to the northeast between the MARQO WP and the FLRNS, SC, Fix. The route extension provides RNAV connectivity to the Florence, SC, area. Additionally, the FAA adds the FEBRO, FL, WP between the CUSEK, FL, WP and the YELLZ, FL, WP to provide connectivity to RNAV Routes T-343 and T-353, and replaces the WHOOU, FL, WP with the WALEE, FL, WP to provide connectivity to RNAV Route T-207. Lastly, the FAA removes the DULFN, FL, WP from the route description as it does not represent a turn point of one degree or more. As amended, the route extends between the MEAGN WP and the FLRNS Fix.

T-349: Prior to this final rule, T-349 extended between the VARZE, FL, WP and the TROYR, FL, WP. The FAA extends T-349 to the southeast between the VARZE WP and the NEWER, FL, Fix; and to the northwest between the TROYR WP and the LYFEE, AL, WP. The route overlays VOR Federal Airway V-7 between the Wiregrass, AL (RRS), VORTAC and the Cross City, FL (CTY), VORTAC and provides RNAV connectivity between the Fort Lauderdale, FL and the Dothan, AL, areas. Additionally, the FAA removes the MILOW, FL, WP and the MURDE, FL, WP from the route description as those route points do not represent a

turn point of one degree or more. Lastly, the FAA changes the TROYR WP name to the CCITY, FL, WP. As amended, the route extends between the NEWER Fix and the LYFEE WP.

T-489: T-489 is a new RNAV route that extends between the BOLTS, FL, WP and the PCANN, GA, WP. The new route overlays a portion of VOR Federal Airway V-35 between the ATTAQ, FL, Fix and the PECAN, GA (PZD), VOR/Distance Measuring Equipment (VOR/DME) and provides RNAV routing between the Tampa, FL, area and the Albany, GA, area.

T-491: T-491 is a new RNAV route that extends between the BOLTS, FL, WP and the SIROC, GA, WP. The new route provides RNAV connectivity between the Tampa, FL, area and the Brunswick, GA, area.

T-493: T-493 is a new RNAV route that extends between the BOLTS, FL, WP and the DOOLY, GA, WP. The new route provides RNAV connectivity between the Tampa, FL, area and the Macon, GA, area.

T-495: T-495 is a new RNAV route that extends between the BOLTS, FL, WP, and the BWDEN, FL, Fix. The new route provides RNAV connectivity between the Tampa, FL, area and the Tallahassee, FL, area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of establishing United States RNAV Routes T-489, T-491, T-493, and T-495; amending RNAV Routes T-210, T-336, T-341, and T-349; and revoking RNAV Route T-204 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA

Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5-6.5b, which categorically excludes from further environmental impact review “Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .”. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T-204 [Removed]

* * * * *

T-210 MILLP, FL to WEZER, FL [Amended]

MILLP, FL	FIX	(Lat. 30°47'10.19" N, long. 085°07'27.41" W)
GRNVL, FL	FIX	(Lat. 30°33'04.80" N, long. 083°46'58.59" W)
HADDE, FL	FIX	(Lat. 30°31'54.46" N, long. 083°13'50.21" W)
MISSM, FL	WP	(Lat. 30°27'28.15" N, long. 082°36'32.24" W)
OHLEE, FL	WP	(Lat. 30°16'06.04" N, long. 082°06'32.53" W)
MMKAY, FL	WP	(Lat. 29°41'55.42" N, long. 081°26'49.15" W)
KIZER, FL	FIX	(Lat. 28°55'26.00" N, long. 081°22'17.83" W)
EMSEE, FL	WP	(Lat. 28°50'43.72" N, long. 081°32'47.03" W)
DAIYL, FL	WP	(Lat. 28°49'10.74" N, long. 081°41'29.68" W)
AKOJO, FL	WP	(Lat. 28°45'44.01" N, long. 081°43'31.54" W)
PUNQU, FL	WP	(Lat. 28°34'33.65" N, long. 081°49'22.43" W)
VARZE, FL	WP	(Lat. 28°16'25.85" N, long. 082°01'44.51" W)
WEZER, FL	WP	(Lat. 28°02'26.59" N, long. 082°02'39.60" W)

* * * * *

T-336 MILLP, FL to VALKA, FL [Amended]

MILLP, FL	FIX	(Lat. 30°47'10.19" N, long. 085°07'27.41" W)
TERES, FL	FIX	(Lat. 29°56'07.76" N, long. 084°20'08.51" W)
HEVVN, FL	FIX	(Lat. 29°49'19.11" N, long. 083°53'42.89" W)
CCITY, FL	WP	(Lat. 29°34'20.92" N, long. 083°01'52.68" W)
PUNQU, FL	WP	(Lat. 28°34'33.65" N, long. 081°49'22.43" W)
YOJIX, FL	FIX	(Lat. 28°02'44.04" N, long. 081°33'45.34" W)
ODDEL, FL	FIX	(Lat. 28°05'45.51" N, long. 081°10'10.24" W)
DEARY, FL	FIX	(Lat. 28°06'02.53" N, long. 080°54'51.40" W)
VALKA, FL	FIX	(Lat. 27°55'06.06" N, long. 080°34'17.17" W)

* * * * *

T-341 MEAGN, FL to FLRNS, SC [Amended]

MEAGN, FL	WP	(Lat. 26°14'17.20" N, long. 080°47'23.64" W)
ZAGPO, FL	WP	(Lat. 26°23'47.41" N, long. 080°57'25.83" W)
CUSEK, FL	WP	(Lat. 26°51'38.79" N, long. 081°23'17.37" W)
FEBRO, FL	WP	(Lat. 27°37'02.08" N, long. 081°47'07.68" W)
YELLZ, FL	WP	(Lat. 27°51'36.18" N, long. 081°56'34.16" W)
WEZER, FL	WP	(Lat. 28°02'26.59" N, long. 082°02'39.60" W)
VARZE, FL	WP	(Lat. 28°16'25.85" N, long. 082°01'44.51" W)
OMMNI, FL	WP	(Lat. 28°51'29.29" N, long. 082°09'41.75" W)
WALEE, FL	WP	(Lat. 29°41'36.05" N, long. 082°14'07.07" W)
MARQO, FL	WP	(Lat. 30°30'53.57" N, long. 082°32'45.62" W)
TWEST, GA	FIX	(Lat. 32°05'45.00" N, long. 082°03'11.00" W)
DURBE, SC	WP	(Lat. 33°00'44.75" N, long. 081°17'32.69" W)
VANNC, SC	WP	(Lat. 33°28'29.84" N, long. 080°26'54.65" W)
FLRNS, SC	FIX	(Lat. 34°13'58.11" N, long. 079°39'25.95" W)

* * * * *

T-349 NEWER, FL to LYFEE, AL [Amended]

NEWER, FL	FIX	(Lat. 26°13'54.98" N, long. 080°37'05.49" W)
GILBI, FL	FIX	(Lat. 26°24'31.77" N, long. 080°43'44.46" W)
KNRAD, FL	FIX	(Lat. 26°37'16.45" N, long. 081°09'54.74" W)
CUSEK, FL	WP	(Lat. 26°51'38.79" N, long. 081°23'17.37" W)
QUNCY, FL	FIX	(Lat. 27°02'13.01" N, long. 081°38'18.21" W)
FEBRO, FL	WP	(Lat. 27°37'02.08" N, long. 081°47'07.68" W)
YELLZ, FL	WP	(Lat. 27°51'36.18" N, long. 081°56'34.16" W)
WEZER, FL	WP	(Lat. 28°02'26.59" N, long. 082°02'39.60" W)
VARZE, FL	WP	(Lat. 28°16'25.85" N, long. 082°01'44.51" W)
CCITY, FL	WP	(Lat. 29°34'20.92" N, long. 083°01'52.68" W)
LYFEE, AL	WP	(Lat. 31°17'05.04" N, long. 085°25'52.67" W)

* * * * *

T-489 BOLTS, FL to PCANN, GA [New]

BOLTS, FL	WP	(Lat. 28°11'15.93" N, long. 082°52'21.14" W)
ATTAK, FL	FIX	(Lat. 28°36'46.38" N, long. 082°49'30.78" W)
NESST, FL	FIX	(Lat. 28°59'10.29" N, long. 082°54'02.10" W)
CEDDI, FL	FIX	(Lat. 29°17'10.66" N, long. 082°58'22.44" W)
CCITY, FL	WP	(Lat. 29°34'20.92" N, long. 083°01'52.68" W)
GRNVL, FL	FIX	(Lat. 30°33'04.80" N, long. 083°46'58.59" W)
PCANN, GA	WP	(Lat. 31°39'18.97" N, long. 084°17'35.80" W)

T-491 BOLTS, FL to SIROC, GA [New]

BOLTS, FL	WP	(Lat. 28°11'15.93" N, long. 082°52'21.14" W)
EXWAY, FL	FIX	(Lat. 28°54'18.24" N, long. 082°30'44.53" W)
WALEE, FL	WP	(Lat. 29°41'36.05" N, long. 082°14'07.07" W)
OHLEE, FL	WP	(Lat. 30°16'06.04" N, long. 082°06'32.53" W)
SIROC, GA	WP	(Lat. 31°03'02.32" N, long. 081°26'45.89" W)

T-493 BOLTS, FL to DOOLY, GA [New]

BOLTS, FL	WP	(Lat. 28°11'15.93" N, long. 082°52'21.14" W)
CHAAZ, FL	FIX	(Lat. 28°43'28.00" N, long. 082°36'13.00" W)
ORATE, FL	FIX	(Lat. 29°20'25.53" N, long. 082°52'48.84" W)
CCITY, FL	WP	(Lat. 29°34'20.92" N, long. 083°01'52.68" W)
VLDST, GA	FIX	(Lat. 30°46'50.17" N, long. 083°16'47.21" W)
TIFFT, GA	FIX	(Lat. 31°25'42.59" N, long. 083°29'19.75" W)
DOOLY, GA	WP	(Lat. 32°12'48.02" N, long. 083°29'50.66" W)

T-495 BOLTS, FL to BWDEN, FL [New]

BOLTS, FL	WP	(Lat. 28°11'15.93" N, long. 082°52'21.14" W)
ATTAK, FL	FIX	(Lat. 28°36'46.38" N, long. 082°49'30.78" W)
NESST, FL	FIX	(Lat. 28°59'10.29" N, long. 082°54'02.10" W)
DEANR, FL	WP	(Lat. 29°15'30.40" N, long. 083°03'30.24" W)
BWDEN, FL	FIX	(Lat. 30°33'21.90" N, long. 084°22'25.85" W)

* * * * *

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

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024-17867 Filed 8-14-24; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. **FAA-2024-0319**; **Airspace**
Docket No. **24-ASO-6**]

RIN 2120-AA66

**Amendment of Class E Airspace;
Reidsville, NC**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Rockingham County NC Shiloh Airport, Reidsville, NC, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. **DATES:** Effective 0901 UTC, October 31, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305-6364.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class E airspace extending upward from 700 feet above the surface for Rockingham County, NC, Shiloh Airport, Reidsville, NC.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2024-0319 in the **Federal Register** (89 FR 19517; March 19, 2024), proposing to establish Class E airspace extending upward from 700 feet above the surface for Rockingham County NC

Shiloh Airport, Reidsville, NC.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA found that even though the airspace was not published in Order 7400.11, the airspace was charted, making this action an amendment. This action corrects this error.

Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends Class E airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Rockingham County, NC Shiloh Airport, Reidsville, NC, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Reidsville, NC [Amended]

Rockingham County, NC Shiloh Airport, NC (Lat. 36°26′14″ N, long 79°51′04″ W)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Rockingham County, NC, Shiloh Airport.

* * * * *

Issued in College Park, Georgia, on July 29, 2024.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2024–17908 Filed 8–14–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1850; Airspace Docket No. 24–ASO–12]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route Q–109; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) Route Q–109 by changing the name of the “LAANA”, NC, waypoint (WP) to “JOHAR”. The FAA is taking this action due to a similarly pronounced and sounding route point (LANNA, NJ) located 410 nautical miles (NM) northeast of the LAANA WP. This action is an administrative change and does not affect the airspace boundaries or operating requirements.

DATES: Effective date 0901 UTC, October 31, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Background

The FAA identified a safety issue with similar sounding route point names, the LAANA, NC, WP and the LANNA, NJ, Fix located 410 NM to the northeast of the LAANA WP which contributes to communications errors resulting from the similar-sounding route point names in radio communications. To remedy this, the FAA is changing the name of the LAANA, NC, WP to the JOHAR, NC, WP in RNAV Route Q–109.

Incorporation by Reference

United States Area Navigation routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by changing the name of the “LAANA”, NC, WP to “JOHAR” in RNAV Route Q–109 to overcome the similar-sounding pronunciation of the LAANA, NC, WP and the LANNA, NJ, Fix which contributes to communications errors resulting from the similar-sounding route point names in radio communications. The amendment is described below.

Q–109: Prior to this final rule, Q–109 extended between the KNOT, OG, WP and the DFENC, NC, WP. The FAA replaces the LAANA, NC, WP with the JOHAR, NC, WP at the same location. As amended, the route continues to extend between the KNOT WP and the DFENC WP.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV Route Q–109 by changing the name of the “LAANA”, NC, WP to “JOHAR” qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and

circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact statement.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–109 KNOT, OG to DFENC, NC [Amended]

KNOT, OG	WP	(Lat. 28°00′02.55″ N, long. 083°25′23.99″ W)
DEANR, FL	WP	(Lat. 29°15′30.40″ N, long. 083°03′30.24″ W)
BRUTS, FL	WP	(Lat. 29°30′58.00″ N, long. 082°58′57.00″ W)
EVANZ, FL	WP	(Lat. 29°54′12.11″ N, long. 082°52′03.81″ W)
CAMJO, FL	WP	(Lat. 30°30′32.00″ N, long. 082°41′11.00″ W)
HEPAR, GA	WP	(Lat. 31°05′13.00″ N, long. 082°33′46.00″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
RIELE, SC	WP	(Lat. 32°37′27.14″ N, long. 081°23′34.97″ W)
PANDY, SC	WP	(Lat. 33°28′29.39″ N, long. 080°26′55.21″ W)
RAYVO, SC	WP	(Lat. 33°38′44.12″ N, long. 080°04′00.84″ W)
SESUE, SC	WP	(Lat. 33°52′02.58″ N, long. 079°33′51.88″ W)
BUMMA, SC	WP	(Lat. 34°01′58.09″ N, long. 079°11′07.50″ W)
YURCK, NC	WP	(Lat. 34°11′14.80″ N, long. 078°52′40.62″ W)
JOHAR, NC	WP	(Lat. 34°19′41.35″ N, long. 078°35′37.16″ W)
TINKK, NC	WP	(Lat. 34°51′03.78″ N, long. 078°05′48.08″ W)
DFENC, NC	WP	(Lat. 35°55′11.09″ N, long. 077°03′37.54″ W)

* * * * *

Issued in Washington, DC, on August 5, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–17721 Filed 8–14–24; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 48

RIN 3038–AF37

Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is amending its regulations to permit a foreign board of trade (FBOT) registered with the Commission to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the United States and registered with the Commission as an introducing

broker (IB) for submission of customer orders to the FBOT's trading system for execution. The Commission is also establishing a procedure for an FBOT to request revocation of its registration, and removing certain outdated references to "existing no-action relief."

DATES: The rules will become effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Alexandros Stamoulis, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (646) 746-9792, astamoulis@cftc.gov, 290 Broadway, 6th Floor, New York, NY 10007; Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5344, rsmith@cftc.gov, 77 West Jackson Blvd., Suite 800, Chicago, IL 60604; Jennifer Diamantis, Special Counsel, (202) 418-5762, jdiamantis@cftc.gov, Commodity Futures Trading Commission, Division of Market Oversight, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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- II. Final Regulations
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 - B. Section 48.8—Conditions of Registration
 - C. Section 48.9—Revocation of Registration
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- III. Related Matters
 - A. Regulatory Flexibility Act
 - B. Paperwork Reduction Act
 - C. Cost Benefit Considerations
 - D. Antitrust Considerations

I. Background

Under part 48 of the Commission's regulations, an FBOT must be registered with the Commission in order to provide its members or other participants located in the United States with direct access to its electronic trading and order matching system.¹ Part 48 is authorized by section 738 of the Dodd-Frank Act, which amended section 4(b) of the Commodity Exchange Act (CEA), to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide U.S. persons with direct

access to register with the Commission.² Prior to enactment of the part 48 FBOT registration procedures in 2011, FBOTs relied on no-action letters that were requested by the FBOT and issued by Commission staff in order to provide direct access to U.S. persons.³

Part 48 provides the procedures, requirements, and conditions to be met by FBOTs that seek to provide their members and other participants in the U.S. with direct access to the FBOT's trade matching system. The regulations set forth, among other things, procedures an FBOT must follow in applying for registration, requirements that an FBOT must meet in order to obtain registration, conditions that an FBOT must satisfy on a continuing basis upon obtaining registration, and provisions for the termination of registration.

On March 1, 2024, the Commission released a proposal⁴ to amend § 48.4 to broaden the types of intermediaries eligible for direct access for submission of customer orders to the FBOT to include IBs registered with the Commission as such and located in the United States.⁵ An IB is generally defined as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders.⁶

² See Sec. 738, Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, 1726-1728 (2010) (*codified at* 7 U.S.C. 6(b)).

³ See 76 FR 80674 at 80674-80675.

⁴ Foreign Boards of Trade, 89 FR 15083 (Mar. 1, 2024) (the Proposal).

⁵ Intermediaries are entities that act on behalf of another person with respect to trading derivatives. They are generally required to register with the Commission and, depending on the nature of their activities, may be subject to various financial, disclosure, reporting, and recordkeeping requirements.

⁶ IB is defined, subject to certain exclusions and additions, in CEA section 1a(31) as any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) (i) who (I) is engaged in soliciting or in accepting orders for (aa) the purchase or sale of any commodity for future delivery, security futures product, or swap; (bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (cc) any commodity option authorized under section 4c; or (dd) any leverage transaction authorized under section 19; and (II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) who is registered with the Commission as an IB. 7 U.S.C. 1a(31). IB is further defined, subject to certain exclusions and additions, in Commission regulation 1.3(mm) as (1) Any person who, for compensation or profit, whether direct or indirect: (i) Is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery,

Currently, § 48.4 only includes certain futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs) as intermediaries that are eligible for entering orders on behalf of customers or commodity pools (in the case of CPOs) via direct access on a registered FBOT.

In addition, the Proposal proposed to amend § 48.9 to provide registered FBOTs with a procedure to request revocation of their FBOT registration. Further, the Commission proposed to delete § 48.6, which provides for an alternate registration procedure for FBOTs operating under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect.

The Commission received seven comment letters regarding the Proposal.⁷ After considering the comments, the Commission is adopting the rule amendments described herein as proposed. The Commission believes the amendments are an appropriate response to market developments that have occurred since part 48 was promulgated in 2011, and will benefit affected markets and their participants by improving competition, risk management and liquidity—while also maintaining the Commission's longstanding protections available to U.S. customers that trade foreign futures and options.

II. Final Regulations

A. Section 48.4—Registration Eligibility and Scope

1. Proposed Regulations

The Commission proposed to amend § 48.4(b) to permit FBOTs to provide direct access to eligible IBs to enter orders directly into an FBOT's trading and order matching system on behalf of U.S. customers.⁸ Section 48.4(b)

security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the CEA; any commodity option transaction authorized under section 4c; or any leverage transaction authorized under section 19; or who is registered with the Commission as an IB; and (ii) Does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. 17 CFR 1.3(mm). IBs are subject to registration with the Commission under CEA section 4d(g) and Commission regulation 3.4(a). 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

⁷ The following persons and entities submitted relevant comment letters: Everett Mein, Eurex Deutschland (Eurex), Futures Industry Association (FIA), Intercontinental Exchange Inc. (ICE), New Zealand Exchange Limited (NZX), NIBA, and the Wholesale Markets Brokers' Association, Americas (WMBAA).

⁸ The term "eligible IB" is used in this release to mean an IB that is located in the United States and

¹ See Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011); 17 CFR part 48. "Direct access" is defined as an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A); 17 CFR 48.2(c).

identifies the types of members or other participants located in the U.S. that may enter orders directly into the trading and order matching system of a registered FBOT, and the types of accounts for which orders may be submitted by such members or other participants. In this regard, the types of members or other participants identified in existing § 48.4(b) represent the types of members or other participants that were trading via direct access on FBOTs that operated in reliance on CFTC staff no-action letters at the time part 48 was promulgated.⁹ Specifically, § 48.4(b)(1) provides that any member or other participant located in the U.S. may enter orders for their proprietary accounts.¹⁰ Further, § 48.4(b)(2) provides that registered FCMs may submit orders on behalf of their customers. Section 48.4(b)(3) permits certain CPOs to submit orders on behalf of U.S. commodity pools and certain CTAs to submit orders on behalf of U.S. customers provided, however, all trades by the CPO or CTA effected through submission of such orders are guaranteed by a clearing firm registered as an FCM or exempt from FCM registration pursuant to § 30.10.¹¹ The Commission proposed to amend § 48.4(b) by inserting a new paragraph (b)(4) to provide that eligible IBs may submit orders on behalf of their customers, provided that a registered FCM or firm exempt from FCM registration pursuant to § 30.10 acts as a clearing firm and guarantees all trades of the IB effected through submission of U.S. customer orders to the trading system. The Commission also proposed to amend paragraph (b)(3) to insert the words “registered as such” following

registered with the Commission as an IB. Direct access, as defined in the CEA and part 48, refers explicitly to members or other participants of an FBOT that are located in the United States. See footnote 1, *supra*. For purposes of this rulemaking and as used herein, the terms “U.S. customer” and “United States customer” refer to customers located in the United States, its territories or its possessions.

⁹ See Registration of Foreign Boards of Trade, Notice of Proposed Rulemaking, 88 FR 61432, 70977 (Nov. 19, 2010).

¹⁰ Under § 48.2(l), member or other participant is defined as a member or other participant of an FBOT and any affiliate thereof that has been granted direct access by the FBOT. 17 CFR 48.2(l). Proprietary account is defined in § 1.3, 17 CFR 1.3.

¹¹ A § 30.10 exemptive order permits firms subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on FBOTs without registering as FCMs, based upon the firm’s substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. Used herein, U.S. commodity pool refers to a commodity pool that does not meet the criteria set forth in § 3.10(c)(5)(iii)(A) through (F), 17 CFR 3.10(c)(5)(iii)(A) through (F).

“futures commission merchant” to clarify that the reference is limited to FCMs registered with the Commission as such.¹²

Direct access is defined in the CEA and part 48 of the Commission’s regulations to mean an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the trade matching engine of the FBOT.¹³ This means that the FBOT, as opposed to its members or participants, has identified and permitted a member or participant to enter trades directly into the FBOT’s order matching and trade entry system from the United States.¹⁴ For example, a registered FBOT may authorize its members or other participants eligible to handle U.S. customer orders to enter orders on behalf of their U.S. customers or to otherwise permit their U.S. customers to access the trading system using the member’s or participant’s identifier and grant of authority. In such cases the FBOT permits an identified exchange member or other participant to allow their U.S. customers, who have not been granted direct access by the FBOT, to have access to the exchange’s trading systems, subject to a guarantee from an exchange member or other participant. The proposed amendment to § 48.4(b) would permit registered FBOTs to grant explicit authority to eligible IBs to act in such capacity, provided that all trades effected by the IB through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

2. Public Comments

All comment letters received generally support the proposed amendment to § 48.4(b) to permit registered FBOTs to provide direct access to eligible IBs to enter orders on behalf of U.S. customers.¹⁵ Commenters agree that permitting eligible IBs to submit customer orders via direct access to FBOTs would benefit affected

markets and market participants.¹⁶ Several commenters observe that markets have evolved and the role of IBs serving as executing brokers has grown since the Commission’s adoption of part 48 in 2011.¹⁷ In light of these changes, commenters support the Commission’s efforts to update part 48 to ensure that its regulations remain current and reflect changes in the market.¹⁸ Commenters further opine that the Proposal, if adopted, is likely to: provide greater customer choice in, and promote fair competition among, brokers;¹⁹ improve the ability for U.S. participants to manage risk;²⁰ and increase liquidity in affected markets.²¹

The Commission received several comments specifically in support of the proposed condition in § 48.4(b)(4) requiring U.S. customer orders submitted by IBs to be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.²² Commenters note that they support the proposed condition because it would extend access to IBs located in the U.S. on the same terms that U.S. CPOs and CTAs currently access FBOTs.²³

¹⁶ See Eurex at 1–4; FIA at 2; ICE at 2; Mein at 5–6, 8 NIBA at 2; WMBAA at 2.

¹⁷ See Eurex at 3–4; FIA at 2; WMBAA at 2.

¹⁸ See Eurex at 2–4; WMBAA at 2.

¹⁹ See FIA at 2; NZX at 1; NIBA at 2; WMBAA at 2–3.

²⁰ See Eurex at 3–4; FIA at 2; WMBAA at 2; NIBA at 1. Commenters specifically note that the Proposal would allow U.S. participants to better conduct risk management by enabling on-exchange trades in foreign markets through IBs during the U.S. business day following the close of European markets. *Id.*

²¹ ICE posits that the proposed changes to § 48.4 would enable additional types of market participants to access FBOTs, which would improve liquidity and reduce fragmentation while promoting competitiveness in derivatives markets. ICE at 2. NIBA and WMBAA generally state that they believe the Proposal would improve liquidity. NIBA at 2; WMBAA at 2.

²² See FIA at 2; Eurex at 3–4, 6, 8; ICE at 2; NIBA at 2; NZX at 1.

²³ *Id.* Eurex further states that it does not believe there is any reason to require a different standard for IBs than what is presently required for CPOs or CTAs, and asserts that the Commission’s framework for assessing applications for exemptions under § 30.10 provides a comprehensive and robust process to assess whether the foreign jurisdiction offers a comparable regulatory scheme (including with respect to the protection of customer funds, and anti-money laundering (AML)). Eurex at 6–7. ICE states that the condition reflects the different ways U.S. customers access clearing and avoids unnecessary limitations on customers trading through FBOTs. ICE at 2. Further, Eurex states that it does not believe there is any additional information the Commission should receive from FBOTs that provide direct access to IBs under the proposed amendment to § 48.4(b)(4). Eurex at 8. Eurex notes that all quarterly, annual, and prompt-notice reporting requirements that pertain to an FBOT’s members under § 48.8(b)(1) would apply to IBs as well as existing categories of participants. Eurex at 8. In addition, Eurex asserts that IBs are

Continued

¹² The addition of the words “registered as such” here is intended as a technical change rather than a substantive change; *i.e.*, that the reference is intended to refer to registered FCMs is already implied by the subsequent clause “or a firm exempt from such registration . . .”

¹³ CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A); 17 CFR 48.2(c).

¹⁴ Conversely, a person located in the U.S. who accesses an FBOT through an intermediary (whether such intermediary is located in the United States or not) and without an explicit grant of authority by the FBOT (*i.e.*, such person is not an identified member or other participant of the FBOT) would not meet the definition of “direct access” for purposes of part 48. See, *e.g.*, 76 FR 80674 at 80688.

¹⁵ See Eurex Letter; FIA Letter; ICE Letter; Mein Letter; NZX Letter; NIBA Letter; and WMBAA Letter.

Two commenters requested clarification that proposed § 48.4(b)(4) would permit IBs to submit block trades to an FBOT (or otherwise not prohibit them from doing so).²⁴

3. Commission Determination

The Commission is adopting, as proposed and as supported by commenters, the amendment to § 48.4(b) to permit FBOTs to provide direct access to eligible IBs to enter orders directly into an FBOT's trading and order matching system on behalf of U.S. customers.²⁵ The Commission agrees with commenters that permitting eligible IBs to submit customer orders via direct access to FBOTs would benefit market participants and affected markets,²⁶ and is an appropriate update to part 48 of the Commission's regulations given the increased role that IBs now serve in derivatives markets.²⁷ As discussed above, existing § 48.4(b) permits registered FBOTs to provide direct access to eligible FCMs, CPOs and CTAs for submission of client orders. DCMs may provide for IBs to act as executing brokers for customer accounts that in turn use FCM clearing members to whom executed trades are given up for clearing and through which such customer accounts are carried.²⁸ FBOTs may similarly permit IBs located outside

already subject to a wide range of CFTC and NFA regulatory record keeping and reporting requirements, which provides the Commission with the necessary reporting for oversight. Eurex at 8. Eurex further opines that it does not believe there are any additional registration requirements under § 48.7 that the Commission should consider for FBOTs that provide direct access to IBs under proposed § 48.4(b)(4). Eurex at 7.

²⁴ See Eurex at 4; WMBAA at 3. In addition, WMBAA requests clarification as to whether permitting IBs located in the U.S. to engage in block trades would require an unregistered foreign board of trade to be registered as an FBOT under part 48. WMBAA at 3. Generally speaking, a board of trade that is not a designated contract market (DCM) or registered FBOT may, depending on the nature of its activities within the United States, be liable for violating section 4(a) of the CEA, 7 U.S.C. 6(a). Without knowing the specifics of how each potential unregistered foreign board of trade operates with respect to block trades involving IBs located in the U.S. as well as other U.S. located participants, the Commission is not in a position to opine generally on WMBAA's request. However, the Commission notes that unregistered foreign boards of trade seeking guidance concerning FBOT registration and its application to their particular operations may request informal guidance from the Division of Market Oversight.

²⁵ See Eurex Letter; FIA Letter; ICE Letter; NZX Letter; NIBA Letter; WMBAA Letter; and Mein Letter.

²⁶ See Eurex at 1–4; FIA at 2; ICE at 2, NIBA at 2; Mein at 5–6, 8.

²⁷ See Eurex at 3–4; FIA at 2; WMBAA at 2.

²⁸ The Commission also agrees with ICE that the amendment to 48.4(b) “would establish a similar structure that is already in place on [DCMs] whereby IBs submit customer orders via direct electronic access.” ICE at 2.

of the United States to enter trades directly into the trading system of the FBOT on behalf of their customer accounts.²⁹ The Commission agrees with commenters that the amendment to § 48.4 will permit registered IBs located in the U.S. to act in a comparable capacity on registered FBOTs in cases where an FBOT grants direct access to the IB for the purpose of submitting customer orders for execution.³⁰ The Commission believes, as supported by commenters, that allowing eligible IBs to have direct access to registered FBOTs to execute transactions on behalf of their U.S. clients is likely to: provide U.S. market participants that wish to trade in foreign derivatives contracts with greater choice in brokers and broker arrangements, and increase competition among firms offering execution brokerage services to customers on registered FBOTs;³¹ improve the ability for U.S. participants to manage risk;³² and increase liquidity on affected markets.³³ The Commission furthermore believes, as supported by commenters, that permitting U.S. IBs access to FBOTs on par with FCMs, CPOs, CTAs, and foreign brokers will not undermine or otherwise adversely affect protections available to U.S. customers because their trades must be guaranteed by a registered FCM or firm exempt from FCM registration under § 30.10,³⁴ and will be subject to required

²⁹ See Eurex at 3; WMBAA at 3.

³⁰ See WMBAA at 2–3. See also Eurex at 4; FIA at 2.

³¹ See FIA at 2; NZX at 1; NIBA at 2; WMBAA at 2–3.

³² See Eurex at 3–4; FIA at 2; WMBAA at 2; NIBA at 1.

³³ See footnote 21, *supra*.

³⁴ Including the provision relating to the guarantee of U.S. customer trades in new § 48.4(b)(4) will ensure that U.S. customer trades executed by eligible IBs via direct access are guaranteed by a firm that is registered as an FCM or exempt from FCM registration under § 30.10. In so doing, the final rule will act to reinforce adherence with part 30, insofar as part 30 generally requires intermediaries holding funds of U.S. customers in connection with the offer or sale of foreign futures and options to be registered as FCMs or exempt from FCM registration under § 30.10. Part 30 of the Commission's regulations governs the offer and sale of foreign futures and options to customers located in the United States. These regulations are designed to carry out Congress's intent that foreign futures and options offered or sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions. Section 30.4 of the Commission's regulations requires that in order to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure transactions conducted by U.S. persons on an FBOT, a person must be registered as an FCM. See 17 CFR 30.4(a). The Commission may grant and has granted exemptions to this requirement to register as an FCM based on petitions filed pursuant to 17 CFR 30.10. See footnote 11, *supra*. See also Eurex at 5–7; ICE at 2.

risk disclosures relating to foreign futures and options transactions.³⁵

Therefore, for the reasons stated above, the Commission is adopting as proposed the amendment to § 48.4(b) to permit FBOTs to provide direct access to eligible IBs to enter orders directly into an FBOT's trading and order matching system on behalf of U.S. customers.

Eurex and WMBAA each requested that the Commission clarify that the Proposal would permit IBs to submit block trades to an FBOT (or otherwise not prohibit them from doing so).³⁶ Section 48.4(b) provides that an FBOT may apply for registration under part 48 “in order to permit the members and other participants of the [FBOT] that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade[. . .].”³⁷ The Commission confirms and clarifies that this may include block trades submitted to an FBOT. As such, and for the avoidance of doubt, an FBOT registered under part 48 is not prohibited by this final rule from allowing an eligible IB to which it has granted direct access to submit block trades to the FBOT on behalf of the IB's U.S. clients.

B. Section 48.8—Conditions of Registration

1. Proposed Regulations

The Commission proposed conforming amendments that will include eligible IBs in §§ 48.8(a)(4)(ii) and (a)(5)(i) and (iii) alongside FCMs, CPOs and CTAs.

Section 48.8(a)(4)(ii) requires all orders transmitted via direct access and pursuant to an FBOT's registration to be for a member's or other participant's proprietary trading account unless transmitted by a registered FCM, CPO or CTA (or exempt CPO or CTA). The Commission proposed to include IBs in this section along with FCMs, CPOs and CTAs, to conform with the proposed changes to § 48.4(b) that would allow

³⁵ Section 30.6 of the Commission's regulations requires FCMs and IBs to provide a statement to customers disclosing the risks of trading foreign futures and options outside the United States. 17 CFR 30.6. This requirement also applies to exempt foreign IBs, CPOs, and CTAs. 17 CFR 30.5(c). Petitions for exemptive relief under § 30.10 for firms seeking an exemption from FCM registration must demonstrate that such firms are subject to a comparable regulatory program that includes, among other elements, minimum sales practice standards, including “disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law.” 17 CFR part 30, Appendix A, Sales Practice Standards. See also Eurex at 4.

³⁶ See Eurex at 4; WMBAA at 3.

³⁷ 17 CFR 48.4(b).

eligible IBs to transmit orders via direct access on behalf of the accounts of their customers. The Commission also proposed to add the words “registered as such” following the final reference to “futures commission merchant” in § 48.8(a)(4)(ii) to conform to the proposed amendment to § 48.4(b)(3).³⁸

Section 48.8(a)(5)(i) provides that a registered FBOT must require each current and prospective member or other participant granted direct access and not registered with the Commission as an FCM, CPO or CTA to agree to and submit to the jurisdiction of the Commission with respect to activities conducted pursuant to the FBOT’s registration. Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise subject to the jurisdiction of the Commission as Commission registrants. Registered IBs are likewise subject to the jurisdiction of the Commission as registrants and the Commission therefore proposed to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(i).

Section 48.8(a)(5)(iii) provides that a registered FBOT, its clearing organization, and each current and prospective member or other participant granted direct access that is not registered with the Commission as an FCM, CPO or CTA must maintain with the FBOT written representations stating that such entity will provide prompt access to books, records, and premises upon the request of the Commission, U.S. Department of Justice and, if appropriate, the National Futures Association (NFA). Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise required to provide such access to books, records, and premises as Commission registrants and, where applicable, NFA members.³⁹ Registered IBs, as Commission registrants and NFA members, are likewise required to provide such access to books, records, and premises by the Commission, U.S. Department of Justice, and NFA, and the Commission therefore proposed to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(iii).

2. Public Comments

The Commission received no comments regarding the proposed conforming amendments to include eligible IBs in §§ 48.8(a)(4)(ii) and

(a)(5)(i) and (iii) alongside FCMs, CPOs and CTAs.

3. Commission Determination

The Commission is adopting, as proposed, the amendments to §§ 48.8(a)(4)(ii) and (a)(5)(i) and (iii).

C. Section 48.9—Revocation of Registration

1. Proposed Regulations

The Commission proposed to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. Section 48.9 addresses certain events which could lead the Commission to revoke an FBOT’s registration, including the failure to satisfy registration requirements or conditions, and certain other specified events.⁴⁰ However, part 48 presently does not contain any provisions for an FBOT to request voluntary revocation of its registration. In order to allow registered FBOTs to more easily ascertain the steps required to request revocation, the Commission proposed to amend § 48.9(b) (“Other Events that Could Result in Revocation”) by adding a new paragraph (b)(5).

2. Public Comments

The Commission received one comment regarding the proposed amendments to § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. NZX commented that it supports the introduction of a revocation process for FBOTs because it will provide greater certainty for entities that no longer wish to retain their status as a registered FBOT.⁴¹

3. Commission Determination

The Commission agrees with NZX that the amendment will provide greater certainty for entities that no longer wish to retain their status as a registered FBOT.⁴² Therefore, for the reasons stated above and as supported by public comment, the Commission is adopting as proposed the addition of § 48.9(b)(5) which makes clear that the Commission may revoke an FBOT’s registration in response to a voluntary request by an FBOT to do so, and provides that an FBOT can make such request via email to the Commission.

D. Section 48.6—Foreign Boards of Trade Providing Direct Access Pursuant to Existing No-Action Relief

1. Proposed Regulations

Section 48.6 provides for a limited registration application procedure for FBOTs that had been operating under existing staff no-action letters and FBOTs that had submitted a complete application for a staff no-action letter that was pending as of the effective date of part 48. Those limited application provisions are no longer applicable because all FBOTs with previously existing staff no-action letters have been registered under part 48 and all such no-action letters have been revoked. Accordingly, the Commission proposed to delete § 48.6. As a conforming amendment the Commission also proposed to delete § 48.2(h) (definition of “existing no-action relief”) as that definition will no longer be applicable or necessary once existing § 48.6 is removed.

2. Public Comments

The Commission received one comment generally in support of the proposed deletion of § 48.6 and the conforming deletion of § 48.2(h).⁴³

3. Commission Determination

Therefore, for the reasons stated above, the Commission is adopting as proposed the deletion of § 48.6 and the conforming deletion of § 48.2(h).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the regulations they promulgate will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.⁴⁴ The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.⁴⁵ The amendments to part 48 would impact FBOTs. The Commission has previously determined that FBOTs are not small entities for purposes of the RFA.⁴⁶

The amendments to part 48 would also impact eligible IBs by providing

⁴³ NZX states that it supports the removal of § 48.6, which is obsolete, and the removal of § 48.2(h) as a conforming amendment. NZX at 3.

⁴⁴ 5 U.S.C. 601 *et seq.*

⁴⁵ See Policy Statement and Establishment of “Small Entities” for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

⁴⁶ 76 FR 80698.

³⁸ See footnote 12, *supra*, and accompanying text.

³⁹ Subpart C of part 170 of the Commission’s regulations provides for certain exceptions to the general requirement that Commission-registered FCMs and CTAs must become NFA members. See 17 CFR 170.15 and 170.17.

⁴⁰ See 17 CFR 48.9.

⁴¹ NZX at 3.

⁴² *Id.*

them with the potential to gain direct access to FBOTs that incorporate the new regulatory provisions allowing such IBs direct access. The Commission has previously established that IBs may in some cases be deemed “small entities” for the purposes of the RFA.⁴⁷ However, the final rules do not impose any new burden on eligible IBs. Instead, the final rules would remove a regulatory barrier preventing these small entities from accessing FBOTs. Accordingly, the Commission believes that the regulation will be less burdensome to small-entity, eligible IBs and will not impose any additional costs on them.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the final rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)⁴⁸ imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any “collection of information,”⁴⁹ as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB).⁵⁰ The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by Federal agencies, to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.⁵¹ The PRA applies to all information, “regardless of form or format,” whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.⁵²

This final rulemaking amends regulations that contain collections of information for which the Commission

has previously received a control number from OMB: 3038–0101, Registration of Foreign Boards of Trade (17 CFR part 48).⁵³ This collection addresses the information collection requirements associated with part 48’s registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide direct access to their electronic trading and order matching systems. The final rulemaking allows eligible IBs to act as direct access participants on registered FBOTs, provides a process for FBOTs to request voluntary revocation of their registration, and removes outdated references to “no action relief.”

The Commission believes that these amendments do not contain any new collections of information and will not increase the burden associated with the information collections under part 48. While the amendments establish a new process for FBOTs to submit requests for revocation of their registration, the regulations allow FBOTs to submit their requests electronically via email to the Commission and do not mandate any specific form or format for such requests. Accordingly, this new submission method does not constitute a collection of information under the PRA. In addition, the amendments do not affect the provisions of part 48 covered in the current PRA approval (§ 48.8 (periodic data submissions to the Commission), § 48.9 (demonstration of compliance); and § 48.10 (listing additional futures and options contracts)). Accordingly, the Commission is retaining its existing estimates for the burden associated with the information collections under OMB Collection 3038–0101. The Commission received no comments related to the PRA analysis or this determination.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA⁵⁴ requires the Commission to “consider the costs and benefits” of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk

management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors.

The Commission has endeavored to assess the expected costs and benefits of the amendments in quantitative terms, including Paperwork Reduction Act (PRA)-related costs, where practicable. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable amendments in qualitative terms. The Commission did not receive any comments from commenters which quantified or attempted to quantify the costs and benefits of the Proposal.

The Commission notes that this consideration of costs and benefits is based on, inter alia, its understanding that the derivatives markets regulated by the Commission function internationally, with (1) transactions that involve entities organized in the United States occurring across different international jurisdictions, (2) some entities organized outside of the United States that are prospective Commission registrants, and (3) some entities that typically operate both within and outside the United States, and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.⁵⁵

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the rule amendments. The Commission, where applicable, then considers the costs and benefits of the rule amendments in light of the five public interest considerations set out in section 15(a) of the CEA.

2. Final Regulations

The Commission is amending certain rules in part 48 of its regulations relating to FBOTs. The Commission identifies the costs and benefits of the amendments relative to the baseline of the regulatory status quo. In particular, the baseline against which the Commission considers the costs and benefits of these rule amendments is the statutory and regulatory requirements of the CEA and Commission regulations

⁴⁷ 85 FR 78718, 78733 (Dec. 7, 2020).

⁴⁸ 44 U.S.C. 3501 *et seq.*

⁴⁹ See 44 U.S.C. 3502(3)(A).

⁵⁰ See 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

⁵¹ See 44 U.S.C. 3501.

⁵² See 44 U.S.C. 3502(3).

⁵³ The Commission’s most recent burden estimates for this collection are available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202301-3038-001.

⁵⁴ 7 U.S.C. 19(a).

⁵⁵ See, e.g., 7 U.S.C. 2(i).

now in effect, in particular CEA section 4(b) and part 48 of the Commission's regulations.

Amendments to § 48.6

The final rules delete § 48.6, which provided for an alternate registration procedure for FBOTs acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect. Deletion of § 48.6 and elimination of the alternate registration procedure will not increase costs to FBOTs because § 48.6 and the alternate registration procedure are already in effect obsolete.

Amendments to § 48.9

The amendment to § 48.9 establishes a procedure for FBOTs to request voluntary revocation of registration. This amendment would not impose a new requirement for FBOTs. The baseline is the current practice of the Commission, whereby requests for voluntary revocation are processed on an ad-hoc basis. The primary benefit will be to allow registrants to more easily ascertain the steps required to request revocation. The amendments are not expected to increase costs to registered FBOTs compared to the status quo.

Amendments to § 48.4 and Conforming Amendments to § 48.8

The amendments to § 48.4 and conforming amendments to § 48.8 permit a registered FBOT to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the U.S. and registered with the Commission as an IB for submission of customer orders to the FBOT's trading system for execution, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

There are presently 24 FBOTs registered with the Commission. Under the current rules, eligible intermediaries permitted direct access on registered FBOTs for purposes of entering trades on behalf of non-proprietary client accounts include certain FCMs, CTAs, and CPOs. The amendments would add eligible IBs to the existing list of eligible intermediaries. Similar to trades submitted by CTAs and CPOs via direct access, the trades executed by eligible IBs on behalf of customers located in the U.S. would be required to be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. IBs specialize in soliciting and

executing orders for their clients. The field of trade execution is continuously evolving with technological advances, and has helped bring down execution costs. As of July 2024, the following numbers of intermediaries were registered with the Commission.⁵⁶

INTERMEDIARIES REGISTERED WITH THE COMMISSION AS OF JULY 2024

CTAs ¹	1,237
CPOs ¹	1,188
IBs	919
FCMs	62
Swap Dealers	107

¹ These categories are not mutually exclusive, *i.e.*, a CPO may also be registered as a CTA.

The table above shows that the number of IBs is more than one quarter of all Commission-registered intermediaries. The Commission does not know how many FBOTs will choose to provide direct access to eligible IBs for purposes of entering trades on behalf of non-proprietary client accounts or how many eligible IBs will become direct access members or participants of registered FBOTs pursuant to this final rule. There could also be new IB entrants that are granted direct access to registered FBOTs. However, by permitting FBOTs the option to provide direct access to eligible IBs for submission of customer orders, the amendments could lead to a significant increase in the number of choices for U.S. customers with respect to execution of trades on FBOTs.

Although the Commission lacks the data and information to quantitatively estimate the costs and benefits of permitting IBs located in the U.S. to have direct access to registered FBOTs pursuant to this final rule, it has endeavored to assess the expected costs and benefits of the proposal in qualitative terms. The lack of data and information to estimate costs is attributable in part to uncertainty regarding how FBOTs will choose to respond to the amendments to part 48 and how IBs located in the U.S. will choose to respond to potential new opportunities to participate on registered FBOTs.

The baseline is the status quo in which § 48.4 permits FBOTs to provide direct access to certain FCMs, CPOs and CTAs for purposes of transmission of orders for certain client accounts. Furthermore, foreign IBs not located in the U.S. may have similar arrangements on FBOTs whereby their customer

orders are transmitted to an FBOT.⁵⁷ IBs are not included in § 48.4 as intermediaries eligible to have direct access and transmit trades on behalf of customers. As such, registered FBOTs currently do not provide direct access to IBs located in the United States to enter orders on behalf of their customers.

Relative to the baseline, the primary effect of the amendment to § 48.4 is to allow registered FBOTs to provide direct access to eligible IBs in order to transmit orders of U.S. customers. This could promote competition among execution-only brokers on registered FBOTs. There may be advantages to customers from having additional choices in brokers and brokerage arrangements to trade foreign derivatives on registered FBOTs—for example, lower trading costs or the use of advantageous proprietary execution algorithms developed by such IBs. Several commenters assert that the amendments will allow U.S. participants to better conduct risk management by enabling trades to be submitted to FBOTs through IBs during the U.S. business day following the close of European markets.⁵⁸ From the standpoint of registered FBOTs, allowing eligible IBs to become direct access participants for submission of customer orders will open up potential new distribution channels that could lead to additional trading volume. This in turn could improve the viability of some traded instruments. Similarly, eligible IBs may be able to pursue new business models and/or expand existing business models onto new foreign markets.

FBOTs that decide to provide direct access to eligible IBs pursuant to this final rule and that do not already have necessary structures in place to do so may incur certain costs relating to, for example, modification of rules, procedures and/or systems to enable direct access to eligible IBs to submit customer orders to the FBOT's trading system for execution.

The Commission did not receive any comments which quantified or attempted to quantify any of the costs and benefits described above, or which quantified or attempted to quantify any other costs or benefits associated with eligible IBs having direct access to registered FBOTs.

Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and

⁵⁷ The definition of "direct access" does not include identified members or other participants of an FBOT that are located outside of the United States. See 17 CFR 48.2(c).

⁵⁸ Eurex at 3–4; FIA at 2; NIBA at 1.

⁵⁶ NFA website, <https://www.nfa.futures.org/registration-membership/membership-and-directories.html>.

benefits of the amendments to part 48 with respect to the following factors: protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

(i) Protection of Market Participants and the Public

The changes to part 48 would not affect the basic protection for customers with respect to their foreign futures and options transactions. Under the rule, U.S. customer assets are required to be maintained by registered FCMs or similar entities exempt from FCM registration pursuant to § 30.10.

(ii) Efficiency, Competitiveness, and Financial Integrity of Markets

The current part 48 treats IBs differently from certain FCMs, CTAs and CPOs in that certain FCMs, CTAs and CPOs have the ability to be granted direct access to registered FBOTs for the submission of client orders. Similarly, non-U.S. intermediaries (which are outside of the scope of part 48) may also, under the status quo, be granted similar access to registered FBOTs for the purpose of offering execution services to U.S. and non-U.S. customers. The adopted amendments to part 48 will permit eligible IBs to offer competing execution services on registered FBOTs. The adopted amendments may also open access to foreign derivatives markets for existing IB customers that otherwise would not have access to trading on a registered FBOT (*i.e.*, customers that choose not to or cannot become direct access participants or otherwise seek out an eligible FCM, CPO, CTA, or foreign broker to transact on an FBOT). Greater competition among introducing brokers and potentially additional and new types of customers participating in affected markets may lead to increased market efficiencies and greater financial integrity. Furthermore, that trades of U.S. customers must be guaranteed by registered FCMs or comparable foreign firms promotes the financial integrity of affected markets by ensuring that intermediaries handling U.S. customer funds are subject to certain regulatory safeguards.

(iii) Price Discovery

There is a potential for the adopted changes to part 48 to positively affect price discovery in futures markets. Participation of eligible IBs as direct access members may lead to increased participation and volume on registered FBOTs, in particular during hours when

U.S. brokers are more active than foreign brokers.

(iv) Risk Management Practices

As noted above, the changes will not affect how customer assets are treated. However, registered FCMs and firms exempt from FCM registration pursuant to § 30.10 may need to expand their risk mitigation processes to ensure that they have robust processes for managing the risk associated with eligible IBs executing trades on registered FBOTs via direct access.

(v) Other Public Interest Considerations

As noted above, the changes may enable new and distinct kinds of market participants to access registered FBOTs, which could help improve liquidity and reduce fragmentation in affected markets.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.⁵⁹

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission has considered the modified rule to determine whether it is anticompetitive and has identified no anticompetitive effects.⁶⁰ Because the Commission has determined that the modified rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act.

List of Subjects in 17 CFR Part 48

Registration of foreign boards of trade.

⁵⁹ 7 U.S.C. 19(b).

⁶⁰ The Commission received several comments stating that the modified rule may increase competition and/or promote fair competition among brokers. *See* FIA at 2 (stating that the rule may “work to increase competition in brokering foreign products”); NIBA at 2 (stating that “IBs should have the same access to FBOTs as CPOs and CTAs currently enjoy” and that the modified rule “can provide additional market choices for IBs and their customers”); WMBAA at 2–3 (stating that the rule will “promote competition among firms offering execution brokerage services to customers on registered FBOTs,” and that the rule “allows for the growth of competitive markets without impeding liquidity formation”).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 48 as follows:

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

■ 1. The authority citation for part 48 continues to read as follows:

Authority: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

§ 48.2 [Amended]

■ 2. In § 48.2 remove paragraph (h) and redesignate paragraphs (i) through (l) as paragraphs (h) through (k), respectively.

■ 3. In § 48.4 revise paragraph (b) to read as follows:

§ 48.4 Registration eligibility and scope.

* * * * *

(b) A foreign board of trade may apply for registration under this part in order to permit the members and other participants of the foreign board of trade that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade, to the extent that such members or other participants are:

(1) Entering orders for the member’s or other participant’s proprietary accounts;

(2) Registered with the Commission as futures commission merchants and are submitting customer orders to the trading system for execution;

(3) Registered with the Commission as a commodity pool operator or commodity trading advisor, or are exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, and are submitting orders for execution on behalf of a United States pool that the member or other participant operates or an account of a United States customer for which the member or other participant has discretionary authority, respectively, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders to the trading system; or

(4) Registered with the Commission as introducing brokers and are submitting customer orders to the trading system for execution, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as a clearing firm and guarantees, without limitation, all trades of the introducing

broker effected through submission of orders for United States customers to the trading system.

§ 48.6 [Removed and Reserved]

■ 4. Remove and reserve § 48.6.

■ 5. In § 48.8, revise paragraphs (a)(4)(ii) and (a)(5)(i) and (iii) to read as follows:

§ 48.8 Conditions of registration.

* * * * *

(a) * * *

(4) * * *

(ii) All orders that are transmitted to the foreign board of trade's trading system by a foreign board of trade's identified member or other participant that is operating pursuant to the foreign board of trade's registration will be solely for the member's or trading participant's own account unless such member or other participant is registered with the Commission as a futures commission merchant or such member or other participant is registered with the Commission as an introducing broker, commodity pool operator or commodity trading advisor, or is exempt from registration as a commodity pool operator or commodity trading advisor pursuant to § 4.13 or § 4.14 of this chapter, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all trades of the introducing broker, commodity pool operator or commodity trading advisor effected through submission of orders for United States pools or customers to the trading system.

(5) * * *

(i) Prior to operating pursuant to registration under this part and on a continuing basis thereafter, a registered foreign board of trade will require that each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, an introducing broker, a commodity trading advisor or a commodity pool operator, file with the foreign board of trade a written representation, executed by a person with the authority to bind the member or other participant, stating that as long as the member or other participant is authorized to enter orders directly into the trade matching system of the foreign board of trade, the member or other participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the registration.

* * * * *

(iii) The foreign board of trade, clearing organization, and each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, an introducing broker, a commodity trading advisor, or a commodity pool operator will maintain with the foreign board of trade written representations, executed by persons with the authority to bind the entity making them, stating that as long as the foreign board of trade is registered under this part, the foreign board of trade, the clearing organization or member of either or other participant granted direct access pursuant to this part will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, the National Futures Association, prompt access to the entity's, member's, or other participant's original books and records or, at the election of the requesting agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the United States.

* * * * *

■ 6. In § 48.9, add paragraph (b)(5) to read as follows:

§ 48.9 Revocation of registration.

* * * * *

(b) * * *

(5) The Commission may revoke a foreign board of trade's registration in response to a voluntary request by the foreign board of trade to vacate its registration. A foreign board of trade may file a request to vacate its registration with the Secretary of the Commission at FBOTapplications@cftc.gov.

* * * * *

Issued in Washington, DC, on August 6, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Foreign Boards of Trade—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam

I support this final rule, which amends the CFTC regulations for foreign boards of trade (FBOTs). The amendments permit a registered FBOT to provide direct access to its electronic trading and order matching system to a registered introducing broker (IB) located in the United States for submission of customer orders to the FBOT's trading system for execution. Based upon more than ten years of Commission experience with the existing rules for FBOTs, the amendments also enhance and modernize the ruleset.

The existing FBOT rules were promulgated in 2011. Today's amendments demonstrate the Commission's ongoing consideration of its existing rules and my commitment to ensuring that our rules address the reality of today's markets and their structure. The changes enable new types of market participants to access registered FBOTs, improving liquidity and promoting healthier markets.

I thank staff in the Division of Market Oversight, Office of the General Counsel, and the Office of the Chief Economist for all of their work on this final rule.

Appendix 3—Statement of Commissioner Kristin N. Johnson

The Commodity Futures Trading Commission (Commission) approved a final rule that amends Part 48 to permit a foreign board of trade (FBOT) registered with the Commission to provide introducing brokers (IBs) located in the United States and registered with the Commission direct access to submit orders to trade foreign futures and options on behalf of customers located in the United States (Final Rule).¹ Under the Final Rule, FBOTs will be able to provide registered IBs located in the United States with direct access to execute customer trades, provided that they submit such orders for clearing to a Commission-registered FCM or a firm exempt from FCM registration under CFTC Regulation 30.10.

Over the course of my tenure as a Commissioner, I have consistently supported the Commission's efforts to advance the protection of customer funds. I appreciate the thoughtful comments regarding the Commission's 30.10 framework in the context of the Final Rule and the attention given to the need to ensure that the foreign regime has comparable customer protection, disclosure, and anti-money laundering requirements.

I support the Final Rule, which includes important protections for U.S. customers, while also facilitating market access. I commend the careful work of the staff of the Division of Market Oversight, including Alexandros Stamoulis, Roger Smith, Maura Dundon, and David Reiffen, on the Final Rule.

¹ The Commission is also establishing a procedure for an FBOT to request the revocation of its registration, and removing certain outdated references to "existing no-action relief."

Appendix 4—Statement of Commissioner Caroline D. Pham

I support the Foreign Boards of Trade (FBOT) Final Rule because it promotes access to markets for U.S. participants, competition, and liquidity. I would like to thank Maura Dundon, Roger Smith, and Alexandros Stamoulis in the CFTC's Division of Market Oversight for their work on this rulemaking.

I will reiterate key points from my statement on the FBOT proposed rule.¹ As a CFTC Commissioner, I have made it clear that I believe in good policy that enables growth, progress, and access to markets.² Accordingly, I am pleased to support Commission efforts that take a pragmatic approach to issues that hinder market access and cross-border activity. I continue to believe that this rulemaking exemplifies policy that ensures a level playing field, and I applaud this step in the right direction for market structure.

FBOTs have been a critical piece of the CFTC's markets for decades and provide access for U.S. market participants to non-U.S. markets in realization of the global economy and international business.³ The main substantive amendment in the FBOT Final Rule is to Regulation 48.4, which will now include introducing brokers (IBs)⁴ as a permissible intermediary, in addition to futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs), to enter orders on behalf of customers or commodity pools via direct access on a registered FBOT.⁵ I believe that the FBOT Final Rule will provide more choice in brokers and broker arrangements for U.S. market participants that trade foreign futures and ensure that appropriate customer protections are in place.

As sponsor of the CFTC's Global Markets Advisory Committee (GMAC),⁶ I have

devoted a significant part of my Commissionership to supporting solutions that will enhance the resiliency and efficiency of global markets.⁷ The FBOT Final Rule is policy that mitigates market fragmentation and the associated impact on liquidity, and promotes the overall competitiveness of our derivatives markets. I am pleased to support the FBOT Final Rule.

[FR Doc. 2024–17828 Filed 8–14–24; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice: 12422]

RIN 1400–AF26

International Traffic in Arms Regulations: Amendments to the Definition of Activities That Are Not Exports, Reexports, Retransfers, or Temporary Imports

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) published a proposed rule on December 16, 2022, to include two new entries to the International Traffic in Arms Regulations (ITAR) to expand the definition of “activities that are not exports, reexports, retransfers, or temporary imports.” The Department is now responding to the public comments received in response to that proposed rule and finalizing the proposed rule with changes.

DATES: The rule is effective on September 16, 2024.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 634–4981; email

GMAC. See Commissioner Pham Announces New Members and Leadership of the CFTC's Global Markets Advisory Committee and Subcommittees (June 30, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8740-23>.

⁷ E.g., Achieving Growth and Progress: Statement of Commissioner Caroline D. Pham at the Global Markets Advisory Committee June 4 Meeting (June 4, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement060424>; Opening Statement of Commissioner Caroline D. Pham before the Global Markets Advisory Committee (Feb. 13, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement021323>. To date, the GMAC has advanced 13 recommendations and reports to the Commission on a broad set of significant global markets issues, including U.S. Treasury market liquidity, well-functioning repo and funding markets, capital and margin requirements, exchange volatility controls, T+1 securities settlement, improved collateral management, central counterparty (CCP) default simulation, streamlining trade reporting data to monitor systemic risk, and a foundational digital asset taxonomy to facilitate alignment in regulation across jurisdictions.

DDTCCustomerService@state.gov
ATTN: Regulatory Change, ITAR 120.54 additions.

SUPPLEMENTARY INFORMATION: On December 16, 2022, the Department of State published a proposed rule (87 FR 77046), to include two new entries to § 120.54 of the International Traffic in Arms Regulations (ITAR) to expand the definition of “activities that are not exports, reexports, retransfers, or temporary imports.” Activities listed in ITAR § 120.54 do not require an authorization from the Department's Directorate of Defense Trade Controls (DDTC). The Department has received delegated authority under section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778) to issue regulations regarding the export of defense articles and defense services. It has long used this authority to define what events are controlled as exports and what events are not. Moreover, section 38(b) of the AECA also provides supporting authority, as the Department may by regulation except instances where a license would otherwise be required. Accordingly, the Department proposed this rule to amend ITAR § 120.54 in two ways. First, the proposed rule provided that, subject to certain conditions, the taking of U.S. defense articles outside a previously approved country by the armed forces of a foreign government or United Nations personnel on a deployment or training exercise is not an export, reexport, retransfer, or temporary import. Second, the proposed rule provided that a foreign defense article that enters the United States, either permanently or temporarily, and that is subsequently exported from the United States pursuant to a license or other approval under this subchapter, is not subject to the reexport and retransfer requirements of this subchapter, provided it has not been modified, enhanced, upgraded, or otherwise altered or improved or had a U.S.-origin defense article incorporated into it. In that proposed rule, the Department requested comments from the public. The Department now provides responses to those comments and amends the ITAR, with changes from the proposed rule, through this final rulemaking.

Summary of Changes From the Proposed Rule

The following are six changes the Department made in this final rule since the development and publication of the December 16, 2022, proposed rule (87 FR 77046). First, to provide additional clarity, the Department inverted the order of proposed paragraphs (a)(6)(i)

¹ Statement of Commissioner Caroline D. Pham in Support of Foreign Board of Trade Proposal (Feb. 20, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement022024>.

² See, e.g., Keynote Address by Commissioner Caroline D. Pham, 98th Annual Convention of the American Cotton Shippers Association (June 22, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham2>; Statement of Commissioner Caroline D. Pham on Staff Letter Regarding ADM Investor Services, Inc. (June 16, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement061623>.

³ While FBOTs initially had operated pursuant to no-action relief, in 2011, following the Dodd-Frank Wall Street and Consumer Protection Act of 2010, the Commission began registering FBOTs. See Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011), <https://www.federalregister.gov/documents/2011/12/23/2011-31637/registration-of-foreign-boards-of-trade>.

⁴ The Commission generally defines an IB as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders. Commodity Exchange Act (CEA) section 1a(31); 17 CFR 1.3(mm). The Commission registers IBs under CEA section 4d(g) and CFTC Regulation 3.4(a). 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

⁵ 17 CFR 48.4.

⁶ CFTC Global Markets Advisory Committee, <https://www.cftc.gov/About/AdvisoryCommittees/>

and (ii). The first provision now notes there is no change in end-use or end-user, and the next provision is the requirement that the items be transported by and remain in the possession of the previously authorized armed forces or United Nations military personnel.

Second, the Department amended the text of proposed paragraph (a)(6)(ii), which will now become paragraph (a)(6)(i), by changing “subject defense article” to “defense article” to reduce unnecessary text.

Third, the Department amended the text of proposed paragraph (a)(6)(i), which will now become paragraph (a)(6)(ii), by adding the phrase “previously authorized” before “armed forces” to reinforce that the armed forces or United Nations (U.N.) military personnel transporting and in possession of the defense articles must be previously authorized end-users of the defense articles.

Fourth, the Department also amended the text of proposed paragraph (a)(6)(i), which will now become paragraph (a)(6)(ii), by revising the phrase “U.N. personnel” to “U.N. military personnel.” The Department added the additional word to ensure that non-military persons associated with U.N. missions, such as civilians, including police, working for various U.N. agencies are not mistakenly believed to be described by the provision.

For the fifth and sixth changes, the Department narrowed the scope of the proposed excluded list of activities that are not exports, reexports, retransfers, or temporary imports, by not excluding temporary imports into the United States, or subsequent exports. Although exports and temporary imports were originally included in the proposed rule, since publication and during the review period, the Department reassessed the inclusion of those activities in light of a comment received, information received from an interagency partner, and the intended purpose of the rule. More specifically, one commenter requested clarification that licenses for temporary imports would not be required under the proposed rule text. The response to this comment is discussed more below, but highlighted aspects of the proposed rule the Department was already focused on. In addition, the Department conferred with interagency partners regarding the Automated Commercial Environment (ACE), the system through which imports, including temporary imports, and exports are reported. Considerations of tracking temporary imports and a long process to change ACE reporting and coding options led the Department

to reevaluate this aspect of its proposal in this particular rulemaking. Moreover, the intent of the proposed rule was to consider eliminating the need to submit reexport and retransfer requests for activities that are routinely approved and to provide clarity regarding subsequent control of unmodified foreign-origin defense articles that have been subject to ITAR control while in the United States. The resulting change in this rule does not impose any new obligation or requirement. Rather, it is a reduction in the scope of the broader exemption initially proposed.

Accordingly, the Department added a third limitation to proposed paragraph (a)(6). This third limitation in what will now become ITAR § 120.54(a)(6)(iii), “the defense article is not being exported from or temporarily imported into the United States,” prohibits the applicability of the provision for exports from the United States and temporary imports into the United States. The Department added this third limitation to avoid complications when transiting the U.S. border and to stay within the intent of this portion of the rule, which is to clarify policy regarding reexports and retransfers of defense articles previously authorized for export from the United States and in the possession of the armed forces of a foreign government or United Nations military personnel. This makes express in the regulations a long-standing practice set forth since 2013 in DDTC’s publicly available “Guidelines for Preparing Agreements.”

Similarly, the Department added a new paragraph (a)(7)(iii), using the same language as found in new paragraph (a)(6)(iii). The new paragraph (a)(7)(iii) states that a transfer of a wholly foreign defense article is not a controlled event, unless it is an export from, or a temporary import into, the United States. This addition is for clarification purposes only and reinforces that the transfer of a wholly foreign defense article outside of the United States and not otherwise subject to the ITAR does not require authorization.

Response to Comments

Two commenters noted the two proposed entries to ITAR § 120.54 help clarify what activities are controlled events subject to the ITAR’s jurisdiction. Specifically, both commenters noted the two new entries are appropriately narrow in construing events that are and are not controlled in a manner consistent with U.S. national security interests. One commenter expressed their agreement with proposed paragraph (a)(6) but not paragraph (a)(7). The commenter specifically stated

paragraph (a)(7) “says that foreign defense articles, presumably meaning guns, ammunition, and other weapons, will not be subject to the normal procedures of a controlled event. I disagree with this because I believe controlling the flow of weapons is of the utmost importance, and even if the weapons come from a partner country, they deserve a certain level of scrutiny, even if it causes some frustration from interested parties. . . .” The Department notes paragraph (a)(7) is an accurate reflection of the current jurisdiction of the ITAR, which does not control transfers of foreign defense articles that originally entered the United States and have since been exported from the United States if the enumerated criteria in paragraph (a)(7)(i) to paragraph (a)(7)(iii) are all met. Like foreign persons who generally become subject to U.S. laws and regulations when they enter the United States, foreign defense articles that enter the United States generally become subject to U.S. laws and regulations, including the ITAR, while in the United States. However, U.S. laws and regulations generally do not govern the activities of foreign persons abroad. Similarly, foreign defense articles that leave the United States are no longer subject to the ITAR under the circumstances described in paragraph (a)(7). To help illustrate this concept, the Department notes the following scenario—U.S. Company A purchases a foreign defense article from Foreign Company B located outside the United States. The purchased foreign defense article is imported into the United States but U.S. Company A later realizes it no longer needs the foreign defense article and obtains the necessary DDTC authorization to export the foreign defense article back to Foreign Company B. Foreign Company B does not subsequently need further Department authorization to sell the returned foreign defense article to a separate party, assuming the criteria in paragraph (a)(7) are met. As a result, no change is being made to proposed paragraph (a)(7) in response to this comment.

Several commenters expressed appreciation for the Department’s effort regarding new paragraph (a)(6). Specifically, these commenters noted proposed paragraph (a)(6) provides “positive assurance to [U.S.] partner countries’ armed forces” of an understanding that was previously “only noted in DDTC’s Guidelines for Preparing Agreements document” and applauded DDTC for making explicit in the regulations DDTC’s long-standing policy expressed in that document that

the taking of a defense article outside a previously approved country by the armed forces of a foreign government or international organization is not a controlled event, provided certain criteria are met. One commenter noted that it would simplify the process their country's armed forces must follow to take U.S. defense articles outside a previously approved country during a deployment or on exercises, while another expressed their belief that new paragraph (a)(6) would enhance interoperability amongst allies.

However, one commenter suggested the language of paragraph (a)(6) is too narrow and requested an expansion to enable other foreign or U.S. parties to an agreement (who are not the armed forces of a foreign government or United Nations personnel) to take defenses articles on operations or deployments outside a previously approved country without requesting additional authorization from the Department. The commenter suggested a specific modification to the "Deployment Clause" language included in DDTC's "Guidelines for Preparing Agreements" to implement their suggestion. The Department emphasizes the goal of this rulemaking is to memorialize long-standing Department policies that were specified in the "Guidelines for Preparing Agreements." Therefore, the Department notes its purposeful limited intent for this rulemaking to be applicable to activities of armed forces of a foreign government or United Nations military personnel. In contrast, the Department assesses that activities undertaken by other foreign or U.S. parties to an agreement who are not the armed forces of a foreign country or United Nations military personnel still warrant additional review and should continue to require authorization from the Department in order to take defenses articles outside a previously approved country. For these reasons, the Department is not revising the text of proposed paragraph (a)(6) in response to this comment.

Another commenter noted with respect to paragraph (a)(6) "that the proposed addition lacks any reference to related technical data." Specifically, the commenter explained that "codifying the Department's long-standing policy without an explicit reference to 'related technical data' might lead to confusion [as to] whether separate authorization is required for the export, reexport, retransfer or temporary import of technical data needed to operate the defense article and/or generated by the defense article." Subsequently, the commenter suggested adding "and any related technical data" to the term

"defense article" in ITAR § 120.54(a)(6). The Department notes, per ITAR § 120.31, "defense article" means any item or technical data designated in ITAR § 121.1; therefore, the addition of "and any related technical data" would be duplicative. For this reason, the Department is not making the changes proposed by this commenter.

As introduced above, one commenter requested that the Department provide clarification that, as a result of this rulemaking, licenses for temporary imports into the United States that meet the criteria of ITAR § 120.54(a)(6) are not required. The Department declines to adopt this recommendation for the reasons previously expressed in this preamble. Specifically, the Department wishes to stay within the intent of this portion of the rule, which is to clarify long-standing policy regarding reexports and retransfers outside of the United States of properly authorized defense articles previously exported from the United States and in the possession of the armed forces of a foreign government or United Nations military personnel. The comment did, however, bring to the attention of the Department the issues which led to the inclusion of new paragraphs (a)(6)(iii) and (a)(7)(iii), as discussed above. The commenter also recommended a revision to proposed paragraph (a)(6) to enable the armed forces of a foreign government or United Nations personnel to "[share] equipment with foreign partners that also have access to the same equipment, albeit via different licenses and agreements" during deployments and training exercises. The Department notes that foreign partners who have access to the same equipment via different licenses and agreements do not always have access to the same configuration of the equipment and thus foreign partners would not always have the ability to make an accurate determination as to whether their specific defense article configurations are the same. Therefore, the Department is not revising the text of the proposed rule as suggested by the commenter.

The same commenter also requested revisions to proposed paragraph (a)(6) to expand the entry to include third-party contractors in addition to the armed forces of a foreign government and United Nations personnel. The Department emphasizes that the goal of this rulemaking is to memorialize long-standing Department policies that were articulated in the "Guidelines for Preparing Agreements." Therefore, the Department notes its purposeful limited intent for this rulemaking to apply only to the activities of the armed forces of a foreign government or United Nations

military personnel. In contrast, activities undertaken by other foreign or U.S. persons who are not the armed forces of a foreign country or United Nations military personnel should continue to require additional authorization from the Department. For these reasons, the Department is not making the changes suggested by this commenter.

The same commenter also requested that "end-use" be removed from proposed paragraph (a)(6)(ii) since Department export control licenses and agreements do not often explicitly include "use by a foreign government (armed forces) for deployment or training exercise," even though such activity is often an implied end-use. The position of the Department is that the taking of a defense article subject to the reexport or retransfer requirements of the ITAR on a deployment or training exercise outside a previously approved country is not a change in end-use if the enumerated criteria in ITAR § 120.54(a)(6)(i) through (iii) are met. This Department position is applicable even if such deployments or training exercises are not explicitly included on a license or agreement. For this reason, the Department is not revising the text of the proposed rule as proposed by the commenter.

Regarding proposed paragraph (a)(7), the same commenter welcomed this new entry. The commenter further requested the Department provide clarification on several matters. First, the commenter requested clarification as to whether a foreign defense article will become subject to the ITAR's "reexport/retransfer license obligations if it had been modified, enhanced, upgraded or otherwise altered or improved in a manner that changed the basic performance of the item but did not have a U.S.-origin defense article incorporated while it is in the United States." The Department confirms that in such a scenario the foreign defense article will be subject to the ITAR and will require reexport or retransfer authorizations for all subsequent transfers after it leaves the United States.

The commenter also requested the Department provide "a clear threshold for activities undertaken whilst the wholly foreign defense article is in the United States for controls to be triggered under ITAR § 120.54(a)(7)(i)" and to provide guidance on the meaning of "modified, enhanced, upgraded or otherwise altered or improved in a manner that changed the basic performance." The Department does not believe it needs to offer definitions of commonly used terms and phrases such as "modified," "enhanced," "upgraded"

or “otherwise altered or improved.” The regulated community should apply the ordinary meaning of those words consistent with how it has interpreted those terms as they already exist in the ITAR (*e.g.*, ITAR § 123.4(b)).

Finally, the commenter also requested the Department put in place “a mechanism in U.S. export licenses to indicate that a wholly foreign defense article has been modified, enhanced, upgraded or otherwise altered or improved in a manner that changed the basic performance of the item.” The commenter asserted that, if such a mechanism were not put in place, “that these changes [would] place the onus of identifying whether controls apply on foreign recipients [which] may lead to excessive and unnecessary licensing to avoid non-compliance.” The Department notes that an authorization would be required for a person modifying, enhancing, upgrading, or otherwise altering or improving a foreign defense article while in the United States. Therefore, the subsequent recipient of an altered or improved foreign defense article should have clear notice of whether the criteria in paragraph (a)(7)(i) are met. Consequently, the Department does not envision any excessive or unnecessary licensing will occur because of these changes. For this reason, the Department is not adopting the commenter’s recommendation.

One commenter requested that the Department provide additional guidance regarding the word “transported” in paragraph (a)(6)(i). Specifically, the commenter requested guidance or amendments to the proposed rule that would enable transport of defense articles by third-party contractors in addition to the armed forces of a foreign government or United Nations personnel. The Department notes its purposeful limited intent for this rulemaking to be applicable only to the activities of the armed forces of a foreign government or United Nations military personnel. In contrast, activities undertaken by other foreign or U.S. parties to an agreement that are not the armed forces of a foreign country or United Nations military personnel should generally be reviewed on a case-by-case basis and continue to require authorization from the Department. For this reason, the Department is not revising the text of the proposed rule in response to the comment.

The same commenter expressed their support for proposed paragraph (a)(7), noting that it is a “welcome clarification over an issue that has caused different risk-based approaches by [companies] over many years.” The commenter also

requested the Department provide additional guidance regarding when a foreign defense article is imported into the United States for testing and how any generated test data should be controlled. In addition, the commenter requested the Department provide further clarification regarding how a foreign defense article that contains U.S.-origin defense articles should be treated when undergoing testing in a foreign country. The Department notes such requests are outside the scope of this rulemaking. For this reason, the Department is not revising the text of the proposed rule in response to this comment.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the requirements of section 553 of the Administrative Procedure Act (APA) as a military or foreign affairs function of the United States. Without prejudice to this determination, the Department elected to solicit comments on the proposed regulatory changes and has responded to those comments in this final rule.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

The Office of Management and Budget has determined that this rulemaking is not a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Orders 12866, as amended by Executive Orders 13563 and 14094, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributed impacts; and equity). Because the scope of this rule does not impose additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. Although the Department cannot determine based on available data how many fewer licenses will be submitted as a result of this rule, the amendments to the definition of activities that are not exports, reexports, retransfers, or temporary imports will relieve licensing burdens. Qualitatively, this rule should have significant benefits for industry. The rule will provide more certainty and clarity by expressly stating in regulatory text what was already in Guidelines published by the Department. Additionally, it should have helpful impacts on our nation’s foreign policy, more clearly conveying that the Department does not attempt to impose restrictions on other nations transporting defense articles during deployments or training exercises to other foreign countries. In turn, this may also encourage other nations to purchase additional defense articles from U.S. industry. This rule is consistent with Executive Order 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing cost, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not significant within the meaning of section 3(f)(1) of Executive Order 12866, by the Office of Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly,

Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This final rule does not impose or revise any new information collections subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

For the reasons set forth above, the Department of State amends title 22, chapter I, subchapter M, part 120 of the Code of Federal Regulations as follows:

PART 120—PURPOSE AND DEFINITIONS

- 1. The authority citation for part 120 continues to read as follows:

Authority: 22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

- 2. Amend § 120.54 by:

- a. Removing the period at the end of paragraph (a)(5)(v) and adding a semicolon in its place; and
■ b. Adding paragraphs (a)(6) and (7).

The additions read as follows:

§ 120.54 Activities that are not exports, reexports, retransfers, or temporary imports.

(a) * * *

(6) The taking of a defense article subject to the reexport or retransfer requirements of this subchapter on a deployment or training exercise outside a previously approved country, provided:

(i) There is no change in end-use or end-user with respect to the defense article;

(ii) The defense article is transported by and remains in the possession of the previously authorized armed forces of a foreign government or United Nations military personnel; and

(iii) The defense article is not being exported from or temporarily imported into the United States; and

(7) The transfer of a foreign defense article previously imported into the United States that has since been exported from the United States pursuant to a license or other approval under this subchapter, provided:

(i) The foreign defense article was not modified, enhanced, upgraded, or otherwise altered or improved in a manner that changed the basic performance of the item prior to its return to the country from which it was imported or a third country;

(ii) A U.S.-origin defense article was not incorporated into the foreign defense article; and

(iii) The defense article is not being exported from or temporarily imported into the United States.

* * * * *

Bonnie D. Jenkins,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2024-18249 Filed 8-14-24; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY-260-FOR; Docket ID: OSM-2018-0008; S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS01520]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment, with one exception.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment, with one exception, to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We are approving changes to statutory provisions that involve civil penalty fund distributions, self-bonding, and major permit revisions related to underground mining. We are not approving a provision that involves civil penalty escrow accounts.

DATES: The rule is effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (859) 260-3900, email: mcastle@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws

and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). Based on these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17. The regulatory authority in Kentucky is the Kentucky Energy and Environment Cabinet, Department of Natural Resources (herein referred to as the Cabinet).

II. Submission of the Amendment

By letter dated September 19, 2018 (Administrative Record Number KY-2007-01), the Cabinet submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*), docketed as KY-260-FOR. The amendment seeks to revise the Kentucky Revised Statutes (KRS) to include statutory changes that involve civil penalty escrow accounts, civil penalty fund distributions, self-bonding, and major permit revisions related to underground mining.

The General Assembly of the Commonwealth of Kentucky enacted statutory changes through House Bill 261, which was signed by the Governor on April 2, 2018, and became effective on July 14, 2018. *See* 2018 Ky. Acts ch. 85. These changes are codified at KRS Chapter 350, *Surface Coal Mining*, sections 350.0301, 350.064, 350.070, 350.518, and 350.990. The Cabinet was not required to promulgate administrative regulations as a result of the law.

We announced receipt of the proposed amendment in the May 10, 2019, **Federal Register** (84 FR 20595) (Administrative Record No. KY-2007-17). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on these provisions. We did not hold a public hearing or meeting because none was requested. The public comment period ended on June 10, 2019. No public comments were received.

III. OSMRE's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are

approving the amendment as described below with the exception of changes to KRS 350.0301. Any revisions that we do not specifically discuss below concern non-substantive grammatical or editorial changes and can be found in the full text of the program amendment available at www.regulations.gov.

A. Civil Penalty Escrow Account, KRS 350.0301, Petition challenging determination of cabinet—Conduct of hearings—Administrative regulations—Secretary may designate deputy secretary to sign final orders.

Kentucky seeks to revise KRS 350.0301(5) by removing language requiring Kentucky's administrative regulations to include provisions that: (1) require that operators place civil penalty funds in escrow before a formal hearing on the amount of the assessment of the civil penalties; and (2) allow Kentucky to waive the escrow requirement for individuals who demonstrate with substantial evidence an inability to pay the proposed civil penalty assessment into escrow.

OSMRE Finding: In 2005, the Supreme Court of Kentucky decided *Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet v. Kentec Coal Co., Inc.*, 177 S.W.3d 718 (Ky. 2005), in which the Court concluded that Kentucky's prepayment requirements, codified at the time in the Kentucky Administrative Regulations at 405 KAR 7:092, were in violation of the due process and equal protection clauses of the United States Constitution and section 2 of the Kentucky Constitution, which prohibits arbitrary State action. In response to the Court's decision, Kentucky first removed notice of its prepayment requirements from two documents provided to operators, a Notice of Assessment of Civil Penalties and a Penalty Assessment Conference Officer's Report, and Kentucky added language to those documents making clear that prepayment was no longer required to request a formal administrative hearing. By letter dated March 28, 2006, Kentucky sent us notice of these revisions, which we docketed as Program Amendment No. KY-250-FOR and subsequently disapproved on September 18, 2006 (71 FR 54586).¹

In our decision of September 18, 2006 (71 FR 54586), we concluded that removing the requirement to place civil penalty funds in escrow prior to a formal hearing on the assessment renders the program less stringent than

section 518(c) of SMCRA, 30 U.S.C. 1268, and less effective than the Federal regulations at 30 CFR 845.19(a), and therefore disapproved the amendment. As stated in that document, the Supreme Court of Kentucky rulings notwithstanding, section 518(c) of SMCRA and the Federal regulations require prepayment of a proposed penalty if a hearing is requested. Section 518(c) of SMCRA states that should the person charged with the penalty wish to contest the amount of the penalty or the fact of the violation, that person must forward the proposed amount of the penalty to the Secretary for placement into an escrow account pending resolution of the contest. 30 U.S.C. 1268(c). Section 518(c) further states that failure to forward the money accordingly shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. *Id.* The Federal regulations repeat this requirement, specifying that the petition and proposed penalty amount must be submitted to the Office of Hearings and Appeals. 30 CFR 845.19(a). Federal courts of appeals have found these provisions consistent with the due process and equal protection requirements of the United States Constitution. *See, e.g., Graham vs. Office of Surface Mining, Reclamation and Enforcement*, 722 F.2d 1106 (3d Cir. 1983).

Kentucky's proposed revision to KRS 350.0301 directly relates to the same revisions that we disapproved on September 18, 2006, codified at 30 CFR 917.12(f). Kentucky's further steps to remove the requirement to prepay the assessed penalty into escrow when administrative hearing is requested continues to render Kentucky's program less stringent than section 518(c) of SMCRA and less effective than the Federal regulations at 30 CFR 845.19(a), and therefore are not approved.

B. Self-Bonding—KRS 350.064, Reclamation bond to be filed by applicant.

Kentucky seeks to revise KRS 350.064(2) by removing language that allows self-bonding in the State. A self-bond is a bond of the applicant and is backed only by the overall financial health of the applicant, without separate surety or specific pledges of collateral. In order to have qualified and received approval for self-bond in Kentucky, the applicant must successfully demonstrate a history of financial solvency and continuous operation and the existence of a suitable agent to receive service of process.

OSMRE Finding: Section 509(c) of SMCRA, 30 U.S.C. 1259, and its implementing regulations at 30 CFR

800.4(d), *Regulatory Authority Responsibilities*; 30 CFR 800.5, *Definitions*; 30 CFR 800.12, *Form of the Performance Bond*; and 30 CFR 800.23, *Self-bonding*, permit a regulatory authority to accept different forms of performance bonds, including self-bonds, as a mechanism to ensure that funds will be available to complete the reclamation plan if the work has to be performed by the regulatory authority in the event of a forfeiture. The regulatory authority may accept a self-bond without separate surety when the applicant demonstrates, to the satisfaction of the regulatory authority, the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount. Some State regulatory programs have accepted self-bonds to guarantee reclamation.

It is reasonable that Kentucky reconsider acceptance of this type of performance bond as a reclamation guarantee. In fact, there are no active self-bonds being held by Kentucky at this time. SMCRA and its implementing regulations do not require that a regulatory authority include a self-bond in their regulatory programs; therefore, we find that the elimination of self-bonding in the Kentucky program renders the program no less stringent than SMCRA and no less effective than the Federal regulations, and we approve this change.

C. Permit Revisions—KRS 350.070, Permit revisions.

Kentucky seeks to revise KRS 350.070(1) by removing language that requires an operator to submit a major permit revision application for an extension of an underground mining area that is more than incidental boundary revisions, but which does not include planned subsidence or other new proposed surface disturbances. Kentucky also seeks to delete subsection (6)(b), which defines the maximum number of acres for a revision to be considered an incidental boundary revision involving underground operations.

OSMRE Finding: Kentucky originally added the above requirement, which we approved, through Kentucky House Bill 707 of 1994, enacted 1995 Ky. Acts ch. 301. *See* 60 FR 33110 (June 27, 1995). In our approval, we explained that the Federal regulations do not require that areas overlying proposed underground workings be included in the permit area if no surface disturbance is planned. *Id.* At 33113. Therefore, under those circumstances, where no surface disturbance is planned by an extension

¹ In 2017, Kentucky removed the prepayment requirement from 405 KAR 7:092, *see* 43 Ky.R. 1876 (April 1, 2017), and subsequently recodified this provision to 400 KAR 1:110, effective August 4, 2017.

of the underground mining area, no permit revision is required.

For the same reason that we approved the inclusion of this requirement in 1994, we approve its removal. Neither SMCRA nor the Federal regulations require Kentucky to include those areas within the permit area. Thus, this amendment does not render Kentucky's program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 774.13, *Permit revisions*, or 30 CFR part 784, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*.

D. Civil Penalty Funds and Distribution—KRS 350.518, [relating to Kentucky's bond pool], and KRS 350.990, Penalties.

Kentucky seeks to delete KRS 350.518(11), which requires penalty funds in excess of \$800,000 in any fiscal year to be equally deposited between: (a) the Kentucky Reclamation Guaranty Fund (KRGF), which finances Kentucky's alternative bonding system, or bond pool; and (b) the Abandoned Mine Land (AML) supplemental fund, which was established under KRS 350.139 and consists primarily of interest generated on funds derived from the forfeiture of conventional bonds, and which is to be used to supplement forfeited conventional bonds that are inadequate to complete the reclamation plan. In a complementary revision, Kentucky seeks to delete similar language from KRS 350.990(1). KRS 350.990(1) further directs that the money disbursed to the KRGF be used for the purposes set forth in KRS 350.500–350.521 (relating to Kentucky's bond pool) and KRS 350.595 (relating to Kentucky's Abandoned Mine Land Enhancement Program, which provides partial bond coverage for eligible remining operations), and that money disbursed to the AML supplemental fund established under KRS 350.139(1) be used for the purposes of that section. In place of these deleted allocations, Kentucky seeks to add language to KRS 350.990(1) that directs that penalties in excess of \$800,000 in any fiscal year be deposited into the restricted fund account of the Office of the Commissioner of the Department for Natural Resources to be disbursed for the purposes set out in KRS chapters 350 (Surface Coal Mining), 351 (Department for Natural Resources), and 352 (Mining Regulations). KRS chapters 351 and 352 consist of Kentucky's coal mine safety laws.

OSMRE Finding: We approved the provision to equally distribute civil penalty funds in excess of \$800,000 into two specific reclamation funds in KY–

218 on May 10, 2000 (65 FR 29949). At that time, civil penalties collected in any fiscal year up to \$800,000 were deposited with the State Treasury to the credit of Kentucky's general fund, *see* KRS 350.139, and any sums in excess of \$800,000 were to go to the Kentucky Bond Pool Fund (BPF) (the predecessor to the KRGF). From there, one half of the excess would go to a new bond forfeiture supplemental fund but only when the balance of the BPF was above the maximum of the operating range necessary to ensure solvency (\$16 million at the time). A review of the adequacy of the BPF was conducted in 2011; the findings concluded that reclamation performance bonds were not always sufficient to complete reclamation required in approved permits. As a result, the program was amended by KY–256 on January 29, 2018 (83 FR 3948) to ensure bond amounts were adequate to complete reclamation in the event of forfeiture. As part of that effort, Kentucky eliminated the BPF and replaced it with the KRGF, which carried greater safeguards, such as periodic actuarial studies to determine the amount necessary to ensure its solvency. At the same time, Kentucky removed the \$16 million minimum balance and, instead, required periodic actuarial studies in order to determine the necessary balance of the KRGF.

In our 2000 approval, we noted that Kentucky was not diverting any money away from the BPF except for proceeds in excess of the amount necessary to guarantee its solvency. *See* 65 FR 29949 at 29950. In our 2018 approval, we noted that the safeguards provided in the KRGF ensure the KRGF's solvency, and therefore removing the commitment of civil penalty money to the KRGF to achieving a particular minimum balance was not inconsistent with SMCRA or its implementing regulations. *See* 83 FR 3948 at 3953.

The Kentucky revisions described above broaden the potential uses of civil penalty funds to any purposes set out in KRS chapters 350, 351, and 352, which would include the current purposes laid out for the KRGF and the AML supplemental fund established under chapter 350. Kentucky has the discretion to allocate its funds in a manner that supports the objectives of its program. Unlike performance bond funds, no Federal requirements exist that direct penalty funds be used for reclamation. Our regulations at 30 CFR 845.21 explain our use of Federal civil penalties for reclamation subject to Congressional authorization; however, this provision was the result of a continuing resolution by Congress in

1987, which, for the first time, authorized us to use civil penalty money in this manner and was not part of the broader SMCRA program required of the States. *See* 53 FR 16016 (May 4, 1988). Because, as was the case when we approved this requirement in 2000, neither SMCRA nor the Federal regulations require civil penalty funds to be used on reclamation, Kentucky's program is not less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 845.21 by using these funds for other purposes; therefore, we approve these revisions.

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment in the May 10, 2019, **Federal Register** document announcing receipt of this amendment (84 FR 20595). Because no one requested an opportunity to speak at a public hearing, none was held. We did not receive any comments from the public.

Federal Agency Comments

On December 3, 2018, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record Nos. KY–2007–08, 09, 10, 11, 12, 13, 14). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on December 3, 2018, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. KY–2007–09 and 10). We did not receive any comments from EPA.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and the ACHP on amendments

that may have an effect on historic properties. On December 3, 2018, we requested comments on the amendment from the SHPO (Administrative Record No. KY-2007-13) and the ACHP (Administrative Record No. KY-2007-11). SHPO responded on December 26, 2018, that they had no comment as the amendment is not likely to cause changes that could impact cultural resources (Administrative Record No. KY-2007-16). We did not receive a response from the ACHP.

V. OSMRE's Decision

Based on the above findings, we are approving Kentucky's amendment submitted to OSMRE on September 19, 2018 (Administrative Record No. KY-2007-01), with one exception. For the reasons stated above, removal of the requirement for civil penalty funds to be placed in escrow before a formal hearing is not approved, and therefore the requirement is not eliminated from Kentucky's program.

To implement the approval of the remaining four provisions, we are amending the Federal regulations at 30 CFR part 917 that codify decisions concerning the Kentucky program. In accordance with the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionality Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the relevant Federal regulations.

Executive Order 12866—Regulatory Planning and Review, Executive Order 13563—Improving Regulation and Regulatory Review, and Executive Order 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M-94-3), the approval of State program and/or plan amendments is exempted from OMB review under Executive Order

12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order does not extend to the language of the State regulatory program or to the program amendment that the Commonwealth of Kentucky drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132, which directs agencies to "grant the States the maximum administrative discretion possible" with respect to Federal statutes and regulations administered by the States. Kentucky, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the Kentucky program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative direction to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial

direct effects on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision on the Kentucky program does not include Indian lands as defined by SMCRA or other Tribal lands and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, mostly reflects the State's policy choices not required by or prohibited by Federal law. The part of this rule disapproving one of the State's proposed revisions is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the State submittal, which mostly reflects State policy choices not required by or prohibited by Federal

law. For the part of this rule disapproving one of the State's proposed revisions, the determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the State submittal, which mostly reflects State policy choices not required by or prohibited by Federal law. For the part of this rule disapproving one of the State's proposed revisions, the determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, the Office of Surface Mining

Reclamation and Enforcement amends 30 CFR part 917 as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 917.12 is amended by adding paragraph (i) to read as follows:

§917.12 State regulatory program and proposed program amendment provisions not approved.

* * * *

(i) We are not approving revisions to KRS 350.0301 made by 2018 Ky. Acts ch. 85 that would have eliminated a requirement that Kentucky promulgate regulations providing that operators must place proposed civil penalty assessments into an escrow account prior to a formal hearing on the amount of the assessment.

■ 3. Section 917.15 is amended by adding a new entry to the table in paragraph (a) in chronological order by "Date of Final Publication" to read as follows:

§917.15 Approval of Kentucky regulatory program amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
* * * *	* * * *	* * * *
September 19, 2018	August 15, 2024	KRS 350.064, KRS 350.070, KRS 350.518, and KRS 350.990.

* * * * *
[FR Doc. 2024–18040 Filed 8–14–24; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–048–FOR; Docket ID No. OSM–2012–0011; S1D1S SS08011000 SX064A000 24S180110; S2D2S SS08011000 SX064A000 24XS501520]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are not approving the State of Utah's proposed amendment to the Utah regulatory program ("the Utah program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). In May of 2011, an environmental advocacy group notified OSMRE that the Utah legislature modified its Judicial Code of the Utah Code Annotated by adding a new section that requires plaintiffs who seek an administrative stay or preliminary injunction in an environmental action to first post a surety bond or cash equivalent. After

determining that the legislative change would affect the implementation of the Utah program, OSMRE notified the Utah Division of Oil, Gas and Mining ("DOGM" or "the Division") that the changes to the State law must be submitted as a proposed Utah program amendment. DOGM subsequently submitted this amendment proposing to incorporate legislative changes made to the Utah program.

DATES: Effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Howard E. Strand, Manager, Denver Field Branch, Office of Surface Mining Reclamation and Enforcement, One Denver Federal Center Building 41, Lakewood, Colorado 80225–0065.

Telephone: (303) 236–2931. Email: hstrand@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Utah Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Utah Program

Subject to OSMRE's oversight, sec. 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, *Federal Register* (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of the Amendment

The Governor of Utah signed H.B. 399 into law on March 21, 2011. On May 16, 2011, OSMRE received a letter from an environmental advocacy group notifying the agency of Utah's legislative changes under H.B. 399 (Administrative Record No. OSM–2012–0011–0010). That letter asserted that H.B. 399 resulted in changes to Utah law that required OSMRE's review and approval through the State program amendment process under 30 CFR part 732 before such legislative changes could become an effective part of Utah's program.

In response to the citizen letter, OSMRE, in a letter dated August 8, 2011, requested that DOGM clarify whether the enactment of H.B. 399 resulted in a change to the Utah program (Administrative Record No. OSM–2012–0011–0005). On October 31, 2011, DOGM provided a response to OSMRE's request. In its response, DOGM explained that H.B. 399 modified title 78 of the Utah Judicial Code (Administrative Record No. OSM–2012–0011–0006). DOGM's letter also stated its uncertainty as to whether the enactment of H.B. 399 represented a change in State law approved as part of the Utah program, modified the rights of

any party for judicial review in a manner that would conflict with the requirements of 30 CFR 732.15, or was inconsistent with the Federal law (Administrative Record No. OSM–2012–0011–0006). In a letter dated February 24, 2012, OSMRE determined that a change of condition had occurred under 30 CFR 732.17(e)(2); therefore, OSMRE required DOGM to submit the legislative changes as a proposed program amendment pursuant to 30 CFR 732.17(f) (Administrative Record No. OSM–2012–0011–0007). DOGM submitted the language of H.B. 399 as a State program amendment on April 18, 2012 (Administrative Record No. OSM–2012–0011–0003).

We announced receipt of the proposed amendment in the June 12, 2012, *Federal Register* (77 FR 34892). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record No. OSM–2012–0011–0001). We did not hold a public hearing or meeting because one was not requested. The public comment period ended on July 12, 2012. We received three public comments and one comment from a Federal agency.

III. OSMRE's Findings

The following are the findings we made concerning the proposed amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. As described below, we are not approving the amendment.

DOGM's proposed amendment seeks approval to apply the terms of H.B. 399 under Utah's Program. H.B. 399 modified, and was codified under, title 78 of the Utah Judicial Code, Utah Code Ann. sec. 78B–5–828, and applies to environmental actions. "Environmental action" is defined as a cause of action filed on or after May 10, 2011, that seeks judicial review of a final agency action to issue a permit. Utah Code Ann. sec. 78B–5–828(b). This provision specifically applies to permits issued by the Department of Transportation, the School and Institutional Trust Lands Administration, or the Department of Natural Resources ("DNR"), which includes DOGM's coal permitting actions issued pursuant to Utah's program. Utah Code Ann. sec. 78B–5–828(b)(ii)(A)–(C).

Under the proposed amendment incorporating the terms of H.B. 399, a court or agency may not grant a plaintiff's request for temporary relief (administrative stay or preliminary injunction) related to a challenged State environmental permitting decision until

the plaintiff posts a surety bond or cash equivalent (herein referred to as a bond or environmental litigation bond). Utah Code Ann. sec. 78B–5–828(3). This bond would be imposed in an amount that either the reviewing agency or court deems sufficient to compensate for damages the defendant may sustain as a result of a stay or injunction later found to have been unwarranted. Utah Code Ann. sec. 78B–5–828(3)(a). The bond is required to be written by a surety licensed to do business within the State and must be made payable to each defendant in the event the plaintiff does not prevail on the merits of the environmental action. Utah Code Ann. sec. 78B–5–828(3)(b)–(c) and (5). A reviewing agency or court decision refusing to require the posting of a bond is immediately appealable. Utah Code Ann. sec. 78B–5–828(6).

While the changes outlined in H.B. 399 (Utah Code Ann. sec. 78B–5–828) apply to multiple State agencies, this final rule pertains only to the application of Utah Code Ann. sec. 78B–5–828 to DOGM's coal permitting actions issued pursuant to the approved Utah program under SMCRA. Utah's program consists of the Utah Coal Mining and Reclamation Act, Utah Code Ann. sec. 40–10–1 through 40–10–31, and the Utah Administrative Code rules, R645–100 through –403. While DOGM's submission does not amend the text of the already approved Utah program, application of Utah Code Ann. sec. 78B–5–828 would markedly alter implementation of the Utah program and render the program inconsistent with, and less stringent and effective than, SMCRA and Federal regulations. Both DOGM, which is responsible for administering the Utah coal program under SMCRA, and the Board of Oil, Gas and Mining ("the Board"), which is an administrative body with rulemaking and adjudicatory responsibilities under Utah's coal program, are entities within DNR and, therefore, are subject to the environmental litigation bond requirement.

SMCRA sec. 503 provides that a State may assume primary responsibility to regulate coal mining and reclamation operations within its State borders. To obtain and maintain primacy under 30 CFR 730.5 and 732.15(a), a State regulatory authority must submit a State program, or proposed amendments thereto, that contain requirements that are consistent with, and no less stringent and effective than, SMCRA and Federal regulations. As the proposed language from H.B. 399 applies to administrative stays issued by a State agency and preliminary injunctions granted by a court, SMCRA

requires that Utah's program must provide, at minimum, the same opportunities for judicial review and citizen participation that are available under SMCRA and the Federal regulations.

The approved Utah program is similar to SMCRA and the Federal regulations regarding the available opportunities to seek temporary relief during an administrative hearing or proceeding. After a permit is issued, the Utah program, at Utah Code Ann. sec. 40-10-14(4) and R645-300-212, provides that the Board may grant temporary relief it deems appropriate pending final determination of the proceedings, in accordance with SMCRA sec. 514(d) and 30 CFR 775.11(b). Both the Utah and the Federal programs allow for an administrative hearing prior to judicial review, which would be adjudicatory in nature, regarding the agency's reasons for its permitting decision. The presiding authority may grant temporary relief if the person requesting relief shows that there is a substantial likelihood that they will prevail on the merits of their case, among other criteria. *See* SMCRA sec. 514(d)(1)-(3) (30 U.S.C. 1264(d)(1)-(3)); 30 CFR 775.11(b)(2)(i) through (iv); Utah Code Ann. sec. 40-10-14(4)(a)-(c); and R645-300-212.220, 212.210-212.400. The Utah program, similar to SMCRA and the Federal regulations, leaves discretion to the deciding authority to grant temporary relief during administrative review so long as the above-cited criteria for such relief are satisfied. Neither SMCRA nor the approved Utah program requires the posting of a bond prior to granting a request for temporary relief during administrative review.

Both SMCRA, at sec. 526(e) (30 U.S.C. 1276(e)), and the Utah program, at Utah Code Ann. sec. 40-10-30, establish that administrative hearing decisions are subject to judicial review. Thus, an interested person who participated in the administrative proceedings and is aggrieved by the regulatory authority's decision is provided an opportunity for appeal in a court of competent jurisdiction. SMCRA sec. 514(f) (30 U.S.C. 1264(f)); 30 CFR 775.13; Utah Code Ann. sec. 40-10-14(6); and R645-300-221. As provided under the Utah Code, the Utah Supreme Court has jurisdiction to review all final agency actions resulting from formal adjudicative proceedings. Utah Code Ann. sec. 40-10-14(6)(a); *see also* the Utah Administrative Procedures Act at Utah Code Ann. sec. 63G-4-403 and 78A-3-102(6) (stating the Utah Supreme Court "shall comply with the requirements of Title 63G, Chapter 4,

Administrative Procedures Act, in its review of agency adjudicative proceedings."'). Under the Utah Rules of Civil Procedure ("URCP"), the Utah courts have authority to require that an applicant submit a form of security to the court before it issues an order of injunction. However, URCP rule 65A also allows the court to forgo the security requirement if "it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or . . . there exists some other substantial reason for dispensing with the requirement of security." URCP 65A(c). While the Federal Rules of Civil Procedure, at rule 65(c), generally mandate that a court require the posting of a bond before issuing a preliminary injunction in an amount the court deems proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained, neither SMCRA sec. 525(c) (30 U.S.C. 1275(c)) nor sec. 526(c) (30 U.S.C. 1276(c)) contain such a mandate. Rather, the conditions of any temporary relief ordered are reserved (not mandated) to the discretion of the Secretary in administrative proceedings and to the court in judicial proceedings.

In addition to the opportunities afforded to persons challenging a final agency decision, citizen suits filed in court provide another pathway for persons to challenge perceived violations of the Act, including violations of any rule, regulation, order, or permit issued pursuant to the Act or failure to perform a non-discretionary duty. Under the State or Federal citizen suit provision, found at Utah Code Ann. sec. 40-10-21 or SMCRA sec. 520 (30 U.S.C. 1270), an interested person may commence a civil action against the United States or a State agency to the extent permitted by the Eleventh Amendment, or against any other person, to compel compliance with the corresponding State or Federal Act. Utah Code Ann. sec. 40-10-21(4)(b) and SMCRA sec. 520(d) (30 U.S.C. 1270(d)) both provide that, if a temporary restraining order or preliminary injunction is sought through the course of a citizen suit, a court "may" require the filing of a bond or equivalent security in accordance with the applicable rules of civil procedure. Thus, Utah's existing preliminary injunction standards are consistent within the Utah program, at Utah Code Ann. sec. 40-10-14(5), the Utah Administrative Procedures Act at Utah Code Ann. sec. 63G-4-404, and the URCP at rule 65A. The provisions in H.B. 399 that would be implemented

under the proposed amendment appear somewhat duplicative of these pre-existing provisions, but some of the other provisions in H.B. 399, including the bond requirement, would cause confusion regarding the appropriate temporary relief to apply with respect to decisions involving coal permitting actions.

While Congress acknowledged a court's authority under SMCRA sec. 520(d) (30 U.S.C. 1270(d)) to require the posting of a bond, the legislative history of this section explains that in drafting the citizen suit provision, the Committee intended "that the courts will carefully consider the circumstances and probable outcome of litigation in deciding whether to require a bond. This will minimize the possibility that this section might be subject to misuse either by the commencement of frivolous actions against environmentally sound operations or as a substitute for other provisions of this bill which impose more precise requirements for citizen participation in the permit application and performance bond release proceedings." S. Rept. 95-128, 88 (May 10, 1977). Utah's approved program contains this discretionary authority nearly verbatim at Utah Code Ann. sec. 40-10-21(4)(b).

The Utah Code Ann. sec. 78B-5-828 enacted by the Utah legislature as H.B. 399, and submitted by DOGM as a proposed program amendment, is inconsistent with SMCRA's legislative history and would not provide a plaintiff with the opportunities to seek temporary relief when compared with SMCRA and the Federal regulations. The language of the proposed provision would remove a judge's ability and discretion to consider other factors or circumstances that may otherwise be taken into account while deciding whether a bond must be posted and in what amount. Indeed, the proposed amendment mandating imposition of a bond would conflict with existing Utah law that was already approved as part of Utah's program that makes a bond discretionary in judicial proceedings.

When deciding to grant or deny a preliminary injunction or administrative stay, SMCRA and the approved Utah program provide the deciding official with more flexibility. In enacting SMCRA, Congress recognized that "providing citizen access to administrative appellate procedures and the courts is a practical and legitimate method of assuring the regulatory authority's compliance with the requirements of the Act." S. Rept. 95-128, 59 (May 10, 1977). The effect of the proposed mandatory environmental

litigation bond requirement could create an undue financial burden on plaintiffs and potentially deter citizens from bringing good faith actions. This would be inconsistent with SMCRA's purpose to "assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act. . . ." SMCRA sec. 102(i). Further, the enactment of H.B. 399, codified as Utah Code Ann. sec. 78B-5-828, is inconsistent with SMCRA's legislative intent that bonds be used on a case-by-case basis as determined by a court.

While State laws may be more stringent than the Federal program, State law cannot conflict with the stated purposes of SMCRA, and State laws cannot provide less opportunities, including for citizen participation, than established under SMCRA and the Federal regulations. The proposed amendment is inconsistent with the congressional intent of assuring public participation and legal access for interested parties in agency decision-making. OSMRE thereby finds that Utah's amendment proposal is inconsistent with, and less stringent and effective than, SMCRA and the Federal regulations. Therefore, in accordance with 30 CFR 732.15(a) and 732.17(h)(10), OSMRE is not approving this amendment. As a result, the proposed amendment submitted by the Division will not become an effective part of the Utah coal mining regulatory program under SMCRA. OSMRE instructs the Division to continue implementing the approved Utah program as it did prior to the enactment of H.B. 399.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM-2012-0011-0001) and received three responses.

We received two public comment letters sent on behalf of Southern Utah Wilderness Alliance (SUWA) and the Sierra Club dated, respectively, June 1, 2012, and July 12, 2012 (Administrative Record ID No. OSM-2012-0011-0013). Both of the letters recommended that OSMRE disapprove the amendment on the basis that it is inconsistent with SMCRA and other applicable Federal rules and that SUWA would be personally harmed by it if approved.

Additionally, we received a comment letter from a private citizen dated July

11, 2012 (Administrative Record ID No. OSM-2012-0011-0012). The commenter also recommended that OSMRE not approve the amendment because it would make environmental protection in the State of Utah more difficult with regard to coal mining operations.

In response to the above comments, we acknowledge the concerns expressed and refer the commenters to our findings in sec. III for a detailed explanation as to why OSMRE is not approving Utah's proposed amendment.

Federal Agency Comments

On May 1, 2012, under 30 CFR 732.17(h)(11)(i) and sec. 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record ID No. OSM-2012-0011-0011). We received comments from one Federal Agency.

The Bureau of Land Management (BLM) commented in a letter dated May 11, 2012 (Administrative Record ID No. OSM-2012-0011-0008). The BLM stated that it agreed that, due to the gravity of such granted requests by judicial actions, the requirement for surety bonding or equivalent provides necessary protection for the interest of all parties involved. In response, and as discussed in sec. III above, the conditions of any temporary relief ordered are reserved to the discretion of the Secretary or the State's deciding official in administrative proceedings, and to the court in judicial proceedings. Existing law provides the deciding official with the necessary flexibility to determine the appropriate conditions of any temporary relief on a case-by-case basis, so long as the standards for such relief are satisfied. Therefore, OSMRE does not approve the proposed amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Utah proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 28, 2013, we requested comments from both agencies relative to Utah's proposed amendment (Administrative Record Document ID No. OSM-2012-0011-0011), but neither agency responded to our request.

V. OSMRE's Decision

Based on the above findings, we do not approve Utah's submittal sent to us on April 12, 2012. To implement this decision, we are amending the Federal regulations at 30 CFR part 944, which codifies decisions concerning the Utah program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review, Executive Order 13563—Improving Regulation and Regulatory Review, and Executive Order 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M-94-3), the approval of State program amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by sec. 3 of Executive Order 12988. The

Department has determined that this **Federal Register** document meets the criteria of sec. 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because sec. 3 focuses on the quality of this **Federal Register** document and changes to the Federal regulations, the review under this Executive order does not extend to the language of the Utah program or to the program amendment that the State of Utah submitted.

Executive Order 13132—Federalism

This rule has potential Federalism implications, as defined under sec. 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. Utah, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule disapproves an amendment to the Utah program submitted and drafted by the State, to ensure that the State program is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision on the Utah program does not include Indian lands as defined by SMCRA or other Tribal lands and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable approved Federal Indian

program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage with appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act (NEPA)

Consistent with sec. 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, sec. 13.5(A), State program amendments are not major Federal actions within the meaning of sec. 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). Therefore, there is no need to prepare an environmental assessment under NEPA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule, which does not approve the State submittal, will not alter the existing federally approved Utah program, and therefore this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule, which does not approve the State submittal because it would be

inconsistent with SMCRA and Federal regulation, does not change the status quo of the existing approved Utah program or its implementation under SMCRA, and this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule, which does not approve the State submittal because it would be inconsistent with SMCRA and Federal regulation, does not change the status quo of the existing approved Utah program or its implementation under SMCRA, and, therefore, this rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year, nor does the rule have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

David A. Berry,

Regional Director, Interior Unified Regions 5, 7–11.

For the reasons set out in the preamble, the Office of Surface Mining Reclamation and Enforcement amends 30 CFR part 944 as set forth below:

PART 944—Utah

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Add § 944.16 to read as follows:

§ 944.16 State regulatory program amendment provisions not approved.

(a) The State of Utah submitted a proposed amendment to Utah's coal regulatory program, by letter dated April 12, 2012. The State prepared the proposed amendment in response to legislation (House Bill 399) enacted by the Utah Legislature in 2011 (Utah Code Ann. sec. 78B–5–828). The proposed amendment, which would require an environmental litigation bond be posted by a plaintiff seeking an administrative stay or a court-ordered injunction before any relief was granted, is not approved.

(b) [Reserved]

[FR Doc. 2024–18039 Filed 8–14–24; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket Number USCG–2024–0618]

RIN 1625–AA00

Safety Zone, Kahanamoku Beach, Honolulu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Kahanamoku Beach. This action is necessary to provide for the safety of life on these navigable waters near Honolulu, HI, during a drone show display at various times on August 13 through 18, 2024. This rulemaking prohibits, during the enforcement periods, persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Honolulu or a designated representative.

DATES: This rule is effective without actual notice from August 15, 2024 through 9:30 p.m. on August 18, 2024. For the purposes of enforcement, actual notice will be used from 4:30 p.m. on August 13, 2024, until August 15, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0618 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 Petty Officer Vivian S. Gonzalez, Waterway Management

Division, U.S. Coast Guard; telephone 808–522–8264, email Vivian.S.Gonzalez@uscg.mil.

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

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

II. Background Information and Regulatory History

On June 21, 2024, an organization notified the Coast Guard that it will be conducting a drone show display from 9 p.m. through 4:30 a.m., daily, on August 13 through 15, 2024 and from 6:30 p.m. to 9:30 p.m., daily, on August 15, 17, and 18, 2024. The drones are to be launched from a nearby parking lot approximately 200 feet southwest of the southwestern point of the Hilton Lagoon into the “showbox” located between the following 4 coordinates: 21°16′52.02″ N 157°50′27.88″ W; 21°16′44.24″ N 157°50′29.67″ W; 21°16′40.06″ N 157°50′16.65″ W; and 21°16′47.24″ N 157°50′13.39″ W. In response, on July 17, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone, Kahanamoku Beach, Honolulu, HI (89 FR 58095), stating why the Coast Guard issued the NPRM and invited comments on the proposed regulatory action related to this drone show. The comment period ended August 1, 2024, and the Coast Guard received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety hazards associated with the 428 drones flying overhead at a popular surfing spot in Waikiki.

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 Honolulu (COTP) has determined that potential hazards associated with the drone show to be used in this display will be a safety concern for anyone within the safety zone. The purpose of this rule is to ensure the safety of personnel, vessels, and the marine environment within the navigable waters of the safety zone before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 17, 2024. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 p.m. on August 13 through 9:30 p.m. on August 18, 2024. The safety zone will be enforced from 9 p.m. to 4:30 a.m., daily, on August 13, 2024, through August 15, 2024 and from 6:30 through 9:30 p.m., daily, on August 15, 17, and 18, 2024. The safety zone will cover all navigable waters located between the following 4 coordinates: 21°16′52.02″ N 157°50′27.88″ W; 21°16′44.24″ N 157°50′29.67″ W; 21°16′40.06″ N 157°50′16.65″ W; and 21°16′47.24″ N 157°50′13.39″ W. The duration of the zone is intended to ensure the safety of persons and vessels and these navigable waters during the scheduled drone shows. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the duration and time-of-day of the safety zone. This safety zone will be of limited duration to minimize any adverse impacts to persons and vessels who would be in the area. Vessel traffic will only be restricted in the limited access area while drones are in the air. Further, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM Marine Channel 16 about the zone and persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a

Designated Representative. Advance public notifications will also be made to local mariners through appropriate means, which may include Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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 proposed rule involves a safety zone lasting 6 hours that would prohibit entry within the “showbox”. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034; 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.T14–0618 to read as follows:

§ 165.T14–0618 Safety Zone, Kahanamoku Beach, Honolulu, HI.

(a) *Location.* The following area is a safety zone: All waters offshore of Kahanamoku Beach, from surface to bottom, encompassed by a line connecting the following points beginning at 21°16′52.02″ N 157°50′27.88″ W, thence to 21°16′44.24″ N 157°50′29.67″ W, thence to 21°16′40.06″ N 157°50′16.65″ W, thence to 21°16′47.24″ N 157°50′13.39″ W, back to the beginning point. These coordinates are based on 1984 World Geodetic System (WGS 84).

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Honolulu (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 calling Sector Honolulu Command Center at 808–842–2603. During the enforcement periods, all persons and vessels permitted to enter 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 periods.* This section will be enforced from 9 p.m. to 4:30 a.m., daily, on August 13, 2024, through August 15, 2024, and from 6:30 to 9:30 p.m., daily, on August 15, 17, and 18, 2024.

Dated: August 8, 2024.

Aja L. Kirksey,

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

[FR Doc. 2024–18205 Filed 8–14–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[ED–2024–OPE–0069]

Postsecondary Student Success Grant

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criterion.

SUMMARY: The Department of Education (Department) issues priorities, requirements, definitions, and a selection criterion for use in the Postsecondary Student Success Grant (PSSG) program. The Department may use one or more of these priorities, requirements, definitions, and selection criterion for competitions in fiscal year (FY) 2024 and later years. We intend for these priorities, requirements, definitions, and selection criterion to support projects that equitably improve postsecondary student outcomes, including retention, upward transfer, and completions of value, by leveraging data and implementing, scaling, and rigorously evaluating evidence-based activities to support data-driven decisions and actions that lead to credentials that support economic success and further education.

DATES: These priorities, requirements, definitions, and selection criterion are effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Nemeka Mason-Clerc, U.S. Department of Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202–4260. Telephone: (202) 987–1340. Nalini Lamba-Nieves, U.S. Department of Education, 400 Maryland Avenue SW, room 5C127, Washington,

DC 20202–4260. Telephone: (202) 453–7953. Email: PSSG@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purpose of the PSSG program is to equitably improve postsecondary student outcomes, including retention, upward transfer, and completions of value, by leveraging data and implementing, scaling, and rigorously evaluating evidence-based activities to support data-driven decisions and actions that lead to credentials that support economic success and further education.

Assistance Listing Number: 84.116M.

Program Authority: 20 U.S.C. 1138–1138d.

We published a notice of proposed priorities, requirements, and definitions in the **Federal Register** on June 7, 2024 (89 FR 48517) (NPP). That document contained background information and the Department's reasons for proposing the particular priorities, requirements, and definitions. There are several differences between the proposed priorities, requirements, and definitions and these final priorities, requirements, definitions, and selection criterion. They include changing Proposed Priority 4 on using data for continuous improvement to a selection criterion and adding examples of evaluation strategies; revising the scaling requirements for the mid-phase and expansion priorities; revising the definition of “completions of value”; and revising the examples of allowable uses of funds to include using data to administer the program effectively at the institution and/or State or system levels, capacity building, rigorous evaluations, technology-assisted supports, tutoring and supplemental instruction, peer mentoring, and support for students with disabilities.

Public Comment: In response to our invitation in the NPP, 23 parties submitted comments on the proposed priorities, requirements, and definitions. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize us to make under applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities, requirements, or definitions.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, and definitions since publication of the NPP follows.

General Comments

Comments: Several commenters praised the Department for conducting rulemaking for the PSSG program and for the proposed priorities, requirements, and definitions. For example, several commenters supported the Department's use of evidence standards within Proposed Priorities 1, 2, and 3, and the use of completions of value. Other commenters supported the Department's proposed uses of funds.

Discussion: We appreciate the support of the grant program and the priorities, requirements, and definitions.

Changes: None.

Comments: Several commenters proposed recommendations for which priorities and selection criteria from the NPP should be utilized in a competition, how the selection criteria should be evaluated, what information applicants should be provided, and other components of the application process. Others suggested that we apply the requirements in the recently updated Uniform Grants Guidance.

Discussion: The components of an individual application, including which specific priorities to use, and the guidelines for the application process are laid out in the notice inviting applications that is developed for each competition and do not require additional rulemaking for this grant program. The requirements from the new Uniform Grants Guidance can be utilized without inclusion in the NPP since they have already gone through rulemaking.

Changes: None.

Comments: One commenter criticized the priorities, stating that it is discriminatory to focus on “underserved students” and that the program lacks accountability measures to prevent misuse of the research project support services for certain students and suggested that there should be an opt-out provision for students.

Discussion: The PSSG program is designed to enable institutions to implement evidence-based projects to support student success for a targeted group of students who are underrepresented among college completers. However, nothing in these priorities precludes applicants from proposing to also serve students who are not included in the definition of “underserved students” yet need additional support to complete college. The program holds grantees accountable through, among other things, monitoring of the grants, which includes requiring grantees to report annually on program-specific performance measures. Regarding the opt-out provisions,

institutions manage their own opt-in/opt-out policies with regard to student participation in their grant-funded activities.

Changes: None.

Comments: Two commenters questioned the effectiveness of taking a statistics-focused approach to improving student outcomes.

Discussion: Research demonstrates that data-informed decision-making is an important component of a people-driven continuous improvement process to improve student outcomes, which is the approach promoted in this grant program.¹

Changes: None.

Comments: One commenter expressed concern about the privacy of student data.

Discussion: The Department does not collect individual-level data for the PSSG program. Institutions that use student-level data to support individuals through to completion must comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99).

Changes: None.

Comments: One commenter suggested that the priorities and requirements be used to collect enrollment and persistence data on students with disabilities.

Discussion: Under the final selection criterion under which applicants will identify or describe how they will develop performance and outcome measures, applicants will also describe how they will disaggregate data by student subgroups, which may include students with disabilities if relevant to the project. In addition, under Priorities 1, 2, and 3, projects must be focused on improving outcomes for underserved students, which may include students with disabilities. Nothing in the proposed requirement regarding allowable use of funds precluded support for students with disabilities, but we are explicitly adding it to the list of examples to underscore the importance of supporting this population.

Changes: We have added support for students with disabilities as an explicit allowable student success strategy in the allowable uses of funds requirement.

Priorities

Comment: One commenter suggested that the Department consider whether the programs in which students are being retained or to which they are transferring meet the value threshold in the definition of “completions of value.”

Discussion: The Department does not have the capacity to apply the value measure at the program level, and PSSG currently is not targeted at the program level. However, we recognize the importance of not limiting this measure to completion. Accordingly, we are revising the definition of “completions of value” to also address retention and transfer outcomes. In responding to Priorities 1, 2, and 3, applicants will be expected to demonstrate how their proposed projects will improve postsecondary success for underserved students by increasing completions of value that lead to further education through upward transfer or graduate education and/or lead to economic mobility.

Changes: We added to the definition of “completions of value” that students must be retained at and/or transfer to institutions conferring completions of value.

Comments: One commenter suggested we retain the focus of the PSSG program on degree completion, rather than establish a new definition of “completions of value,” because they claimed it would be burdensome to the grant application and administration processes for the applicant to demonstrate post-completion return on investment due to limited available data.

Discussion: The Department intends to use existing College Scorecard data and generate additional College Scorecard measures related to completions of value that institutions can use as part of their reporting on this metric for PSSG, since we recognize that it is difficult for some institutions to obtain earnings data.

Changes: None.

Comments: Three commenters suggested that the Department adopt a selection criterion regarding data collection and continuous improvement processes at the institution after the grant period, rather than address the topic through a priority. Another commenter suggested we add examples of evaluation strategies to this priority that include rapid-cycle experimentation, pilots, feasibility studies, and implementation research.

Discussion: We agree with the commenters about the importance of this component to this grant program

and believe that if we address it through a selection criterion instead of a priority, it will incentivize more applicants to develop robust data collection and continuous improvement strategies, since it will be factored into the scores of all applicants. While all of the evaluation strategies the commenter mentions are already allowable, we have added them as examples to make it clear for future applicants.

Changes: We have changed Proposed Priority 4 to a selection criterion and added examples of evaluation strategies.

Comments: One commenter suggested that we eliminate Proposed Priority 5, stating that the grant awards should not be selected based on specific strategies to improve retention and completion, and another commenter requested that we keep it. One commenter suggested we include it as an allowable use of funds instead of a priority. Finally, one commenter praised the Department for including this priority but suggested that we add experiential learning in addition to credentials of value.

Discussion: We believe that college-to-career pathways and supports are a critical component of student success, and therefore are retaining this as a priority. We agree with the commenter about the important role experiential learning can play, especially for adult learners with some college but no credential, and added language to the priority to reflect this.

Changes: We have added language to Proposed Priority 5 to indicate that participating in experiential learning can be part of a college-to-career pathway.

Comment: In response to our request in the NPP for feedback on the proposed scale requirements for the mid-phase and expansion tiers of evidence, we received numerous comments with recommendations. A common theme among the commenters was to suggest that we eliminate the use of specific numbers of students required in order to demonstrate scale or, if maintained, lower the number to 350 from EDGAR’s current definitions of “strong evidence” and “moderate evidence.” In lieu of using population metrics, commenters had several suggestions, including utilizing the rigor of evaluations, the caliber of the research, the reasonableness of the costs, the strategy to effectively scale, and the impacts on college completion—specifically to advance equity or participant outcomes. One commenter suggested that we use, instead of the proposed scale requirements for the mid-phase and expansion tiers of evidence, a three-part requirement for each grant type that would include requiring all mid-phase

¹ See, for example, Association of Governing Boards of Universities and Colleges (2019). *Innovation in Higher Education: A Case Study of Georgia State University*. Washington, DC. Retrieved from: https://agb.org/wp-content/uploads/2019/01/case_study_innovation_georgia.pdf; and Gagliardi, J., Parnell, A., and Carpenter-Hubin, J. (Eds). (2018). *The Analytics Revolution in Higher Education: Big Data, Organizational Learning, and Student Success*. Routledge.

and expansion grant applicants to demonstrate they will be able to conduct a well-powered study with the number of students they propose to serve; meet the minimum standard for studies that meet the definition of “moderate evidence” or “strong evidence,” which is 350 students; and implement the intervention at multiple sites with mid-phase grants implemented at multiple campuses and expansion grants implemented either at multiple institutions or multiple campuses, where the campuses serve different types of underserved students or in different locales.

Discussion: We agree with the comments on aligning the scale and multisite requirements with the What Works Clearinghouse (WWC) guidelines defined in EDGAR given one of the stated goals of the program is to generate quality evidence about what works to improve postsecondary student success. Because the WWC guidelines for “moderate evidence” and “strong evidence” do not differ in the required number of sites or scale, we changed the priority language so that the requirements for mid-phase and expansion projects do not include a specific number of students, and we do not differentiate in the number of sites or students required for moderate and strong evidence. We also agree with the comments on ensuring the projects demonstrate positive impact on underserved populations to align with the goal of the program to equitably improve outcomes.

Changes: For mid-phase projects, we have changed the priority to provide that projects must be implemented at multiple institutions of higher education or multiple campuses of the same institution and be intentionally designed to detect the impact of the project, if any, on all students served by the project as well as on at least one population of underserved students (as defined in this document) or between institutions of different locales. For expansion projects, we have changed the priority to provide that projects must be implemented at multiple institutions of higher education and be intentionally designed to detect the impact of the project, if any, on all students served by the project as well as on at least one population of underserved students (as defined in this notice) or between institutions of different locales.

Comments: One commenter suggested adding a priority for projects at lower-resourced institutions serving a significant population of high-need students and with low completion rates or large completion disparities.

Discussion: We agree with the commenter that projects should be at institutions that are lower-resourced and have a significant population of underserved students and completion disparities. That is why the eligibility is targeted to title III and V institutions, which are generally under-resourced institutions with a disproportionate enrollment of students from groups who are underrepresented among college completers, such as students from low-income backgrounds.

Changes: None.

Requirements

Comments: Numerous commenters suggested we add to the list of allowable uses of funds. Recommendations included adding capacity-building, the costs of rigorous evaluation, data to administer the program, development and use of data systems to leverage integrated data systems, data systems, data capacity support, professional development resources for data and institutional effectiveness researchers, credit for prior learning, adaptive courseware, hybrid-flex courses, peer mentoring strategies, supplemental instruction, mental health, basic needs, and the integration of academic coursework and career advising.

Discussion: We agree with the commenters that all of these are allowable uses. While the list provided in the proposed requirement is not comprehensive, several of the suggested uses are critical components for the PSSG program, so we have added to the list of examples. The list in the proposed requirement included several allowable uses to support Proposed Priority 5, including integrated career planning, counseling, and coaching, work-based learning opportunities, and college-to-career navigation support, so we do not think other examples regarding the integration of academic coursework and career advising are needed. It also already included basic needs and mental health uses. Developing and using data systems is already included as an allowable use and the approaches to do so are not limited by the current language.

Changes: We have added using data to administer the program effectively at the institution and/or State or system levels, capacity building, and rigorous evaluation to the list of examples of allowable uses of funds. We also have added technology-assisted supports, tutoring and supplemental instruction, and peer mentoring as examples of allowable uses of funds for student success strategies.

Comments: One commenter suggested that we provide that if a grantee uses

funds to include financial assistance as a component of their project, they must propose to use at least one additional allowable component in conjunction with the financial assistance.

Discussion: The Department does not believe such a stipulation necessary. As a tiered evidence program, PSSG is designed to allow the available evidence of what works in improving postsecondary student outcomes to guide applicants in designing their proposed activities. The Department also believes that applicants are in the best position to determine what uses of funds would best serve to improve their students' postsecondary outcomes. Under each of the priorities, successful applicants will identify the key project components based on their review of the studies they cite as evidence for their projects. The applicant must develop a project that meets the goals of the program as laid out in the priorities but can do so by selecting the tools that they choose.

Changes: None.

Comments: One commenter suggested adding language to the independent evaluation requirement to ensure that the evaluations are “well-designed, well-implemented, and sufficiently powered” to meet WWC standards for “moderate evidence” or “strong evidence.”

Discussion: The Department agrees that the evaluation of these projects should be well-designed, well-executed, and sufficiently powered to yield credible results. We will use selection criteria to ensure that projects include a plan to conduct evaluations that are intentionally designed to meet WWC standards (with or without reservations). As part of the selection process, WWC-certified peer reviewers will assess the rigor of the evaluation plans. Accordingly, it would be redundant to also address this area of focus in the independent evaluation requirement.

Changes: None.

Comments: While praising the requirement that evaluations be posted to ERIC, two commenters suggested that the Department not put the burden on the grantee to submit the evaluations to ERIC. Instead, they suggested that grantees submit the evaluation reports to the Department within one month of completion and the Department post this information to the Awards page.

Discussion: We disagree with the commenters that requiring the grantee to submit evaluations to ERIC would be burdensome. We agree that it is critical to make sure the evaluations are transparent and made public. We intend

to share the evaluations publicly on the Department's website.

Changes: None.

Comments: Several commenters submitted recommendations for the requirements of evaluations that are submitted, including that they use the most updated version of the WWC Handbook; that the evaluations of early-phase projects be designed to meet WWC standards with or without reservations and that the evaluations of mid-phase and expansion grants be designed to meet WWC standards without reservations; that evaluations have methodologies appropriate to the research question being studied; and that the Department provide institutions with clear guidance on how to submit a relevant study for review to determine if a study meets WWC standards, including that the institutions have an equitable opportunity to compete at the expansion phase without being limited based on studies that are readily accessible in WWC.

Discussion: We appreciate the suggestions to ensure that the evaluation methods are all evidence based and high quality. These recommendations do not require rulemaking for this grant program and would be considered in the application and peer review process.

Changes: None.

Comments: Two commenters recommended not restricting the indirect cost rate.

Discussion: The Department maintains limiting the indirect cost reimbursement to 8 percent of a modified total direct cost base. The Department continues to believe that this limitation effectively maximizes the Federal resources that support direct costs associated with the project.

Changes: None.

Comments: Several commenters had recommendations for the types of entities that would be eligible for the grant. Four commenters suggested that eligibility not be limited to institutions that are designated as a title III or V school, including one suggestion that public two-year community and technical colleges be added. Two commenters suggested allowing non-profit organizations to be an eligible entity alone, rather than requiring a partnership with a title III or V institution, and another commenter suggested that we require the institution to be the lead applicant. A couple commenters supported allowing non-profits to apply in partnership with title III or V institutions. One commenter asked that businesses be able to partner with institutions, and one commenter asked that for-profit institutions be prohibited from applying.

Discussion: The Department believes that targeting funding to title III and V institutions is the best use of the available funds because these institutions disproportionately enroll students from groups who are underrepresented among college completers, such as students from low-income backgrounds. Supporting retention and completion strategies at these institutions offers the greatest potential to close gaps in postsecondary outcomes. Additionally, these under-resourced institutions are most in need of Federal assistance to implement and evaluate evidence-based postsecondary college retention and completion interventions. More than half of public two-year institutions are title III/V eligible and would be eligible for a grant. Under the eligibility requirement, non-profits may apply for the funding, as long as they do so in partnership with an institution of higher education. It does not matter which entity is the lead applicant since all entities applying through the partnership are subject to the same "Group Application" requirements under 34 CFR 75.127–129. Given that the innovation would need to occur at an institution, we do not believe it is workable to allow a non-profit to apply without partnership with an institution of higher education. Furthermore, there is nothing that currently prohibits eligible applicants from collaborating with businesses, and for-profit institutions are not eligible institutions.

Changes: None.

Comments: One commenter suggested that we specifically include Hispanic-serving institutions (HSIs) as eligible entities.

Discussion: HSIs are eligible as title III/title V institutions.

Changes: None.

Comments: None.

Discussion: In Proposed Requirement 3, we specified certain circumstances under which the Secretary may waive the matching requirement on a case-by-case basis based on certain showings by the "lead applicant."

Changes: We have revised Requirement 3, section (b) Waiver Authority, to clarify that data showing certain exceptional circumstances should pertain to the "eligible institution(s)" instead of the lead applicant in order to address circumstances where certain eligible entities apply in partnership with title III or V institutions.

Definitions

Comments: Two commenters suggested changes to the definition of "completions of value." One commenter

suggested we use Threshold 0 from the Postsecondary Value Commission framework, and another commenter suggested we incorporate local workforce data.

Discussion: Our proposed definition aligns with the Postsecondary Value Commission framework by measuring the percentage of students earning enough to recoup their costs and experience an earnings premium over high school graduates, and adds the percentage of students pursuing further education. We recognize the importance of not comparing schools nationally on earnings and so our definition also utilizes State-level high school earnings data. The Department does not have the capacity to factor in local workforce data.

Changes: We adjusted the definition to clarify how the percentage of students is calculated and how State earnings data is used in the construction of the metric.

Comments: One commenter suggested that in the definition of "underserved student," we include a more detailed description of "student of color" to align with the Office of Management and Budget (OMB)'s Race and Ethnicity Standards.

Discussion: The term "student of color" is undefined, consistent with the Secretary's Supplemental Priorities, to ensure consistency across the Department's discretionary grant programs and to allow institutions to define the term in a manner they choose, to be consistent with how they do so internally for other purposes.

Changes: None.

Final Priorities

The Secretary establishes the following priorities for use in the PSSG Program.

Priority 1—Early Phase.

Projects that are designed to improve postsecondary success for underserved students by increasing completions of value that lead to further education through upward transfer or graduate education and/or lead to economic mobility, and are supported by evidence that meets the definition of Demonstrates a Rationale (as defined in 34 CFR 77.1) or Promising Evidence (as defined in 34 CFR 77.1).

Priority 2—Mid-Phase: Projects Supported by Moderate Evidence.

Projects that are designed to improve postsecondary success for underserved students by increasing completions of value that lead to further education through upward transfer or graduate education and/or lead to economic mobility, and are supported by evidence that meets the definition of Moderate

Evidence (as defined in 34 CFR 77.1). Projects under this priority must be implemented at multiple institutions of higher education or multiple campuses of the same institution and be intentionally designed to detect the impact of the project, if any, on all students participating in the project as well as on at least one population of underserved students or between institutions of different locales.

Priority 3—Expansion: Projects Supported by Strong Evidence.

Projects that are designed to improve postsecondary success for underserved students by increasing completions of value that lead to further education through upward transfer or graduate education and/or lead to economic mobility, and are supported by evidence that meets the definition of Strong Evidence (as defined in 34 CFR 77.1). Projects under this priority must be implemented at multiple institutions of higher education and be intentionally designed to detect the impact of the project, if any, on all students participating in the project as well as on at least one population of underserved students or between institutions of different locales.

Priority 4—Projects That Support College-to-Career Pathways and Supports.

Projects that propose to build upon demonstrated progress toward integrating, or that propose a plan to integrate, career-connected learning and advising support into their postsecondary success strategies, which may include participation in experiential learning, to ensure students earn completions of value that lead to economic success and/or further education. Projects may include aligning academic coursework with career pathways and outcomes; developing and implementing program-level credential maps to create college-to-career pathways, including across institutions via transfer; integrating career planning, counseling, and coaching into holistic advising support; offering work-based learning opportunities aligned with students' programs of study; and providing navigation support to help graduates transition from college to career.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications

that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority:

Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Secretary establishes the following requirements for use in the PSSG Program.

Requirement 1: Uses of Funds.

Program funds must be used for one or more of the following allowable uses of funds:

(a) Developing and using data systems, tools, and training to implement data-driven processes and interventions as part of a comprehensive continuous improvement effort, as well as to administer the program effectively at the institution and/or State or system levels;

(b) Implementing student success strategies, including but not limited to whole-college improvement models; course redesign to implement co-requisite remediation or career-connected math pathways including through use of technology-assisted supports; tutoring and supplemental instruction; intensive, integrated advising models including program maps with progress checks, case management approaches, coaching, and peer mentoring; financial support, including need-based aid, emergency aid, and basic needs and behavioral health support and services; transfer support (as applicable), including four-year transfer maps, co-enrollment and co-advising across institutions, and regional transfer partnerships; support for students with disabilities; career support, including integrated career planning, counseling, and coaching, work-based learning opportunities, and college-to-career navigation support; or other evidence-based student success strategies and capacity building to implement student success strategies; and

(c) Providing for rigorous evaluation of the program interventions.

Requirement 2: Indirect Cost Rate Information.

A grantee's indirect cost reimbursement is limited to eight percent of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www.ed.gov/about/offices/list/ocfo/intro.html.

Requirement 3: Matching Requirements and Exceptions.

(a) **Matching Requirement.** Grantees must provide a ten percent match, which may include in-kind donations.

(b) **Waiver Authority.** The Secretary may waive the matching requirement on a case-by-case basis upon a showing of any of the following exceptional circumstances:

(1) The difficulty of raising matching funds for a program to serve an area with high rates of poverty in the eligible institution(s)' geographic location(s), defined as a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other Tribal land or county that has a poverty rate of at least 25 percent as determined every 5 years using American Community Survey 5-Year data;

(2) Serving a significant population of students from low-income backgrounds at the eligible institution(s)' location(s), defined as at least 50 percent (or the eligibility threshold for the appropriate institutional sector available at <https://www2.ed.gov/about/offices/list/ope/itudes/eligibility.html#app>) of degree-seeking enrolled students receiving need-based grant aid under title IV of the Higher Education Act of 1965, as amended (HEA); or

(3) Significant economic hardship as demonstrated by low average educational and general expenditures per full-time equivalent undergraduate student at the eligible institution(s)' location(s), in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction without need of a waiver, as determined by the Secretary in accordance with the annual process of designation of title III and title V institutions.

Requirement 4: Limitation on Grant Awards.

The Department will make awards to only applicants that are not the individual or lead applicant in a current active grant from the PSSG program.

Requirement 5: Supplement-not-Supplant.

Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

Requirement 6: Independent Evaluation.

Grantees must conduct an independent evaluation of the effectiveness of the project and submit the evaluation report to ERIC, available at <https://eric.ed.gov/>, in a timely manner.

Requirement 7: Eligible Entities.

Eligible entities are title III or V institutions; nonprofits in partnership with title III or V institutions; States in partnership with title III or V institutions; or systems of public institutions of higher education.

Final Definitions

The Secretary establishes the following definitions for use in the PSSG program.

Completions of value measures the percentage of credentials that lead to further education through upward transfer or graduate education and/or that lead to economic mobility through earning enough to experience a premium over high school graduates in one's State and earning enough to recoup one's investment in postsecondary education. The student must also be retained at, or transferring to, an institution that confers completions of value.

Continuous improvement means using plans for collecting and analyzing data about a project component's (as defined in 34 CFR 77.1) implementation and outcomes (including the pace and extent to which project outcomes are being met) to inform necessary changes throughout the project. These plans may include strategies to gather ongoing feedback from participants and stakeholders on the implementation of the project component.

English learner means an individual who is an English learner as defined in section 8101(2) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Historically Black College or University means an institution that meets the eligibility requirements under section 322(2) of the HEA.

Independent evaluation means an evaluation of a project component that is designed and carried out independently of, but in coordination

with, the entities that develop or implement the project component.

Minority-serving institution means an institution that is eligible to receive assistance under sections 317 through 320 of part A of title III, or under title V of the HEA.

Student with a disability means any student enrolled at an institution of higher education (including those accepted for dual enrollment) who meets the definition of an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Tribally Controlled Colleges or Universities has the meaning ascribed it in section 316(b)(3) of the HEA.

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A student with a disability.

(f) A student experiencing homelessness or housing insecurity.

(g) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(h) A pregnant, parenting, or caregiving student.

(i) A student who is the first in their family to attend postsecondary education.

(j) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(k) A student who is working full-time while enrolled in postsecondary education.

(l) A student who is enrolled in, or is seeking to enroll in, postsecondary education who is eligible for a Pell Grant.

(m) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

Final Selection Criterion

Using Data for Continuous Improvement.

The extent to which the proposed project will build upon demonstrated progress toward improved student outcomes, or the extent to which the proposed project includes a plan to improve student outcomes for underserved students, by using data to continually assess and improve the outcomes associated with funded activities and sustain data-driven continuous improvement processes at the institution after the grant period.

Applicants addressing this selection criterion must—

(a) Identify, or describe how they will develop, the performance and outcome measures they will use to monitor and evaluate implementation of the intervention(s), including baseline data, intermediate and annual targets, and disaggregation by student subgroups;

(b) Describe how they will assess and address gaps in current data systems, tools, and capacity, and how they will monitor and respond to performance and outcome data to improve implementation of the intervention(s) on an ongoing basis and as part of formative (which may include rapid-cycle evaluation, pilots, feasibility studies, and implementation research) and summative evaluation of the intervention(s); and

(c) Describe how institutional leadership will be involved with, and supportive of, project leadership and how the project relates to the institution's broader student success priorities and improvement processes.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use any of these priorities, requirements, definitions, or selection criterion, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094.

To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final priorities, requirements, definitions, and selection criterion only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

The potential costs associated with these priorities, requirements, definitions, and selection criterion would be minimal, while the potential benefits are significant. The Department believes that this final regulatory action would not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that these final priorities, requirements, definitions, and selection criterion would not have a

significant economic impact on a substantial number of small entities.

The small entities that this final regulatory action would affect are institutions that meet the applicable eligibility requirements. The Secretary believes that the costs imposed on applicants by the final priorities, requirements, definitions, and selection criterion would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the final priorities, requirements, definitions, and selection criterion would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for PSSG program funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving PSSG funds. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application.

This final regulatory action would not have a significant economic impact on any small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The final selection criterion contains information collection requirements. Under the PRA the Department has submitted this selection criterion to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection

under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Collection of Information: Using Data for Continuous Improvement

Eligible entities under this program are title III or V institutions; nonprofits in partnership with title III or V institutions; States in partnership with title III or V institutions; or systems of public institutions of higher education. The collection of information would include eligible applicants responding to this final selection criterion: *Using Data for Continuous Improvement*, which we changed from a priority to a selection criterion based on public comment in response to the NPP. The Department will utilize the selection criteria in selecting eligible applicants for funding. Eligible applicants must respond to the selection criteria within the application package for this program. We estimate the annual burden for the information collection to average 8,400 hours, from 210 eligible applicants at 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total burden for this collection to be 8,400 hours. At \$47.20 per hour, the total annualized estimated cost for 210 eligible applicants to respond to final selection criteria is approximately \$396,480.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in this requirement. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the Postsecondary Student Success Grant (PSSG) Program Application Information Collection Request by September 16, 2024. Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov by selecting the Docket ID number ED-2024-OPE-0069 or via postal mail, commercial delivery, or hand delivery by referencing the

Docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, Room 4C210, Washington, DC 20202-1200.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotope, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024-17709 Filed 8-14-24; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0371; FRL-11173-02-R9]

Air Plan Approval; California; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern definitions applicable to local rules that control emissions of volatile organic compounds (VOCs) from: the transfer and storage of reactive organic compound liquids and petroleum material; and processing, production, gathering, and separation of crude oil and natural gas. We are approving a local rule to regulate these emission sources under the Clean Air Act (CAA or “the Act”).

DATES: This rule is effective September 16, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2023-0371. 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. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4129 or by email at sherman.donique@epa.gov.

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

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I. Proposed Action
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I. Proposed Action

On December 12, 2023 (88 FR 86093), the EPA proposed to approve the following rule into the California SIP.

Local agency	Rule #	Rule title	Revised	Submitted
VCAPCD	71	Crude Oil and Reactive Organic Compound Liquids	5/11/2021	10/15/2021

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation of it.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment. The comment discussed the importance of regulating emissions related to the oil and gas industry because of the consequences to humans and the environment. We acknowledge the comment, noting that VCAPCD Rule 71 is exclusively composed of definitions applicable to the VCAPCD rules that regulate emissions from (1) the transfer and storage of reactive organic compound liquids and petroleum material; and (2) processing, production, gathering, and separation of crude oil and natural gas the transfer and storage of reactive organic compound liquids and petroleum material. VCAPCD's clarifying revisions to Rule 71 will improve the enforceability of the control measures in the District's other rules that regulate the oil and gas industry and satisfy the relevant CAA requirements. Therefore, we are approving the rule into the SIP.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving this rule into the California SIP.

The May 11, 2021 version of Rule 71 will replace the previously approved version of this rule in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of VCAPCD Rule 71, "Crude Oil and Reactive Organic Compound Liquids," revised on May 11, 2021, which consists of definitions applicable to local rules that

control emissions of volatile organic compounds (VOCs) from (1) processing, production, gathering, and separation of crude oil and natural gas and (2) the transfer and storage of reactive organic compound liquids and petroleum material. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, 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. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent

with the stated goal of Executive Order 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 2, 2024.
Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(215)(i)(B)(4) and (c)(601)(i)(B) to read as follows:

§ 52.220 Identification of plan—in part.

- * * * * *
- (c) * * *
- (215) * * *
- (i) * * *
- (B) * * *
- (4) Previously approved on February 29, 1996, in paragraph (c)(215)(i)(B)(2) of this section and now deleted with replacement in (c)(601)(i)(B)(1) of this

section: Rule 71, adopted on December 13, 1994.

* * * * *

(601) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(1) Rule 71, “Crude Oil and Reactive Organic Compound Liquids,” revised on May 11, 2021.

(2) [Reserved]

* * * * *

[FR Doc. 2024–17578 Filed 8–14–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2020–0455; FRL–11807–02–R2]

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

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze State Implementation Plan (SIP) revision submitted by the State of New York through the Department of Environmental Conservation (NYSDEC or New York) on May 12, 2020, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. New York’s SIP submission addresses the requirement that States must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to the CAA.

DATES: This final rule is effective on September 16, 2024.
ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2020–0455. 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>.

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

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I. Background

On May 12, 2020, the State of New York through the Department of Environmental Conservation (NYSDEC or New York) submitted a revision to its SIP to address regional haze for the second implementation period. NYSDEC made this SIP submission to satisfy the requirements of the CAA’s regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308.

On March 22, 2024, the EPA published a notice of proposed rulemaking (NPRM) in which the EPA proposed to approve New York’s May 12, 2020, SIP submission as satisfying the regional haze requirements for the second implementation period contained in the CAA and 40 CFR 51.308. 89 FR 20384. The EPA is now determining that the New York regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and is thus approving New York’s submission into its SIP.

The specific details of New York’s SIP submittals and the rationale for the EPA’s approval action are explained in the EPA’s proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA’s March 22, 2024, NPRM (89 FR 20384).

II. Evaluation of Comments

In response to the EPA’s March 22, 2024, NPRM, the EPA received four distinct comments during the 30-day public comment period. One of the

comments was submitted in the form of a letter and was signed by three Non-Governmental Organization (NGO) conservation groups writing as a coalition (*i.e.*, the National Parks Conservation Association (NPCA), Sierra Club, and the Coalition to Protect America's National Parks). The NGO commenters state in their comment letter that they “do not oppose EPA’s proposal to approve New York’s [Regional Haze] SIP Revision,” but rather “urge EPA to address the issues raised [in the comment letter] before finalizing” the approval.

Two comments received were submitted by individuals. The final comment was submitted by the Mid-Atlantic/Northeast Visibility Union (MANE-VU) in support of the EPA’s proposed action.

The specific comments may be viewed in Docket ID Number EPA–R02–OAR–2020–0455 on the www.regulations.gov website. The EPA’s summary of and response to those comments is provided below.

Comment: The individual commenter provides various reference materials. Among the reference materials are various links to websites providing general information related to regional haze and other matters, none of which specifically relate to this action.

Response: The EPA acknowledges receipt of the additional information shared by the commenter.

Comment: The individual commenter states that air quality in the average New York City neighborhood is most severely compromised by motor vehicle emissions and hazards created because of climate change. To address this, the commenter promotes the increased availability of public transportation to reduce the need for individual car use, as well as the regulation of motor vehicle emissions. The commenter then suggests the maintenance of electrical power lines should be considered due to their potential to cause wildfires when the states address energy efficiency under Ask 6. Finally, the commenter expresses that they do not support the EPA’s approval of New York’s SIP until the commenter’s concerns are addressed.

Response: The EPA acknowledges the commenter’s concerns regarding the impact that motor vehicle emissions and climate change induced hazards have on air quality. Regarding the commenter’s promotion of public transportation to reduce the need for individual car use, the EPA has determined that this outside the scope of our proposed action and the EPA will not be providing a specific response to this portion of the comment. As for the commenter’s

recommendation relating to the regulation of motor vehicle emissions, as provided within the NPRM, New York identified in its submission to the EPA, its consideration of the Heavy Duty Diesel Engine Standard, Tier 3 Motor Vehicle Standards, Light Duty Vehicle GHG Rule for Model-Year 2017–2025, and SIP-approved part 217, “Motor Vehicle Emissions,” when developing its Long-Term Strategy to address emissions of on-road sources.¹

While the commenter expresses concern over the maintenance of electrical power lines to prevent wildfires and claims this should be addressed when States consider energy efficiency under Ask 6, the EPA finds the SIP submission sufficiently addresses the applicable requirements of the CAA and the RHR for the second planning period.

Comment: The NGO commenters express concern with the EPA’s suggestion that part of the basis for its approval of New York’s SIP revision was the fact that the uniform rate of progress (URP) for several impacted Class I areas is well below the respective 2028 glidepath and stated that the EPA has made it clear that the glidepath is not a safe harbor to avoid requiring additional reasonable progress measures for Class I areas. The NGO commenters posit that the EPA could not rely on the fact that the Class I areas impacted by New York sources were well below their respective URP glidepaths to excuse New York from conducting rigorous Four-Factor Analyses (FFA) to determine whether additional control measures are necessary for reasonable progress.

Response: The EPA has stated that being below the URP glidepath is not a safe harbor (*i.e.*, not a basis for not evaluating sources, considering the four statutory factors, and potentially requiring control measures), and in evaluating the State’s source selection and control measure determinations, the EPA did not rely on the fact that the Class I areas impacted by New York sources are below their respective URP glidepaths. Rather, the EPA factually stated that the 2028 projections for the Class I areas that New York contributes to are all well below their respective glidepaths. This factual statement is necessary to support the determination that New York satisfied the applicable requirements of 40 CFR 51.308(f)(3), relating to reasonable progress goals (RPGs) for each Class I area. Specifically, 40 CFR 51.308(f)(3)(ii)(B), which applies to all States, is satisfied by the analyses the State provided

within its long-term strategy, as detailed under Section 10 of the State’s submittal, and by the estimated combined visibility benefits of strategies detailed in section 9.5 of the State’s submittal. The EPA determined that because the Class I areas that New York contributes to are all well below their respective glidepaths, New York was not required to conduct the “robust demonstration” detailed under 40 CFR 51.308(f)(3)(ii)(B).

Comment: The NGO commenters express concern with the EPA’s endorsement of New York’s relied upon source selection threshold. The NGO commenters also express concern that New York’s use of the MANE-VU’s source selection threshold of 3.0 inverse megameters (Mm^{-1}), was unreasonably high. Using this threshold, New York identified seven sources, which was then further winnowed down to include only two sources for further consideration of an FFA.

In addition, the NGO commenters express concern that New York failed to select the 29 additional significant sources identified by the Federal Land Managers (FLMs) for detailed FFAs and that the MANE-VU 2 percent or greater sulfate-plus-nitrate threshold, used to determine whether New York emissions contribute to visibility impairment at a particular Class I area, was an extremely low triggering threshold. Thus, the NGO commenters suggest that New York should have used a lower threshold that would have captured a more meaningful portion of in-state sources, such as an emissions over distance (Q/d) threshold of 5 or an equivalent threshold that captures at least 80 percent of the State’s haze-forming emissions.

Response: As explained in the NPRM,² the EPA does not necessarily agree that the 3.0 Mm^{-1} visibility impact is a reasonable threshold for source selection. The RHR recognizes that, due to the nature of regional haze visibility impairment, numerous and sometimes relatively small sources may need to be selected and evaluated for implementation of control measures to make reasonable progress.³ As the EPA has explained, while States have discretion to choose any source selection threshold that is reasonable, “[a] state that relies on a visibility (or proxy for visibility impact) threshold to select sources for FFA should set the threshold at a level that captures a meaningful portion of the State’s total

² See 89 FR 20401–20402 (March 22, 2024).

³ See Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period, EPA Office of Air Quality Planning and Standards, at 4 (July 8, 2021) (“2021 Clarifications Memo”).

¹ See 89 FR 20384, 20405 (March 22, 2024).

contribution to visibility impairment to Class I areas.” In this case, the 3.0 Mm^{-1} threshold used in MANE-VU Ask 2 identified seven sources in New York (and 22 across the entire MANE-VU region), indicating that it may, in some cases, be unreasonably high.

Notwithstanding the above, in this instance, the EPA proposed to find that New York’s additional information and explanation indicated that the State had in fact examined a reasonable set of sources—including sources flagged by the FLMs—and that the State had reasonably concluded that FFAs for its top-impacting sources were not necessary because the outcome would be that no further emission reductions would be reasonable.

While the FLMs identified sources beyond those for which New York conducted FFAs, the State provides in its submittal that the MANE-VU’s analysis of these additional facilities, separate of the source selection threshold analysis MANE-VU conducted and previously mentioned, determined they did not require FFAs. Moreover, regarding the facilities identified by the National Park Service (NPS) for FFA consideration, New York provides in its response to comments, that it did reassess the controls on these facilities and determined that more controls were not necessary.⁴

Furthermore, the EPA based the proposed approval on the State’s examination of its largest operating electric generating units (EGUs) and its industrial commercial institutional (ICI) boilers, at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on New York’s existing SIP-approved NO_x and SO_2 rules that effectively control emissions from the largest contributing stationary-source sectors.

The EPA acknowledges the NGO commenters’ suggestion that New York should have used a lower source selection threshold and evaluated additional sources identified by the Federal Land Managers. That said, the RHR does not require States to consider controls for all sources, all source categories, or any or all sources in a particular source category. Rather, States have discretion to choose any source selection methodology or threshold that is reasonable, provided that the choices they make are reasonably explained.⁵ To this end, 40 CFR 51.308(f)(2)(i) requires that a State’s

SIP submission must include “a description of the criteria it used to determine which sources or groups of sources it evaluated.” The technical basis for source selection must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). In this instance, the EPA proposed to find that New York had demonstrated that the sources of SO_2 and NO_x within the State that would be expected to contribute to visibility impairment have small emissions of those pollutants, are subject to stringent SIP-approved emission control measures, or both.

New York’s information and explanation indicate that the State examined a reasonable set of sources, including sources captured by the other MANE-VU Asks and sources flagged by the FLMs, and reasonably concluded that additional FFAs were not necessary because the outcome would be that no further emission reductions would be reasonable for this planning period.

Comment: The NGO commenters express concern with the EPA’s proposed approval of New York excluding sources from a FFA by asserting sources are effectively controlled and exempt from consideration. The NGO commenters reference Regional Haze guidance documents and the CAA to reason that the demonstrations for numerous sources, provided by New York, are highly flawed and fail to adequately demonstrate that facilities within New York are effectively controlled.

Response: The EPA’s approval of New York’s Regional Haze SIP is based on New York’s satisfaction of the applicable regulatory requirements for the second planning period in 40 CFR 51.308(f), (g), and (i). These requirements include that States must evaluate and determine the emission reduction measures necessary to make reasonable progress by considering the four statutory factors and that the measures that are necessary for reasonable progress must be in the SIP. New York’s submission includes FFAs in response to Asks 2 (for NO_x) and 3 (for SO_2 emissions from sources across the State). As the EPA explained in the NPRM, in assessing its compliance with these Asks, New York explicitly engaged with the statutory and regulatory requirement to determine measures necessary for reasonable progress based on the four factors. As a result, the EPA proposed in the NPRM to approve New York’s SIP submittal as satisfying the requirement of 40 CFR 51.308(f)(2)(i) that a State determine the emission reduction measures that are necessary to make reasonable progress by considering the four factors.

Moreover, New York’s long-term strategy relied on several State air pollution control regulations already approved into the SIP, including 6 NYCRR subpart 225–1, *Fuel Composition and Use—Sulfur Limitations*, 6 NYCRR part 219, *Incinerators*, and 6 NYCRR subpart 227–2, *Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_x)*. The EPA finds that these regulations sufficiently address the long-term strategy requirements of the RHR because they establish emission limits for various source categories, which will reduce the formation of visibility impairing pollutants. Thus, the EPA is appropriately finalizing its approval of New York’s Regional Haze SIP revision based on the EPA’s determination that New York’s SIP, including its long-term strategy, satisfies the requirements of 40 CFR 51.308(f)(2)(i).

Contrary to the NGO commenters’ arguments, New York’s reliance on already effective controls in lieu of FFAs for other sources in the State is not inconsistent with the CAA or the EPA’s Regional Haze Guidance. As the comment notes, the EPA stated in the NPRM that the CAA and RHR do not require that every State must analyze the four factors for *all* sources. Indeed, the Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on States’ and sources’ individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state.⁶

Accordingly, in both guidance documents, the “Guidance on Regional Haze State Implementation Plans for the Second Implementation Period” issued by EPA in August 2019 (“2019 Guidance”) and the 2021 Clarifications Memo, the EPA recognized that a State may reasonably decide not to select sources that have recently installed effective controls.⁷ As the EPA stated in the 2021 Clarifications Memo, “The underlying rationale for the ‘effective controls’ flexibility is that if a source’s emissions are already well controlled, it is unlikely that further cost-effective reductions are available.”⁸ In such a scenario, per the guidance, the State should explain why it is reasonable to assume that a full FFA would likely result in the conclusion that no further controls are necessary.⁹

⁶ See 89 FR 20387 (March 22, 2024).

⁷ 2019 Guidance at 22–25; 2021 Clarifications Memo at 5.

⁸ 2021 Clarifications Memo at 5.

⁹ 2019 Guidance at 23; 2021 Clarifications Memo at 5.

⁴ See “NY Response to Public Comments 05–07–2020”, as was provided within the State’s submittal to the EPA and is included within the docket for this rulemaking.

⁵ See Clarifications Memo at Sections 2 and 2.1.

In this case, New York evaluated those sources that had recently installed controls, including applicable facility permits and regulations, and demonstrated that the high level of control already required makes it reasonable to conclude that the controls were effective; a full FFA would likely result in the conclusion that no further controls are necessary. Thus, the EPA finds that New York satisfied the requirements of the RHR, as clarified by EPA Guidance.

Comment: The NGO commenters express concern with the lack of source specific FFA information for the two sources, Finch Paper and Lafarge Building Materials, which New York selected for FFAs. Specifically, the NGO commenters' claim that New York did not provide any of the required documentation to support its reasonable progress determinations for these two facilities and that New York's conclusory statements relied on an outdated RACT analysis and MACT compliance requirement, and not on FFAs. Similarly, the NGO commenters argue that New York's abbreviated analysis for Lafarge Building Materials do not comport with the legal requirements of an FFA.

Additionally, regarding the determination that the emission limits for Finch Paper and Lafarge Building Materials limit their potential maximum light extinction impact below 3.0 (Mm^{-1}) and well below their previous levels, the NGO commenters assert that a general lowering of emissions below a source screening threshold since the 2011 emissions year on which the MANE-VU based its source-selection screening process, is not an adequate basis for the EPA to approve an otherwise arbitrary FFA. The NGO commenters claim that the EPA's proposed reliance on SIP-approved controls installed at Finch Paper and Lafarge Building Materials, which limit potential contribution to visibility impairment, is inadequate when considering FFA requirements.

Finally, the NGO commenters express concern that there is no documentation that the controls in place at Finch Paper and Lafarge Building Materials are in the SIP. The NGO commenters assert that EPA must require New York to conduct a complete and rigorous FFAs and supplement the SIP. If New York fails to do so, the NGO commenters assert the EPA must conduct the FFAs on the State's behalf, along with providing the necessary supporting documentation.

Response: New York relied on the MANE-VU to target sources for which the State conducted an FFA.

Specifically, as New York provides within section 10.6.3 of its submittal, Finch Paper and Lafarge Building Materials were the two sources in the State that were identified via modeling by the MANE-VU to have the potential for 3.0 Mm^{-1} or greater visibility impacts at Class I areas within the MANE-VU region. Accordingly, the State conducted a FFA for both sources pursuant to 40 CFR 51.308(f)(2)(i). New York listed the statutory four factors that States must consider when conducting an FFA, evaluated the individual four factors with respect to each of the two facilities, and determined the emission reduction measures that are necessary to make reasonable progress.¹⁰

New York considered a RACT analysis and MACT compliance requirements when evaluating the four factors for Finch Paper. New York's submission determined that the phased-in switch from No. 6 fuel oil to natural gas in their boilers (completed by the end of 2015) and the boiler and combustion tune-ups, consistent with 40 CFR part 63, subpart DDDDD (Boiler MACT Rule) (especially for boilers 4 and 5), were adequate upgrades to control emissions. New York states that it has adopted RACT-level controls for NO_x and volatile organic compound (VOC) sources statewide on the largest source categories and that it fully complies with the requirements for Class I areas to identify the RPGs. The EPA finds this analysis and its consideration of the four factors supports the State's reasonable progress determinations for these two facilities and is appropriate for meeting the RHR requirements under 40 CFR 51.308(f)(2)(i).

Regardless of the State's determination that the emission limits for Finch Paper and Lafarge Building Materials limit their potential maximum light extinction impact below 3.0 inverse megameters (Mm^{-1}), the RHR does not provide a particular emission threshold which States must meet when considering installation or upgrade of emission controls under the four factors. However, the State has determined these emission limits will provide for reasonable progress towards achieving natural visibility conditions in Class I areas it impacts. New York evaluated the four factors for both sources under the flexibility provided by the EPA's RHR, which provides States the ability to determine the long-term strategies necessary to make reasonable progress. Therefore, the EPA has determined that the State is taking the necessary steps in

accordance with the CAA and RHR to continue improving visibility conditions.

Finally, documentation that the controls in place at Finch Paper and Lafarge Building Materials are in the SIP can be found under EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New York SIP.¹¹

Comment: The NGO commenters express concern over New York's reliance on a cost-effectiveness threshold that the NGO commenters consider to be unreasonably low and unable to achieve reductions in visibility-impairing pollution from the State's sources. The NGO commenters suggest New York should have used a higher cost-effectiveness threshold, similar to those employed by other States like Colorado and Nevada, who utilized a \$10,000 per ton threshold.

Response: The cost-effectiveness threshold New York relied upon for consideration of what was necessary for reasonable progress was selected in accordance with the RACT requirements found under the NYSDEC 2013 policy, "DAR-20 Economic and Technical Analysis for Reasonably Available Control Technology (RACT)," ¹² and the EPA has determined that the cost threshold is sufficient in this case. The RHR does not provide a specific cost effectiveness emission threshold which States must meet when considering installation or upgrade of emission controls under the four factors. In this case, New York reasonably evaluated the cost effectiveness of controls for both sources.

While Finch Paper's 2019 RACT analysis determined that six technologies were technically feasible for the power boilers, the cost analysis for three of the technologically feasible controls determined that the costs for these control technologies exceeded the RACT threshold identified in the NYSDEC 2013 policy. Furthermore, Finch Paper had already implemented the other three identified control technologies.¹³ Thus, New York determined these control costs were too high to be considered necessary for reasonable progress under the RHR, and the existing controls are sufficient. Moreover, the State did not receive any comments related to the cost-threshold it utilized during its public comment period.

¹¹ See <https://www.epa.gov/air-quality-implementation-plans/epa-approved-nonregulatory-provisions-and-quasi-regulatory-34>.

¹² See https://extapps.dec.ny.gov/docs/air_pdf/dar20.pdf.

¹³ 89 FR 42810 (May 16, 2024).

¹⁰ See section 10.6.3, *Significant Visibility Impact Sources*, of New York's SIP Revision to the EPA.

Comment: The NGO commenters express concern with the lack of any federally enforceable retirements and shutdowns included within New York's SIP Revision for which the EPA can rely on to support its proposed approval.

Response: The commenter refers to facilities and units at sources that have ceased operating and were therefore not selected for further examination and consideration of the four factors. New York referenced a number of these facilities, including Somerset Operating Company, Cayuga Generating Station, and Lafarge.¹⁴ Contrary to the commenters' argument that New York did not include any enforceable retirements or shutdowns, the State provided information about each of these facilities as evidence of shutdowns or retirements. Evidence of enforceable shutdowns can include a variety of different information. For example, the permanent surrender of permits, evidence of dismantling and/or decommissioning, and specifically a notice of decommissioning from a regional Independent System Operator (in the case of EGUs).

As explained in the NPRM, Lafarge entered a Consent Decree (CD) with the EPA which contained a compliance schedule for the plant to either modernize the existing plant, retrofit the existing wet process kilns with controls, or retire the two wet process kilns.¹⁵ Accordingly, the EPA confirms that the wet process kilns were demolished and are no longer in operation.¹⁶ Regarding the retirement of the primary units at the Somerset Operating Company, the last coal-fired plant operating in New York, the State provided in the supplement to its SIP submission, that the facility is currently being demolished and that it ceased operations and retired on March 30, 2020, following the State's adoption of

coal SO₂ regulations under NYCRR part 251, "CO₂ Performance Standards for Major Electric Generating Facilities," and after submitting a deactivation plan to the New York Independent System Operator (NYISO).¹⁷ Moreover, the EPA determined that on December 12, 2019, the Somerset Operating Company submitted a complete Generator Deactivation Notice for the retirement of the 675 MW Somerset generator to the NYISO.¹⁸ Similarly, the State provides in the supplement to its submission that Unit 2 and Unit 1 at the Cayuga Generating Station shutdown in July 2018 and November 2019, respectively. The NYISO also determined that Cayuga Generating Station submitted a complete Generator Deactivation Notice for Unit 1 on August 1, 2019. Cayuga Generating Station Unit 2 was also placed in an ICAP Ineligible Forced Outage by the NYISO on July 1, 2019.¹⁹

Thus, the EPA finds that sufficient evidence has been provided to determine that these facilities are subject to enforceable shutdowns.

Comment: The NGO commenters express concern over the EPA's reliance on fuel switching from coal-fired to burning of natural gas at units lacking a thorough analysis detailing how a fuel conversion impacts visibility impairing pollutants. Additionally, the NGO commenters argue that controls should be considered and required at a new facility or at a facility that switches fuel (converts to natural gas units) to reflect emission rates that have been developed pursuant to an FFA.

Response: The EPA believes it is well understood that converting coal-fired units to natural gas-firing is associated with significant emission reductions. Importantly, the EPA notes that natural gas contains nearly no sulfur, ash, or particulates.²⁰ Thus, co-firing results in a reduction in SO₂ emissions and particulate emissions respectively, and SO₂ emissions and particulate emissions

are reduced by nearly 100% when 100% natural gas is fired.²¹ Moreover, due to the characteristically low nitrogen content of natural gas, NO_x formation through the fuel NO_x mechanism is normally low.²²

The emission benefits from switching to natural gas firing are also detailed within the recent Greenhouse Gas (GHG) Standards and Guidelines for Fossil Fuel-Fired Power Plants, which set emission limits for new gas-fired combustion turbines and emission guidelines for existing coal, oil and gas-fired steam generating units.²³

Furthermore, regarding the NGO commenters' statement that the EPA must require the State to consider and require controls on converted gas units developed pursuant to a FFA, the EPA recognizes that a State may reasonably decide not to select sources for further consideration of additional emission controls if the State determines that emissions at a facility fall below a reasonable threshold, as is the case with the RED-Rochester, Morton Salt Division, and Bowline Point Generating Station facilities the NGO commenters reference. In fact, as New York demonstrates under Table 10-4 of its submission, these three facilities still fall below the NGO commenters' suggested Q/d > 5 threshold. Thus, the EPA finds that New York reasonably determined these sources did not require further analysis of emission controls via an FFA.

Moreover, since New York provides that these facilities have switched from firing coal to natural gas, and this is expected to result in significant emission reductions of SO₂ and NO_x, the State asserts that emissions at these facilities are already effectively controlled. Thus, contrary to the claim in the comment, the EPA recognizes that a State may reasonably decide not to select sources that have recently installed effective controls.

Comment: The NGO commenters express concern with the EPA's failure to identify what portions of New York's submittal document it proposes to approve as SIP enforceable elements. Specifically, the NGO commenters express concern that there are no revised SIP emission limits for facilities within the State, such as Finch Paper, and that the EPA does not identify the monitoring, reporting, and recordkeeping requirements it proposes to approve for the sources into the SIP.

¹⁴ The commenter (as well as New York) also cited the shutdown of Indian Point Unit 2. However, Indian Point is a nuclear plant and does not have PM or regional haze precursor emissions. Therefore, the operation or retirement of Indian Point Unit 2 is not relevant for the regional haze SIP, nor the State's long-term strategy.

¹⁵ See *U.S. v. Lafarge North America, Inc.*, Case 3:10-cv-000440JPG-CJP, available at <https://www.epa.gov/sites/default/files/documents/lafarge-cd.pdf>.

¹⁶ See *Lafarge Takes Down Old Stack in Controlled Explosion*, Melanie Lekocevic, Columbia-Greene Media (November 5, 2017), Hudson Valley 360, available at <http://ns1-wtonset.newscyclecloud.com/article/lafarge-takes-down-old-stack-controlled-explosion>; see also New York State Title V permit for Ravena Cement Plant, Condition 12-14 ("Upon commencement of production of clinker from the new kiln (EU 41100), the facility shall immediately discontinue use of the old kilns (EU 41000)"), available at https://extapps.dec.ny.gov/data/dar/afj/permits/401240000100112_r1_21.pdf.

¹⁷ The NYISO monitors the reliability of the state's power system and coordinates the daily operations to distribute electricity supply. The NYISO provides open access to the state's transmission system to allow competitive generation services. Energy services companies who offer electricity supply, are required to notify the NYISO of their eligibility status upon receipt of the Department's compliance letter that the retail access application is completed.

¹⁸ See <https://www.nyiso.com/documents/20142/1396324/Somerset-Generator-Deactivation-Assessment-vFinal.pdf/f1fc261-3d85-9f96-ef8f-70bdd1586505>.

¹⁹ See <https://www.nyiso.com/documents/20142/1396324/Cayuga1and2-Generation-Deactivation-Assessment-vFinal.pdf/9328ed90-41aa-da58-354f-d02fa755f260>.

²⁰ See <https://www.epa.gov/system/files/documents/2024-04/attachment-5-11-natural-gas-co-firing-methodology.pdf>.

²¹ See <https://www.epa.gov/system/files/documents/2024-04/attachment-5-11-natural-gas-co-firing-methodology.pdf>.

²² *Id.*

²³ 89 FR 39798.

The NGO commenters argue that this prevents the public from reviewing the administrative code or permit conditions that the EPA proposes to include in the SIP and provide comment on whether they satisfy the requirements of the CAA or the RHR.

Response: As provided under the CAA, for proposed action on SIPs, the EPA must create a docket for its proposed action containing all the information on which the proposed action relies. As the NGO commenters note, the EPA references the “Finch Source Specific State Implementation Plan [SSSIP] Revision,” which New York submitted to the EPA on May 24, 2022, for the purpose of approving NO_x Reasonably Available Control Technology (RACT) for sources at the Finch Paper facility as required for implementation of the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). While this SSSIP is applicable to NO_x RACT requirements, the EPA finds the NO_x emission reductions associated with the SSSIP to also be consistent with the focus of New York’s Regional Haze SIP at issue here, which concerns SO₂ and NO_x emissions and their impacts on visibility impairment at Federal Class I areas. The EPA proposed action on the Finch Paper SSSIP on January 19, 2024,²⁴ and finalized its approval of this revision on May 16, 2024.²⁵ Moreover, the EPA provided a copy of the Finch Paper SSSIP submittal, as it was submitted by the State, within the docket for the EPA’s proposed action on New York’s Regional Haze SIP. The EPA refers the NGO commenters to the publicly available docket for this action.

Although approval of the SSSIP for Finch Paper was finalized and incorporated into New York’s SIP after the EPA’s proposed action on New York’s Plan for the Regional Haze Second Implementation Period, the RACT conditions within the SSSIP were proposed to be included in the SIP as federally enforceable prior to the EPA’s proposed action on New York’s Plan for the Regional Haze Plan. The monitoring, reporting and recordkeeping requirements to track compliance with the emission limits that are detailed within the Finch Paper SSSIP are included in the permit conditions, which have also since been incorporated into New York’s SIP.²⁶

Furthermore, as detailed later within this final rulemaking, the EPA took several steps to ensure that the public was given the opportunity to adequately be involved with the Federal rulemaking process for the Finch Paper SSSIP. The EPA utilized an enhanced outreach approach which involved the distribution of physical fact sheets to the public, posts across the EPA’s social media accounts and the EPA’s official website to increase awareness, and an extended public comment period of 60 days to allow the public additional time to provide informed and meaningful comments on the proposed rulemaking. Therefore, the EPA finds that it has provided the public with a sufficient opportunity to review and comment on the regulatory provisions being included in New York’s Regional Haze SIP to comply with the CAA and RHR.

Comment: The NGO commenters express concern over the EPA’s failure to analyze and meaningfully consider the impacts of this SIP revision on communities with environmental justice (EJ) concerns. In particular, the NGO commenters raise concern with EPA’s lack of consideration for EJ in the source-specific analyses in its proposed action, asserting that it is unreasonable for the EPA to ignore its obligations because New York failed to conduct such source-specific analyses.

Response: The regional haze statutory provisions do not explicitly address considerations of EJ, and neither do the regulatory requirements of the second planning period in 40 CFR 51.308(f), (g), and (i). However, the lack of explicit direction does not preclude the State from addressing EJ in the State’s SIP submission. As explained in “EPA Legal Tools to Advance Environmental Justice,”²⁷ and EPA Regional Haze guidance,²⁸ the CAA provides States with the discretion to consider environmental justice in developing rules and measures related to regional haze.

In this instance, New York provided details in its submission regarding the passage of the Climate Leadership and Community Protection Act (CLCPA) in July of 2019. The CLCPA requires New York to achieve a carbon free electric system by 2040 and reduce greenhouse gas emissions 85% below 1990 levels by 2050, to expedite the transition to a clean energy economy. New York anticipates that this law will drive investment in clean energy solutions

such as wind, solar, energy efficiency and energy storage while targeting investments to benefit disadvantaged communities by creating tens of thousands of new jobs, improving public health and quality of life, and providing all New Yorkers with more robust clean energy choices. Additionally, with CLCPA’s focus on EJ, State agencies will be investing at least 35% of clean energy program resources to benefit disadvantaged communities.

As stated earlier in this NFRM, during the regulatory process associated with the Source-Specific SIP approval for Finch Paper,²⁹ the EPA took several steps to ensure that the communities within close proximity to the Finch Paper facility were given the opportunity to participate in the Federal rulemaking process. The EPA utilized EJScreen to identify EJ concerns within a mile radius of the facility and provided those results within the docket for the rulemaking for transparency and awareness purposes. Additionally, the EPA utilized an enhanced outreach approach which involved the distribution of physical fact sheets to the public, posts across the EPA’s social media accounts and the EPA’s official website to increase awareness, and an extended public comment period of 60 days to allow the public additional time to provide informed and meaningful comments on the proposed rulemaking.

III. Final Action

The EPA is approving New York’s May 12, 2020, SIP submission, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f), (g), and (i).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

²⁴ 89 FR 3620 (January 19, 2024).

²⁵ 89 FR 42810 (May 16, 2024).

²⁶ See <https://www.epa.gov/system/files/documents/2024-05/ibr-ny-finch-paper-eff-jan-12-2022.pdf>, as provided on EPA’s website for New York’s approved SIP (<https://www.epa.gov/air-quality-implementation-plans/epa-approved-new-york-source-specific-requirements>).

²⁷ See EPA Legal Tools to Advance Environmental Justice, at 35–36 (May 2022), available at <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.

²⁸ Clarifications Memo at 16.

²⁹ See 89 FR 42810 (May 16, 2024).

October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

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

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

The State did not evaluate EJ considerations by means of an extensive and comprehensive EJ analysis as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Nevertheless, New York did reference existing EJ programs within its SIP submittal, as described in section V, “Environmental Justice Considerations,” of the NPRM. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Alyssa Arcaya,
Acting Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended 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 HH—New York

■ 2. In § 52.1670, the table in paragraph (e) is amended by adding the entry “Regional Haze Plan from 2018–2028” at the end of the table to read as follows:

§ 52.1670 Identification of plan.

*	*	*	*	*
(e)	*	*	*	*

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* Regional Haze Plan from 2018–2028.	* State-wide	* 05/12/2020	* 08/15/2024, [insert Federal Register citation].	* • Full Approval. • New York has met the Regional Haze Rule requirements for the 2nd Implementation Period.

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 206**

[Docket ID FEMA–2024–0024]

RIN 1660–AB15

Hazard Mitigation Grant Program Application Period Extension**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is revising its regulations to extend the Hazard Mitigation Grant Program's application period. This revision will allow FEMA to approve additional projects and offer applicants additional time for project approvals meant to address the effects of climate change and other unmet community mitigation needs.

DATES: This rule is effective August 15, 2024.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT:

Howard Stronach, Mitigation Directorate, Hazard Mitigation Assistance Division, FEMA, 400 C St. SW, Washington, DC 20472, (202) 646–3683, fema-hma-guide@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:**1. Legal and Factual Background***FEMA's Hazard Mitigation Grant Program*

FEMA is responsible for administering and coordinating the Federal Government's response to disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act").¹ There are two types of disaster declarations provided for in the Stafford Act: emergency declarations² and major

disaster declarations.³ Following a major disaster declaration, FEMA may provide several different types of discretionary assistance to applicants such as funding under its Hazard Mitigation Grant Program (HMGP) which is authorized under Section 404 of the Stafford Act. 42 U.S.C. 5170c; 44 CFR 206.40.

HMGP "ensures that State, local, Tribal and territorial governments have the financial opportunity to plan for and implement mitigation measures that reduce the risk of loss of life and property from future natural disasters during the reconstruction process following a disaster."⁴ HMGP funding is time-limited; "the award period of performance for HMGP begins with the opening of the application period and ends no later than 48 months from the close of the application period." *Id.*

Under HMGP, FEMA "may contribute up to 75% of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster."⁵ States (which includes Territories)⁶ and Indian Tribal Governments are eligible applicants for HMGP funding, and upon award, will become recipients.⁷ State agencies, local

the threat of a catastrophe in any part of the United States."

³ 42 U.S.C. 5170; 5122 (defining "major disaster" as "any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.").

⁴ Federal Emergency Management Agency, Hazard Mitigation Assistance Program and Policy Guide ("HMAPPG"), Part 10.A.4, p. 28, March 20, 2023, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

⁵ Stafford Act, *supra* note 1, section 404 (codified as amended at 42 U.S.C. 5170c(a)); the statute caps the maximum amount of financial assistance that FEMA may provide for hazard mitigation, providing that the total of contributions "shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,000,000,000" of the estimated aggregate amount of grants to be made under the disaster declaration.

⁶ "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. 42 U.S.C. 5122(4).

⁷ 44 CFR 206.431 at definitions of "Applicant" and "Recipient"

governments, private nonprofit organizations, and Indian Tribal Governments⁸ are eligible subapplicants for HMGP who, and, upon subaward, will become subrecipients.⁹

The HMGP lists all relevant program definitions at 44 CFR 206.431. In HMGP, a "grant application" is a request to FEMA for HMGP funding by a State or Tribal Government that will act as a recipient. 44 CFR 206.431. The "subaward application" is the request to the recipient for HMGP funding by the eligible subrecipient. 44 CFR 206.431; 44 CFR 206.436(a). The "grant award" is the total Federal and non-federal contributions to complete the approved scope of work.¹⁰ The "subaward" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out as part of the Federal award. 44 CFR 206.431; 44 CFR 206.436(a). The "recipient" is the State or Indian Tribal Government that receives a Federal award directly from FEMA.¹¹

Hazard Mitigation Grant Program Application Procedures

HMGP applicants follow the procedures set forth at § 206.436. Upon identification of mitigation measures, the applicant submits an HMGP application to the FEMA Regional Administrator. The HMGP application includes a comprehensive narrative identifying intended mitigation projects, State or local contacts, project locations, description and cost estimates, an analysis of the cost-effectiveness of the mitigation measures, work schedules, justification for selection, relevant project management information and subrecipients. *See* 44 CFR 206.436(c). Applications for HMGP serve to identify the specific mitigation measures for which HMGP funding is requested. Applicants must submit all local HMGP applications (also known as subaward applications or subapplications) and funding requests to the FEMA Regional Administrator within 12 months of the date of the disaster declaration.¹² Under § 206.436(e), however, applicants/recipients may request that the Regional Administrator extend the application time limit by additional 30-to-90-day

⁸ Indian Tribal Governments have the option to apply as an applicant or a subapplicant. 44 CFR 206.431 at definition of "Indian Tribal Government." An Indian Tribal Government acting as recipient will assume the responsibilities of a State, as described in 44 CFR part 206, subpart N, for the purposes of administering the grant. 44 CFR 206.431 at definition of "Recipient."

⁹ 44 CFR 206.431 at definition of "Subrecipient."

¹⁰ *Id.* at definition of "Grant award."

¹¹ 44 CFR 206.431 at definition of "Recipient."

¹² *See* 44 CFR 206.436.

¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288 (1974) (codified as amended at 42 U.S.C. 5121 *et. seq.*) ("Stafford Act").

² Stafford Act, *supra* note 1, section 501 (codified as amended at 42 U.S.C. 5191(a)); *see also* Stafford Act, *supra* note 1, section 102 (codified as amended at 42 U.S.C. 5122) which defines "emergency" as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert

increments, not to exceed a total of 180 days.

The amount of HMGP funding available to the applicant is based on the estimated total Federal assistance for the major disaster declaration, subject to the sliding scale formula that FEMA provides for disaster recovery. 44 CFR 206.432(b). FEMA establishes the amount of funding available for HMGP for each disaster¹³ (called the HMGP “ceiling”) at 12 months after the date of the disaster declaration (called the HMGP “lock-in”).¹⁴ FEMA provides two point-in-time estimates prior to the 12-month lock-in (at 35 days and 6 months) so that the applicant has some approximation of funding availability for each disaster in order to solicit and select among subapplications for mitigation projects. *Id.* When major fluctuations of projected disaster costs occur, FEMA, at the request of the applicant, may conduct an additional review after the 12-month lock-in. If the resulting review shows that the amount of funds available for HMGP is different than previously calculated, the final lock-in amount will be adjusted accordingly. *Id.*

2. Public Support & Need for Rule Change

FEMA stakeholders have identified the length of the application period and the inability to re-open the application period once it has closed as barriers to applying for assistance under HMGP.¹⁵

¹³ The maximum amount of financial assistance that FEMA may provide for HMGP is based on the amount of the grants FEMA projects it will provide under the major disaster declaration. Specifically, the amount of contributions “shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000” of the estimated aggregate amount of grants to be made under the disaster declaration. 42 U.S.C. 5170c(a).

¹⁴ Federal Emergency Management Agency, *Hazard Mitigation Assistance Program and Policy Guide* (“HMAPP”), Part 10.A.4, pp. 199–200, March 20, 2023, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

¹⁵ See, e.g., www.regulations.gov, Docket ID FEMA–2022–0023 at FEMA–2022–0023–0014 (comment from Texas Division of Emergency Management suggesting that FEMA remove the statutory requirement that FEMA will only consider an extension to the application deadline if the applicant’s inability to meet the deadline must have resulted from the event leading to the major disaster declaration. TDEM notes “[t]here are many legitimate extenuating circumstances that could lead a state to miss an application deadline that aren’t directly caused by the declared disaster.”); at FEMA–2022–0023–0032 (comment from Iowa Homeland Security and Emergency Management noting more time might be necessary for projects if a State experiences back to back disaster declarations); at FEMA–2022–0023–0034 (comment from the City of New Orleans argues that not

Specifically, State, local, Tribal, and territorial (SLTT) stakeholders have indicated they would benefit from additional time to develop quality applications and identified lack of resources, staff, and technical expertise necessary to prepare quality applications in a timely manner, resource challenges in trying to apply for assistance while also managing the response and recovery from a major disaster, failing to have a set HMGP ceiling established until the 12-month mark when the applications are due, and cumulative disasters as circumstances that further exacerbate the challenges to applying for assistance. *Id.*

Among the feedback received, SLTT entities indicated a need for allowing FEMA to extend or reopen the application period after it closes when disaster assistance recalculations potentially result in increased lock-in ceilings.¹⁶ Between October 1, 2019, and January 1, 2023, applicants submitted 75 requests, out of a total of 171 applications, for extensions beyond the 180 days Regional Administrators are permitted to authorize. Based on analysis of historical data from FEMA’s

allowing applicants to submit projects after the application period closes creates a strain on applicants to have ready to go project ideas in the near-term recovery period); at FEMA–2022–0023–0038 (comment from New York State Hazard Mitigation arguing that FEMA should be incorporating flexibility into the application process, particularly when FEMA and/or other disasters are the sole reasons for not being able to meet the 12 month deadline, noting that “[i]n a perfect world, a 12 month application period seems more than sufficient, but taking into account impacts from one disaster occurring while dealing with another disaster and adding 2 more disasters within the 12 month period plus annual FEMA competitive programs that all impact the same groups makes this an impossibility.”); at FEMA–2022–0023–0053 (comment from Louisiana Governor’s Office of Homeland Security and Emergency Preparedness arguing that a State/ jurisdiction can face significant challenges when back to back events occur, stating it is “unrealistic to assume that the impacts from one event are not compounded by each subsequent event, affecting overlapping regions of the State, and further stressing State and local capacity” and further stating that “FEMA should provide flexibility to extend and in some cases re-open an application period when a lock-in recalculation is made, especially when that recalculation comes at the end of the application period, and especially when the increase is substantial” because applicants need sufficient time to develop and submit quality applications.)

¹⁶ See Docket ID FEMA–2022–0025 (containing comments from the Ohio Emergency Management Mitigation Branch, “. . . [w]hat is the purpose of re-calculating the ceiling amount after the application period has closed if FEMA cannot extend the application period and make the funds available to states and communities?”; see also, FEMA–2022–0023–0038 (containing comments from the New York State Hazard Mitigation that FEMA should incorporate flexibility in its lock in ceiling process).

NEMIS database,¹⁷ from 2013–2022, 26.0 percent of applicants submit their applications within 12 months or less, 16.0 percent of applicants request extensions and submit their applications between 12–15 months, 31.3 percent of applicants request extensions and submit their applications between 15–18 months, and 26.7 percent of applicants are unable to complete their applications within the 18 months allowable under the regulations.

FEMA has statutory authority to waive administrative conditions that would prevent applicants from receiving assistance if the inability to meet such conditions is the result of the major disaster. See 42 U.S.C. 5141. FEMA has used this authority to grant extensions beyond 18 months to those applicants who can demonstrate they are unable to meet the deadline as a result of the major disaster. From 2013–2022, for disasters that required extensions beyond the regulatorily-provided 18 months, the average amount of additional time approved by FEMA is approximately 11.6 months; however, this amount includes several major disasters with extraordinary circumstances that require significantly more time to address than typical disasters. The median amount of additional time, which provides a more realistic snapshot, is approximately 6.1 months.

FEMA establishes the amount of funding available for HMGP for each disaster at 12 months after the date of the disaster declaration. 42 U.S.C. 5170c(a). The 12-month application deadline currently in regulation does not provide sufficient time for applicants to submit their applications. In light of the public participation referenced throughout¹⁸ and resultant

¹⁷ The National Emergency Management Information System (NEMIS) is a FEMA-wide system that allows FEMA and its partners to carry out emergency management missions for the United States, its Territories, and its Tribal Agencies.

¹⁸ See, e.g., www.regulations.gov, Docket ID FEMA–2022–0023 at FEMA–2022–0023–0014 (comment from Texas Division of Emergency Management suggesting that FEMA remove the statutory requirement that FEMA will only consider an extension to the application deadline if the applicant’s inability to meet the deadline must have resulted from the event leading to the major disaster declaration. TDEM notes “[t]here are many legitimate extenuating circumstances that could lead a state to miss an application deadline that aren’t directly caused by the declared disaster.”); at FEMA–2022–0023–0032 (comment from Iowa Homeland Security and Emergency Management noting more time might be necessary for projects if a State experiences back to back disaster declarations); at FEMA–2022–0023–0034 (comment from the City of New Orleans argues that not allowing applicants to submit projects after the application period closes creates a strain on

data analytics research discussed in Regulatory Analysis “B. Executive Orders 12866, ‘Regulatory Planning and Review’ and 13563, ‘Improving Regulation and Regulatory Review,’” FEMA now moves to address these identified challenges.

3. Discussion of Rule Change

FEMA is amending § 206.436 to extend the HMGP’s application period and reopen the registration period under limited circumstances. FEMA is revising § 206.436(d), “Application submission time limit,” to extend the initial deadline for applicants to submit local HMGP applications and funding requests from 12 months to 15 months from the date of disaster declaration. FEMA’s historical data shows that 42 percent of applicants are able to submit applications within 15 months (26.0 percent who are able to meet the current 12-month deadline + 16 percent who are able to request an extension and submit by the 15-month extended deadline). FEMA’s historical data also shows that setting the initial deadline at 18 months will increase this number by 31.3 percent. FEMA is extending the initial deadline to 15 months instead of 18 months (or longer) to ensure that it is setting an achievable deadline while still maintaining its commitment to timely and effective grants management. The additional 3 months also provides applicants time to receive the 12-month lock in amount and make educated adjustments to the amount of funding they are applying for. This would lessen the administrative burden placed on HMGP recipients and FEMA as it would

applicants to have ready to go project ideas in the near-term recovery period); at FEMA–2022–0023–0038 (comment from New York State Hazard Mitigation arguing that FEMA should be incorporating flexibility into the application process, particularly when FEMA and/or other disasters are the sole reasons for not being able to meet the 12 month deadline, noting that “[i]n a perfect world, a 12 month application period seems more than sufficient, but taking into account impacts from one disaster occurring while dealing with another disaster and adding 2 more disasters within the 12 month period plus annual FEMA competitive programs that all impact the same groups makes this an impossibility.”); at FEMA–2022–0023–0053 (comment from Louisiana Governor’s Office of Homeland Security and Emergency Preparedness arguing that a State/ jurisdiction can face significant challenges when back to back events occur, stating it is it is “unrealistic to assume that the impacts from one event are not compounded by each subsequent event, affecting overlapping regions of the State, and further stressing State and local capacity” and further stating that “FEMA should provide flexibility to extend and in some cases re-open an application period when a lock-in recalculation is made, especially when that recalculation comes at the end of the application period, and especially when the increase is substantial” because applicants need sufficient time to develop and submit quality applications.)

require fewer application extension requests and responses.

FEMA is making several revisions to § 206.436(e), “Extensions.” Currently, § 206.436(e) provides that an applicant may, with justification, request that the Regional Administrator extend the application time limit by 30 to 90 day increments, not to exceed a total of 180 days. FEMA is revising § 206.436(e) by adding introductory text to state that upon receiving a written request from the applicant, FEMA may extend the application submission timeline as described in new paragraphs (e)(1) and (2). New paragraph (e)(1) retains the language currently in paragraph (e), except that FEMA is increasing 90 days to 120 days and increasing 180 days to 240 days. FEMA is also changing the word “recipient” to “applicant” in the last sentence for accuracy, as “applicant” is an entity applying to FEMA for funding; it is only upon award that the applicant becomes the recipient.

New paragraph (e)(2) provides that FEMA will only consider requests for extensions beyond 240 days for extenuating circumstances outside of the applicant’s control. Such requests must be submitted to the Regional Administrator and must include justification. FEMA is adding new paragraph (e)(2) because it understands that extenuating circumstances outside of the applicant’s control might prevent the applicant from submitting its application within the 240-day timeframe. FEMA is therefore allowing requests for extensions as a matter of fairness but is requiring such extensions to be coordinated between the FEMA region and FEMA Headquarters and requiring justification to ensure that no application period is extended indefinitely. As described in FEMA’s Hazard Mitigation Assistance Program and Policy Guide, a recipient’s extension request must (1) describe the extenuating circumstances that prevent the recipient from meeting that application period deadline, (2) document how the recipient implemented HMGP consistent with its Administrative Plan, (3) provide an implementation strategy and goals to use any remaining assistance (including an assessment of the additional time requested and an updated Administrative Plan), and (4) identify any technical assistance that can assist in addressing resource gaps and/or is needed to successfully implement the program.¹⁹

¹⁹ HMAPP, Part 10.A.10, p. 208–209, Mar. 20, 2023, available at <https://www.fema.gov/sites/>

As noted throughout, FEMA stakeholders have identified the length of the application period and the inability to reopen the application period once it has closed as barriers to applying for assistance under HMGP. They have indicated that additional time to develop applications would allow them to not only submit more applications, but better, more complete applications as well.²⁰ In response, FEMA is adding a new paragraph (f) to allow FEMA to reopen application periods on a limited basis. This paragraph, entitled “Reopening of application period,” provides that FEMA’s Assistant Administrator for the Mitigation Directorate may reopen a closed application period for up to 180 days under two circumstances. (FEMA is limiting its ability to reopen a closed application period to 180 days to ensure this remains a limited authority). The first circumstance, addressed in paragraph (f)(1), “Recalculation of assistance,” will allow FEMA to reopen a closed application period if FEMA approves a recalculation of assistance under § 206.432 and an applicant requests to reopen the application period within 60 days of FEMA’s recalculation approval.

As stated above, the amount of available HMGP funding is based on a percentage of the estimated total Federal assistance for each disaster declaration. 42 U.S.C. 5170c; 44 CFR 206.432(b). FEMA establishes the HMGP lock-in 12 months after the disaster declaration. *Id.* In circumstances when a major disaster results in significant fluctuations of projected or actual costs, FEMA, at the recipient’s request, may change the “lock-in” amount if the projections or actuals used to determine it were inaccurate enough that the change would be material. *Id.* However, FEMA currently cannot reopen the application period after it has closed even if there has been an increase to the ceiling amount of assistance. *Id.* This causes issues for applicants because “lock-in” recalculations can greatly increase the amount of additional HMGP funding but often occur close to the end of, or even outside of, the application period, leaving applicants without additional time to apply for that extra funding.

FEMA is adding new paragraph (f)(1) to allow FEMA to reopen a closed application period to address this issue.

[default/files/documents/fema_hma-program-policy-guide_032023.pdf](default/files/documents/fema_hma-program-policy-guide_032023.pdf) (last accessed on August 1, 2024).

²⁰ See Docket ID: FEMA–2022–0023–0034 (comment from the City of New Orleans argues that not allowing applicants to submit projects after the application period closes creates a strain on applicants to have ready to go project ideas in the near-term recovery period).

FEMA is requiring applicants to submit such requests within 60 days of FEMA's recalculation to ensure that submissions are timely and to prevent an applicant from requesting a reopening after an extended period of time has passed. The second circumstance, addressed in paragraph (f)(2), "Appeal," will allow FEMA to reopen a closed application period if FEMA grants an appeal under § 206.440 for an application extension denial after an application period is closed. Currently, if FEMA grants an appeal for an application extension denial, FEMA lacks the authority to reopen the application period for that applicant. This results in an inequitable scenario where the applicant wins its appeal but is deprived of a "remedy," which effectively renders the appeal meaningless. Allowing FEMA to reopen the application period for an applicant whose appeal it has granted would enable FEMA to provide all applicants a more effective and equitable appeals process.

FEMA will redesignate current paragraph (f), "FEMA approval," as paragraph (g). In new paragraph (g), FEMA will make nonsubstantive revisions such as changing the word "State" to "applicant" for greater accuracy, as well as minor grammatical edits to incorporate the active voice. Lastly, FEMA will redesignate current paragraph (g), "Indian Tribal recipients," as paragraph (h).

4. Regulatory Analysis

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. *See* 5 U.S.C. 553(b) and (c). The APA provides an exception to this prior notice and comment requirement for matters relating to public property, loans, grants, benefits, or contracts. 5 U.S.C. 553(a)(2).

FEMA's HMGP program is a grant program through which FEMA obligates funding to State, local, Tribal, and territorial governments, as well as

eligible private nonprofit organizations, for post-disaster hazard mitigation measures that reduce the risk of, or increase resilience to, future damage, hardship, loss or suffering in any area affected by a major disaster, or any area affected by a fire for which assistance was provided under section 420 of the Stafford Act. Because this rule relates to FEMA's obligation of grant funding under the HMGP program, it is exempt from notice and comment rulemaking under the APA. In addition to the grants exemption previously noted, this rulemaking serves to increase flexibility in the administration of this mitigation grant program.

While FEMA asserts this rule is exempt from notice and comment procedures, the agency acknowledges its general policy to provide for public participation in rulemaking.²¹ FEMA has retained its discretion to depart from this policy as circumstances warrant. 44 CFR 1.3(c). Extending the HMGP application period warrants such a departure from notice and comment rulemaking, because the effort is a result of public comment. FEMA has already received comments from numerous stakeholders in response to a publication of the Hazard Mitigation Assistance (HMA) Program and Policy Guide for public comment²² expressing concern regarding the challenges they encounter in meeting the current HMGP deadlines²³ and supporting the

regulatory changes in this rulemaking. This rule does not impose any additional requirements on applicants; rather, in response to public comment requesting additional flexibilities in the HMGP,²⁴ it increases flexibility for applicants by allowing more opportunities for them to develop and improve their grant applications to address the effects of climate change and other unmet mitigation needs.

(comment from Texas Division of Emergency Management suggesting that FEMA remove the statutory requirement that FEMA will only consider an extension to the application deadline if the applicant's inability to meet the deadline must have resulted from the event leading to the major disaster declaration. TDEM notes "[t]here are many legitimate extenuating circumstances that could lead a state to miss an application deadline that aren't directly caused by the declared disaster."); at FEMA-2022-0023-0032 (comment from Iowa Homeland Security and Emergency Management noting more time might be necessary for projects if a State experiences back to back disaster declarations); at FEMA-2022-0023-0034 (comment from the City of New Orleans argues that not allowing applicants to submit projects after the application period closes creates a strain on applicants to have ready to go project ideas in the near-term recovery period); at FEMA-2022-0023-0038 (comment from New York State Hazard Mitigation arguing that FEMA should be incorporating flexibility into the application process, particularly when FEMA and/or other disasters are the sole reasons for not being able to meet the 12 month deadline, noting that "[i]n a perfect world, a 12 month application period seems more than sufficient, but taking into account impacts from one disaster occurring while dealing with another disaster and adding 2 more disasters within the 12 month period plus annual FEMA competitive programs that all impact the same groups makes this an impossibility."); at FEMA-2022-0023-0053 (comment from Louisiana Governor's Office of Homeland Security and Emergency Preparedness arguing that a State/jurisdiction can face significant challenges when back to back events occur, stating it is "unrealistic to assume that the impacts from one event are not compounded by each subsequent event, affecting overlapping regions of the State, and further stressing State and local capacity" and further stating that "FEMA should provide flexibility to extend and in some cases re-open an application period when a lock-in recalculation is made, especially when that recalculation comes at the end of the application period, and especially when the increase is substantial" because applicants need sufficient time to develop and submit quality applications.)

²⁴ *Id.*

²¹ 44 CFR 1.3(a). Until recently, FEMA waived the exemption afforded to grant programs under the APA and treated its programs as if they were subject to traditional notice and comment requirements. On March 3, 2022, FEMA published a final rule clarifying its position regarding notice and comment rulemaking for its grant programs. *See* 87 FR 11971, Mar. 3, 2022. FEMA determined that removal of the waiver of the exemption streamlined the regulations and ensured that the agency retained the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate. FEMA noted that it would retain its general policy in favor of public participation in rulemaking but would retain discretion to depart from this policy as circumstances warrant.

²² 87 FR 52016; HMAPPG, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

²³ *See, e.g.,* www.regulations.gov, Docket ID FEMA-2022-0023 at FEMA-2022-0023-0014

Finally, FEMA asserts this rule provides necessary relief for the public that should not be delayed. Delayed effective dates are provided to give the public a reasonable time to prepare to comply with a rule. The APA generally requires that substantive rules incorporate a 30-day delayed effective date. 5 U.S.C. 553(d). However, the APA simultaneously provides an exception to the 30-day delayed effective date for rules which grant or recognize an exemption or relieve a restriction.²⁵ 5 U.S.C. 553(d)(1). This rule relieves a restriction on the amount of time HMGP applicants have to develop and submit mitigation project applications and is a result of public comment.

In response to a March 2023 update to and publication of the Hazard Mitigation Policy and Program Guide,²⁶ FEMA received comments from Iowa Homeland Security and Emergency Management,²⁷ the Texas Division of Emergency Management,²⁸ New York State Hazard Mitigation,²⁹ the Louisiana Governor's Office of Homeland Security and Emergency Preparedness,³⁰ and the City of New Orleans,³¹ all calling for additional time and flexibilities in the HMGP application process. In response to this feedback, FEMA ran a query of HMGP disaster application duration periods and found a need to extend the HMGP application period. This discussion is found in the regulatory analysis section below. This final rule will allow applicants and subapplicants more time to develop and submit additional mitigation project applications to address climate change and other unmet mitigation needs, relieving the restriction from which public commenters requested relief.

B. Executive Orders 12866, "Regulatory Planning and Review" and 13563, "Improving Regulation and Regulatory Review"

Executive Orders 12866 ("Regulatory Planning and Review") as amended by Executive Order 14094 (Modernizing Regulatory Analysis), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

The following paragraphs explain the need for the updated regulation, the affected population, and the benefits.

Need for Updated Regulation

Through HMGP, FEMA provides financial assistance to States, Territorial, and Tribal governments and thereafter funds may be distributed to local authorities or certain private nonprofit organizations for post disaster hazard mitigation measures that reduce the risk of, or increase resilience to, future damage, hardship, loss or suffering in any area affected by a major disaster. FEMA's current 12-month HMGP application deadline in regulation does not provide sufficient time for applicants to submit their applications resulting in frequent requests for application period extensions. Additionally, FEMA currently lacks the ability to re-open closed HMGP application periods when additional funding becomes available after the period closes or when an applicant's extension appeal is granted by FEMA. In these cases, FEMA's inability to re-open application periods prevents HMGP funds from helping communities rebuild in a way that mitigates future disaster losses.

To assess the need for changes to the existing application period authorities, FEMA ran a query of application period durations for the 689 disasters declared during the 10-year period from 2013 to 2022. It found that:

- Only 26 percent of applicants (179 of 689) were able to submit all subapplications within the base 12-month application period;
- 16 percent of applicants (111 of 689) were able to submit their applications after 12 months and within 15 months;
- 31.3 percent of applicants (215 of 689) were able to submit their applications after 15 months and within 18 months, only requiring an extension from the Regional Administrator; and,

- 26.7 percent (184 of 689 applicants) needed extensions beyond 18 months from FEMA Headquarters to be able to submit all subapplications. Currently, the only existing extension authority from Headquarters to issue application extensions is Section 301 of the Stafford Act.

During this 10-year period, the average amount of additional time approved by FEMA beyond the regulatorily provided 18 months is approximately 11.6 months, which was heavily influenced by several major disasters with extraordinary circumstances, including major disaster Hurricanes Harvey, Irma, and Maria in 2017. The median amount of additional time was 6.1 months. This data shows that the current application period extension allowances are not enough for many applicants.

The Figure 1 graph shows application period extension length by disaster over the 10-year period analyzed. The dark portion of the x-axis labeled "Regional Extension" shows disasters where the recipient requested an extension from the Regional Administrator and the light portion of the x-axis labeled "Headquarters Extension" shows extension requests from Headquarters. FEMA excluded approximately 70 major disasters with extensions cumulatively greater than 460 days from the graph below because including these outliers would affect the scale and make it difficult to display the plateaus at 90 days (representing a total application period of 15 months) and 180 days (representing a total application period of 18 months).³² There are also smaller plateaus at 270 and 365 days (representing application periods of 21 and 24 months, respectively) due to Headquarters extensions. These plateaus show the amount of time frequently requested by HMGP recipients and granted by FEMA. FEMA is using this information to update § 206.436(d)–(e) by:

- Increasing the base application period by 3 months: from 12 to 15 months. This would decrease the percentage of recipients that require a Regional or Headquarters extension by 16 percent (111 of 689).
- Lengthening the Regional Administrator extension authority from 180 days (6 months) to 240 days (8 months). This would decrease the percentage of recipients that require Headquarters extensions by 10.7 percent

²⁵ See *Indep. U.S. Tanker Owners Comm. v. Skinner*, 884 F.2d 587, 591 (D.C. Cir. 1989) (holding where rule relieves restriction, agency need not make explicit claim in published rule of its right to waive 30-day waiting period).

²⁶ 87 FR 52016; HMAPPG, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

²⁷ FEMA–2022–0023–0032.

²⁸ FEMA–2022–0023–0014.

²⁹ FEMA–2022–0023–0038.

³⁰ FEMA–2022–0023–0053.

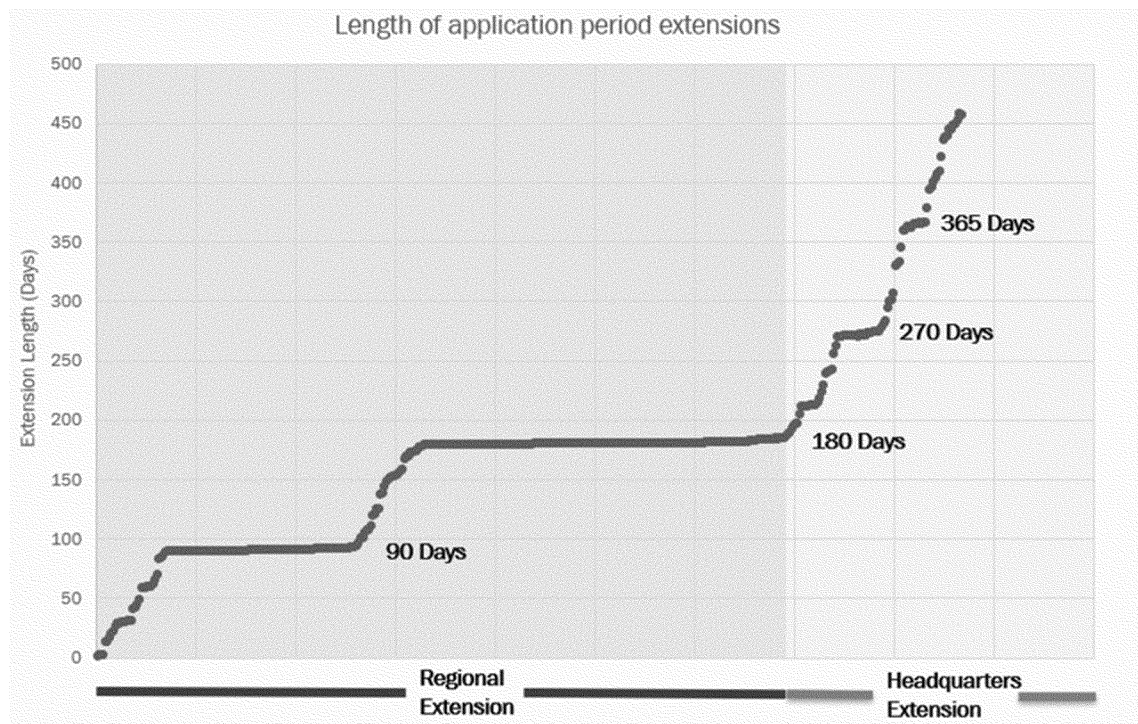
³¹ FEMA–2022–0023–0034.

³² FEMA excluded 70 major disasters with extensions cumulatively greater than 460 days. These data outliers had extraordinary circumstances that required significantly more time to address and therefore do not represent typical disasters.

(from 26.7 percent to 16 percent of disaster application periods). Only 16 percent would require an extension

beyond what the Regional Administrator could grant.

Figure 1. Length of Application Period Extensions for Regions and Headquarters



The additional 3 months gained from changing the application period from 12 to 15 months will give HMGP recipients time to receive the 12-month lock-in from FEMA and make educated adjustments to the amount of funding they have applied for. This would lessen the administrative burden placed on HMGP recipients and FEMA as it would require fewer application extension requests and responses.

The 15-month application period allows FEMA to balance the need to provide assistance quickly with ensuring appropriate oversight of application periods that exceed this period. FEMA Headquarters will retain the ability to issue consistent determinations on additional application period requests for major disasters with extraordinary circumstances. It ensures that recipients have adequate time to submit applications while simultaneously obligating funds at an acceptable rate.

Affected Population

HMGP funding is available, when authorized under a Presidential major disaster declaration, in the areas identified by the requesting State Governor or Chief Executive of an

eligible Tribe. The level of HMGP funding available for a given disaster is based on a percentage of the estimated total Federal assistance available under the Stafford Act, excluding administrative costs, for each Presidential major disaster declaration. This rule will extend the HMGP application deadline for States, Territories, and the District of Columbia as well as 565 Federally-recognized Tribes. HMGP applications are made by States or Tribes on behalf of subapplicants that include local government agencies and eligible private nonprofit organizations.

From 2013 to 2022, FEMA's HMGP approved an average of 69 applications per year and approved an average of \$859,779 in Federal funding per applicant.^{33 34} Of these projects, FEMA found 43 Tribal projects, or an average

³³ FEMA adjusted approved funding amounts by the Consumer Price Index for All Urban Consumers to 2022 dollars. Available at https://data.bls.gov/timeseries/CUUR0000SA0&years_option=specific_years&from_year=2013&to_year=2022&periods_option=specific_periods&periods=M13&annual_AveragesRequested=true (Last accessed on August 1, 2024).

³⁴ Data for projects that, as of the date of this analysis, are still pending or under review where the Federal Share Obligated is not listed, as well as denied applications, were excluded from the average.

of 4 per year. However, FEMA's database does not indicate whether these were submitted directly by an eligible Tribe, or through a State with the Tribe as a subrecipient.

Baseline

Following Office of Management and Budget (OMB) Circular A-4 guidance, FEMA assessed impacts of this rule against a no-action baseline. The no-action baseline is what the world would look like without this rule. Accordingly, measuring the rule against a no-action baseline shows the effects of the rule as compared to current FEMA practice (*i.e.*, compared to § 206.436 and the HMA Program and Policy Guide,³⁵ which reflect FEMA's current practice).

FEMA conducted a 10-year retrospective analysis of available HMGP data from 2013 to 2022, the most recent representative disaster period with complete data at the time of this analysis, to estimate how the rule will impact major disaster declaration costs, benefits, and transfers over a 10-year period. FEMA recognizes a future 10-

³⁵ HMAPP, Part 6.C.1., p. 131, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

year period could vary from the 2013 to 2022 period. However, this is the best estimate given the data available and the unpredictability of the number, size, and cost of future HMGP awards.

FEMA is making the following changes in this rule: (1) Extending the initial deadline for States to submit local HMGP applications and funding requests from 12 months to 15 months from the date of disaster declaration; (2) increasing application period extensions from increments of an additional 90 days to 120-day increments and increasing the total limit from 180 days to 240 days; (3) allowing FEMA to consider application period extension requests beyond 240 days for extenuating circumstances outside of the applicant's control; (4) enabling the reopening of a closed application period if FEMA approves a recalculation of HMGP assistance funding and the applicant requests to reopen the application period within 60 days of FEMA's recalculation approval; and (5) enabling the reopening of a closed application period if FEMA grants an appeal for an application period extension denial after an application period is closed.

For this analysis, FEMA looked at approved HMGP applications and the timelines in which they were submitted. FEMA looked at application deadlines that were extended by FEMA Regional Administrators as well as extensions approved by FEMA Headquarters. For all disasters declared between January 1, 2013, and December 31, 2022 the

average application period was 19.3 months.³⁶

Currently, the Regional Administrator can issue an extension of 6 months to each disaster's application period. Disasters that require application submission time in excess of 18 months (12-month application period + 6-month regional extension) can be extended by FEMA Headquarters. The average Headquarters extension required is 11.6 months. FEMA found that 510 out of the 689 disasters declared in the 10-year period, or 74 percent, needed an extension from a FEMA Regional Administrator (over 12 months), and 184 out of the 510 disasters requiring an extension from FEMA, or 36 percent, also needed an extension from FEMA Headquarters (over 18 months). Changing the standard length of the application period from 12 months to 15 months and changing the Regional Administrator's extension authority from 6 months to 8 months will allow the regions to completely handle disasters with application periods under 23 months. This represents 579 out of 689 disasters declared in the 10-year period, or 84 percent. FEMA estimates that with this rule, an average of 110 disasters per year, or 16 percent of disasters annually, will require an extension from FEMA Headquarters.

FEMA does not have historical data for reopening the application period. FEMA does not currently have the regulatory authority to reopen application periods. However, FEMA does know of two requests over the past

5 years to reopen the application period, both of which were denied.

Costs

The primary costs associated with this rule are familiarization costs for States, Territories, the District of Columbia, and Tribes after this rule is finalized. FEMA assumes that Tribal Governments will only need to understand this process when a disaster is declared in their territory, so rather than estimating familiarization costs for all 565 Tribes, FEMA assumes only 4 per year—the average number of Tribal projects per year from 2013 to 2022—will need to read and understand this rule. FEMA estimates that in the first year, 60 applicants will read this rule, followed by an average of 4 applicants in subsequent years.

Based on a benchmark reading level of 250 words per minute for most adults,³⁷ FEMA estimates that for each applicant two Emergency Management Directors per State, with a fully-loaded wage rate of \$55.78³⁸ ($\$34.86 \times 1.6$)³⁹ will spend 0.7 hours (approximately 9,000 words ÷ 250 words per minute ÷ 60 minutes) to read and understand this rule. This will lead to familiarization costs of \$4,686 for the first year ($\$55.78$ per hour $\times$ 0.7 hours $\times$ 120 employees). Subsequent years will have familiarization costs of \$312 ($\$55.78$ per hour⁴⁰ $\times$ 0.7 hours $\times$ 8 employees).

FEMA estimates the 10-year annualized familiarization costs for this rule to be \$810 at 7 percent and \$894 at 3 percent. See Table 1.

TABLE 1—10-YEAR FAMILIARIZATION COSTS, DISCOUNTED AND ANNUALIZED
[2023]

Year	Undiscounted	3 Percent	7 Percent
1	\$4,686	\$4,550	\$4,379
2	312	294	273
3	312	286	255
4	312	277	238
5	312	269	222
6	312	261	208
7	312	254	194
8	312	246	182
9	312	239	170

³⁶ Data was pulled from FEMA's NEMIS database. Data is entered manually by FEMA employees processing these applications and is subject to data entry and incomplete or missing data fields. FEMA excluded Disaster numbers 4241, 4140, 4214, and 4163 from this average as that data is unreliable. Including these disasters will have increased the average to 19.64 months.

³⁷ HealthGuidance.org, What Is the Average Reading Speed and the Best Rate of Reading? (April 22, 2024), available at <https://www.healthguidance.org/entry/13263/1/what-is-the-average-reading-speed-and-the-best-rate-of-reading.html> ExecuRead, Speed Reading Facts, <https://secure.>

execuread.com/facts/ (last accessed on August 1, 2024).

³⁸ Bureau of Labor Statistics, May 2022 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999200 State Government excluding schools and hospitals, SOC 11-9161 Emergency Management Directors mean hourly wage \$34.86. Available at https://www.bls.gov/oes/2022/may/naics4_999200.htm#11-0000. (last accessed on August 1, 2024).

³⁹ FEMA uses a benefits multiplier of 1.61 to calculate fully loaded wage rates. The benefits multiplier accounts for costs to the employer beyond wages, such as paid leave, health insurance, retirement, and other benefits. Bureau of Labor

Statistics, Employer Costs for Employee Compensation, Table 1. "Employer costs For Employee Compensation by ownership." March 2023. Available at http://www.bls.gov/news.release/archives/eccec_06162023.pdf. (last accessed on August 1, 2024). The benefits multiplier is calculated by dividing total compensation for State and local government workers of \$58.08 by Wages and salaries for State and local government workers of \$35.89 per hour yielding a benefits multiplier of approximately 1.6 ($\$58.08 \div \$35.89$).

⁴⁰ Occupational Employment Statistics do not include Tribal Governments in their estimates, so FEMA used the wage rate for State Government employees.

TABLE 1—10-YEAR FAMILIARIZATION COSTS, DISCOUNTED AND ANNUALIZED—Continued
[\$2023]

Year	Undiscounted	3 Percent	7 Percent
10	312	232	159
Total	7,494	6,908	6,280
Annualized .....	.....	810	894

FEMA cannot predict whether applicants will spend additional time on their grant applications as a result of the extension. However, FEMA expects extending the application period by 3 months for HMGP assistance will not increase costs to HMGP applicants or to FEMA. Applicants will have more knowledge about the amount of money they will have to spend at 15 months because the “lock-in” generally occurs at 12 months; the extension allows for 3 months of additional time, post-disaster, to recover and identify areas for improved resiliency in their communities. FEMA expects the additional time will help applicants ensure application information is accurate and includes necessary mitigation projects. The ability to reopen the application period is not allowed under current regulations, so this will add additional costs to FEMA and applicants. An applicant will have to dedicate time to request the reopening, and FEMA will have to

review and approve or deny the reopening based on statutory authority to do so. However, since this has not been done before, FEMA does not have historical data to estimate the time and staffing requirements to reopen an application period.

Benefits

This rule will reduce the application burden for applicants and FEMA by extending application deadlines to a more reasonable timeframe. These timeframes will allow applicants to collect information and submit the application to the FEMA Region and receive approval without the additional steps involved in requesting extensions from FEMA Regional Administrators and FEMA Headquarters. Additionally, this rule will decrease the burden on FEMA of processing application extension requests.

FEMA estimated cost savings to the Federal Government by multiplying the reduction of work hours for FEMA staff

to review and process the extension request by the hourly-loaded wage rates. HMGP regional staff estimate a time burden between 3–5 hours per extension request, which includes multiple levels of review. FEMA used an average estimate of 3.5 hours for a Regional Office review and 4 hours for a Headquarters review. FEMA used Step 5 of the General Schedule to account for the average experience level of Federal employees, and added a 23.25 percent average locality multiplier to account for average locality pay across the United States ⁴¹ to the 2023 General Schedule (Base) ⁴² pay, as well as a 1.45 percent benefits multiplier.⁴³ For example, a GS–12 Step 5 working in a Regional Office would have an estimated hourly compensation of \$69.00 (base wage of \$38.61 × 1.2325 average locality adjustment × 1.45 wage multiplier). Table 2 shows the breakdown of time and wages for FEMA staff to review and approve extension requests.

TABLE 2—REVIEW OF HMGP EXTENSION REQUESTS (2023\$)

Type	Grade level	Hours	Fully-loaded wage rate ⁴⁴	Total opportunity cost savings
Regional Extension *	12	2.5	\$69.00	\$172.50
	14	0.5	96.95	48.48
	15	0.25	114.05	28.51
	† SES	0.25	123.09	30.77
	.....	.....	.....	280.26
Total per Request .....	.....	.....	.....	280.26
HQ Extension ^	12	2.5	74.17	185.42
	14	0.5	104.23	52.11
	15	0.25	122.60	30.65
	13 (Legal Review)	0.5	88.20	44.10
	SES	0.25	123.09	30.77
Total per Request .....	.....	.....	.....	343.05

* Office of Personnel Management 2023 Pay and Leave Table (Base Schedule with 23.25% increase for average locality differential). Available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/GS_h.pdf. (Wage rates multiplied by 1.2325) (last accessed on August 1, 2024).

⁴¹ FEMA averaged the locality adjustment for all localities across the U.S. Available at <https://www.federalpay.org/gs/locality> (last accessed on August 1, 2024).

⁴² 2023 General Schedule Pay Table (Base), available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/pdf/GS_h.pdf. (last accessed on August 1, 2024).

⁴³ FEMA uses a benefits multiplier of 1.45 to calculate fully loaded wage rates. The benefits multiplier accounts for costs to the employer for benefits, such as paid leave, health insurance, retirement, and other benefits. Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. “Employer costs For Employee Compensation by ownership,” March 2023. Available at <http://www.bls.gov/news.release/>

[archives/ecec_06162023.pdf](https://www.ecec.gov/ecec_06162023.pdf) (last accessed on August 1, 2024).

The benefits multiplier is calculated by dividing total compensation for civilian workers of \$43.07 by Wages and salaries for civilian workers of \$29.70 per hour yielding a benefits multiplier of approximately 1.45 (\$43.07 ÷ \$29.70).

† Senior Executive Service January 2023 Pay and Leave. Available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx>. (last accessed on August 1, 2024). FEMA used the midpoint of the salary range (\$141,022 to \$212,100) of \$176,561 and applied a multiplier of 1.45 to obtain yearly compensation of \$256,013. Yearly salary was divided by 2,080 to estimate hourly compensation of \$123.09.

^ Office of Personnel Management 2023 Pay and Leave Tables for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality. Available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf> (last accessed on August 1, 2024).

FEMA estimates that this rule will reduce the number of extension requests by 6.9 per year for the Regional Administrators and 7.4 per year for FEMA Headquarters. This will lead to a cost reduction of \$1,934 (6.9 requests × \$280.26) per year for Regional extensions and \$2,539 (7.4 requests × \$343.05) per year for Headquarters extensions.

FEMA estimated the cost savings to applicants of this rule by multiplying the reduction of work hours for an applicant to compile information and submit the extension request by the annual number of extension requests and by the appropriate wage rate. HMGP regional staff estimate the time burden for applicants to be 3–5 hours for each extension request; FEMA used the average estimate of 4 hours. FEMA estimates the average number of extension requests to be 14.3 (6.9 Regional + 7.4 Headquarters) per year, and the fully-loaded⁴⁵ hourly wage rate for a State Government Emergency Management Director to be \$55.78.⁴⁶

⁴⁴ FEMA uses a benefits multiplier of 1.45 to calculate fully-loaded wage rates. The benefits multiplier accounts for costs to the employer for benefits, such as paid leave, health insurance, retirement, and other benefits. Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. “Employer costs For Employee Compensation by ownership,” March 2023. Available at http://www.bls.gov/news.release/archives/eccec_06162023.pdf (last accessed on August 1, 2024).

The benefits multiplier is calculated by dividing total compensation for civilian workers of \$43.07 by Wages and salaries for civilian workers of \$29.70 per hour yielding a benefits multiplier of approximately 1.45 (\$43.07 ÷ \$29.70).

⁴⁵ Fully-loaded wage rates include other benefits, we are using a factor of 1.61 to calculate fully loaded wage rates. The unloaded wage rate does not account for costs to the employer for benefits, such as paid leave, health insurance, retirement, and other benefits. Bureau of Labor Statistics. Employer Costs for Employee Compensation, Table 1. “Employer costs For Employee Compensation by ownership,” March 2023. Retrieved from http://www.bls.gov/news.release/archives/eccec_06162023.pdf (last accessed on August 1, 2024).

The wage multiplier is calculated by dividing total compensation for State and local government workers of \$58.08 by Wages and salaries for State and local government workers of \$35.89 per hour yielding a benefits multiplier of approximately 1.61 (\$58.08 ÷ \$35.89).

⁴⁶ Bureau of Labor Statistics. Occupational Employment Survey May 2022. SOC 11–9161 Emergency Management Directors: State Government mean hourly wage \$34.86. Available at

FEMA estimates applicant cost savings of \$223.12 (\$55.78 × 4) per extension request and a total cost savings to applicants of \$3,191 (\$223.12 × 14.3 requests).

The total quantified cost savings from this rule are \$4,473 (\$1,934 + 2,539) in cost savings to FEMA and \$3,191 in cost savings to HMGP applicants totaling \$7,664 in cost savings per year. FEMA was unable to estimate the benefits from reopening the application period due to a lack of historical data. FEMA expects that additional cost savings will exist by diminishing the need to reopen the application period for numerous applications but cannot quantify those cost savings.

Transfer Payments

FEMA is not able to estimate the impacts on transfer payments of this rule. FEMA expects no changes in the number of HMGP grants approved, or the amount of funding obligated as total HMGP funding is limited by a “lock-in,” which acts as a ceiling for assistance available to a recipient, including its subrecipients. The level of HMGP assistance available for a given disaster is based on a percentage of the estimated total Federal assistance under the Stafford Act, excluding administrative costs for each major disaster declaration.⁴⁷ However, FEMA is unable to estimate if the changes will affect the amount of funding that is obligated but unused by applicants. Between 2013 and 2022 approximately 18.22 percent of HMGP funds were returned to the Disaster Relief fund due to a number of factors, including insufficient time for recipients to submit applications. This amount also includes withdrawn applications, ineligible applications, or applications found to not be cost-effective by FEMA. Because application time constraints were only one factor in the amount of HMGP funds not expended, FEMA is unable to estimate the amount of transfers that can be expected from this rule.

https://www.bls.gov/oes/2022/may/naics4_999200.htm#11-0000 (last accessed on August 1, 2024).

⁴⁷ HMAPP, Part 10.A.4.p.199, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide-032023.pdf (last accessed on August 1, 2024).

Alternatives Considered

FEMA considered extending the application period to 18 months instead of 15 months, with no changes to the Regional Administrator’s ability to extend. While the average application period duration including extensions is approximately 19 months. Major disasters with extraordinary circumstances, which are far less common than typical disasters, raised the average significantly. FEMA chose to increase the application period to 15 months to balance the need to provide assistance quickly while ensuring appropriate oversight for more complex disasters. In addition, requesting additional time for Regional Administrators to authorize (*i.e.*, two 120-day extensions instead of two 90-day extensions) will address most outliers that need to extend beyond 15 months.

Conclusion

FEMA believes this rule is necessary due to historical timeframes for HMGP applications exceeding what is currently allowed by regulation. Under current practice, the majority of HMGP applications must be extended by FEMA regions and FEMA Headquarters. This creates an unnecessary burden to both FEMA and HMGP applicants that increases the costs of submitting these applications as well as project delays under the current process for requesting extension. The extensions provided by this rule will result in cost savings to both FEMA and HMGP applicants, as well as streamline the process for a substantial number of applicants who will no longer be required to navigate a cumbersome process of requesting extensions through the Regional Administrator and FEMA Headquarters. The cost savings associated with this final rule show why extending the HMGP application period will be beneficial. Additionally, this rule will allow FEMA more flexibility to reopen HMGP application periods when needed and to reopen application periods if an applicant successfully appeals a denial. This rule will ensure HMGP funds are more efficiently allocated.

TABLE 3—OMB CIRCULAR A-4 ACCOUNTING STATEMENT (2023\$)

Category	3 Percent discount rate	7 Percent discount rate
BENEFITS:		
Annualized Monetized	\$7,664	\$7,664
Qualitative (unquantified) benefits	• More likely to use available HMGP funds due to greater likelihood of grant approvals	
COSTS:		
Annualized Monetized	\$810	\$894
Qualitative (unquantified) costs	N/A	
TRANSFERS:		
Annualized Monetized	\$0	\$0
Qualitative (unquantified) Transfers	• Increased number of approved HMGP grants up to the maximum available funding per declared disaster	
From/To	FEMA to HMGP recipients and subrecipients	
Effects on State, local, and/or Tribal governments.	• Extends the HMGP application deadline for States, Territories, and the District of Columbia as well as 565 Federally recognized Tribes	
Effects on small businesses	• Not estimated	
Effects on wages	None	
Effects on growth	None	

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. The RFA applies only when an agency is “required by section 553 . . . to publish general notice of proposed rulemaking for any proposed rule.”⁴⁸ An RFA analysis is not required for this rulemaking because FEMA is not required to publish a notice of proposed rulemaking.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that 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 (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains

to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Additionally, regulations are only reviewable under UMRA when an agency has published a notice of proposed rulemaking as defined by 5 U.S.C. 553(b). *See* 2 U.S.C. 658(10); 5 U.S.C. 601(2). FEMA is not required to publish a notice of proposed rulemaking; thus, this rule is exempt from UMRA’s requirements pertaining to the preparation of a written statement.

E. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless FEMA obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. This rule contains collections of information that are subject to review by OMB. The information collections included in this rule are approved by OMB under control number 1660–0076 (Hazard Mitigation Grant Program Application and Reporting).

This rulemaking calls for no new collections of information under the PRA. This rule includes information currently collected by FEMA and approved in OMB information collection 1660–0076. The changes in this rulemaking do not change the forms, the substance of the forms, or the number of applicants who would submit the forms to FEMA. No additional documentation will be required as State, local and Tribal governments already submit extension requests. However, FEMA estimates additional flexibilities of this rule will result in a minor cost savings for SLTT applicants of \$3,191 (\$223.12 × 14.3 extension requests) per year.

F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information

⁴⁸ 5 U.S.C. 603(a).

about an individual that is maintained by an agency, including, but not limited to, their education, financial transactions, medical history, and criminal or employment history and that contains their name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

A Privacy Threshold Analysis was completed August 3, 2023. FEMA’s OMB information collection 1660–0076 is a privacy-sensitive collection, requiring PIA coverage and coverage is provided under DHS/FEMA/PIA–006 National Emergency Management Information System Mitigation (MT) Electronic Grants (eGrants) System, which covers PII that may be included in grant applications made by states or local communities.⁴⁹ The rule, once enacted, will not change the forms, the substance of the forms, or the number of applicants who would submit to FEMA’s OMB information collection 1660–0076. The rule will not change the PII data elements or the amount of PII collected by FEMA. The rule will not require additional collection of information beyond what is already documented within the 1660–0076 Hazard Mitigation Grant Program Application and Reporting Collection

⁴⁹ Additional PIA coverage is provided under DHS/FEMA/PIA–031 Authentication and Provisioning Services, which covers PII that APS collects, uses, maintains, and retrieves about employees, contractors, members of the public; and Federal, State, local, and Tribal government officials; and under DHS/FEMA/PIA–026 Operational Data Store and Enterprise Data Warehouse, which covers PII related to the production of agency reports for internal use as well as for external stakeholders via those systems.

PTA. SORN coverage is provided under DHS/FEMA–009 Hazard Mitigation, which covers PII collected from individual property owners and/or occupants whose properties are identified in applications for public assistance, hazard mitigation assistance, and other disaster-related assistance or who have been identified by FEMA as candidates for such assistance.⁵⁰

G. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal Governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal Government in complying with the regulation are provided by the Federal Government or the agency consults with Tribal officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. This rule involves no policies that have Tribal implications under Executive Order 13175. Although Indian Tribal Governments are potentially eligible applicants under HMGP, FEMA has determined this rulemaking would not have substantial negative direct effects on citizens of Tribal Nations, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. There is no substantial direct compliance cost associated with this rule. The HMGP program is a voluntary program that provides funding to applicants, including Tribal governments, for eligible mitigation planning and projects that reduce disaster losses and protect life and property from future disaster damages. An Indian Tribal Government

⁵⁰ Additional SORN coverage is provided under DHS/ALL–004 GITAARS SORN, which covers user information collected to grant access to IT systems.

may participate as either an applicant/recipient or a subapplicant/subrecipient. FEMA does not expect the regulatory changes in this rule to disproportionately affect Indian Tribal Governments acting as applicants.

H. Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that 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. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does 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, and therefore does not have federalism implications as defined by the Executive Order. FEMA has determined that this rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion. This rulemaking amends regulations governing voluntary grant programs that may be used by State, local and Tribal governments to fund eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. States are not required to seek grant funding, and this rulemaking does not limit their policymaking discretion.

I. Executive Order 11988, “Floodplain Management”

Executive Order 11988, 42 FR 26951 (May 25, 1977), as amended by Executive Order 13690, “Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input,” (80 FR 6425, Feb. 4, 2015) and Executive Order 14030, “Climate-Related Financial Risk,” (86 FR 27967, May 25, 2021), requires each Federal agency to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and

welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations. It must also prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The purpose of this rule is to extend the HMGP application period to allow applicants additional time to submit projects to address the effects of climate change and other unmet mitigation needs in communities. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes in this rule do not meet the definition of an action that would require analysis under the 8-step decision-making process.

J. Executive Order 11990, "Protection of Wetlands"

Executive Order 11990, "Protection of Wetlands," 42 FR 26961 (May 24, 1977) sets forth that each agency must provide leadership and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's

responsibilities. These responsibilities include (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this rule is to extend the HMGP application period to allow applicants additional time to submit projects to address the effects of climate change and other unmet mitigation needs in communities. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes in this rule do not meet the definition of an action that would require analysis under the 8-step decision-making process.

K. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended, requires Federal agencies to evaluate the impacts of a proposed major Federal action that may significantly affect the quality of the human environment, consider alternatives to the proposed action, provide public notice and opportunity

to comment, and properly document its analysis. DHS and its component agencies analyze proposed actions to determine whether NEPA applies to them and, if so, what level of documentation and analysis is required. 40 CFR 1501.3.

DHS Directive 023-01, Rev. 01 and DHS Instruction Manual 023-01-001-01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing the procedural requirements of NEPA codified at 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish, in their NEPA implementing procedures, with CEQ review and concurrence, categories of actions ("categorical exclusions") that experience has shown normally do not, individually or in the aggregate, have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). The Instruction Manual, Appendix A, lists the DHS categorical exclusions. Under DHS NEPA implementing procedures, for an action to be categorically excluded it must satisfy each of the following conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual, section V.B.(2)(a-c).

This rule revises regulations at 44 CFR 206.436 to allow FEMA to extend the Hazard Mitigation Grant Program's application time period and reopen it in limited circumstances. The revised regulations will remove barriers to allow additional applications by State, local, Tribal and territorial governments to be considered. These changes are strictly administrative and will not result in any change in environmental effect in the current regulations. Therefore, it clearly fits within categorical exclusion A3 in Appendix A of the Instruction Manual.

The rule meets the second condition that it is not a piece of a larger action. The regulatory application period that is being altered in this rulemaking only applies to HMGP and will not affect any other FEMA programs. The rule also meets the third condition because no extraordinary circumstances exist. Accordingly, this rule is categorically excluded and no further NEPA analysis or documentation is required.

L. Endangered Species Act

Section (7)(a)(2) of the Endangered Species Act mandates that each Federal agency shall, in consultation with and with the assistance of the National Marine Fisheries (NMFS) or United States Fish and Wildlife (USFWS), collectively known as the “Services,” insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Services after consultation to be critical.

To comply with Section 7(a)(2) of the ESA, for any action that FEMA proposes to carry out, fund, or authorize, FEMA must determine if its action may affect a listed species or its critical habitat. If the action may affect species or its critical habitat, then FEMA must make one of the following determinations with respect to the effect of the proposed action on listed species and critical habitat: (1) no effect (NE); (2) may affect but is not likely to adversely affect (NLAA); or (3) may affect and is likely to adversely affect (LAA).

This rule has been evaluated by FEMA and due to the administrative nature, FEMA has determined the rule does not have the potential to affect federally-listed species or designated critical habitat. As such, a “No Effect” determination has been made for these activities. Per the ESA regulations, notification to, and consultation with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service are not required for activities with a “No Effect” determination. 50 CFR 402.

M. National Historic Preservation Act of 1966

The National Historic Preservation Act (NHPA) (54 U.S.C. 300101, formerly 16 U.S.C. 470) was enacted in 1966, with various amendments throughout the years. Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to take into account the effect of their undertakings on any historic property. It mandates a consultation process in the early stages of project planning and must be completed prior to the approval of expenditure of any Federal funds for the undertaking. Subpart B of 36 CFR part 800 lays out a four-step Section 106 process to fulfill this obligation: (1) initiate the process (800.3); (2) identify historic properties (800.4); (3) assess adverse effects (800.5); and (4) resolve adverse effects (800.6).

Pursuant to section 106 of the NHPA and its implementing regulations at 36 CFR part 800, FEMA has determined that this rule does not have the potential to cause effects to historic properties and in accordance with 36 CFR 800.3(a)(1), and FEMA has no further obligations under section 106.

N. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency’s actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a “major rule” within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Emergency Management Agency amends part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 2. Amend § 206.436 by:

- a. In paragraph (d), removing the number “12” and adding in its place the number “15”;
- b. Revising paragraph (e);
- c. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h);
- d. Adding new paragraph (f); and
- e. Revising newly redesignated paragraph (g).

The revisions and addition read as follows:

§ 206.436 Application procedures.

* * * * *

(e) *Extensions.* Upon written request from the applicant, FEMA may extend the application submission timeline as follows:

(1) The State may request the Regional Administrator to extend the application time limit by 30 to 120 day increments, not to exceed a total of 240 days. The applicant must include a justification in its request.

(2) FEMA will only consider requests for extensions beyond 240 days for extenuating circumstances outside of the applicant’s control. Such requests must be submitted to the Regional Administrator and must include justification. The Regional Administrator, in coordination with FEMA’s Assistant Administrator for the Mitigation Directorate, may extend the application time limit for a reasonable amount of time based upon the extenuating circumstances.

(f) *Reopening of application period.* FEMA’s Assistant Administrator for the Mitigation Directorate may reopen a closed application period for up to 180 days in the following circumstances:

(1) *Recalculation of assistance.* If FEMA approves a recalculation of assistance under § 206.432 and an applicant requests to reopen the application period within 60 days of FEMA’s recalculation approval.

(2) *Appeal.* If FEMA grants an appeal under § 206.440 for an application extension denial after an application period is closed.

(g) *FEMA approval.* The applicant must submit its application and supplement(s) to the FEMA Regional Administrator for approval. FEMA has

final approval authority for funding of all projects.

* * * * *

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–17909 Filed 8–14–24; 8:45 am]

BILLING CODE 9111–BW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–195, 11–10; FCC 24–72; FR ID 233875]

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) codifies the Broadband Data Collection (BDC) challenge process deadline as required by the bipartisan Infrastructure Investment and Jobs Act, delegates authority to the offices and bureaus to conduct BDC audits, and clarifies that providers must submit detailed data to seek restoration for those locations or areas on the National Broadband Map (NBM).

DATES: Effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Will Holloway, Broadband Data Task Force, at *William.Holloway@fcc.gov* or (202) 418–2334.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Fourth Report and Order in WC Docket Nos. 19–195 and 11–10, released on July 12, 2024. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-takes-steps-update-broadband-data-collection-processes> or by using the Commission’s EDOCS web page at www.fcc.gov/edocs.

Paperwork Reduction Act. The Fourth Report and Order rulemaking required under the Broadband DATA Act is exempt from review by Office of Management and Budget (OMB) and from the requirements of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. As a result, the Fourth Report and Order will not be submitted to OMB for review under section 3507(d) of the PRA.

Congressional Review Act. The Commission has determined, and the

Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Fourth Report and Order and Declaratory Ruling to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). The Commission will submit the draft Fourth Report and Order and Declaratory Ruling to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. 804(2).

Synopsis

A. Codifying the Adjudication Deadlines for Availability Challenges

1. In the Infrastructure Investment and Jobs Act of 2021 (IIJA), Congress amended the Broadband DATA Act to require the Commission to resolve any challenges received as part of the BDC “not later than 90 days after the date on which a final response by a provider to a challenge to the accuracy of a map . . . is complete.” Since the inception of the availability challenge processes, the Commission has followed this deadline. However, in the Fourth Report and Order we take steps to codify this deadline and memorialize the Commission’s challenge processes in the BDC rules.

2. The following paragraphs describe how the Commission has implemented this 90-day deadline for processing fixed and mobile service challenges, and how we will amend our rules to reflect these existing practices and the minor modifications to those practices. For each type of challenge, we indicate the date on which we deem a provider’s response to the challenge to be “final” and “complete” for purposes of triggering the 90-day deadline required by the IIJA. As set forth in the proposed rule published elsewhere in this issue of the **Federal Register**, we tentatively conclude and seek comment on whether this deadline should apply to fixed and mobile availability challenges only, and not to challenges to data in the Fabric.

3. Fixed Service Challenges. For challenges to the accuracy of fixed broadband availability data and coverage maps, the Commission’s rules currently provide that “within 60 days of receiving an alert” to a challenge, “a provider shall reply in the portal by: (i) [a]ccepting the allegation(s) raised by the challenger . . . or (ii) [d]enying the

allegation(s) raised by the challenger, in which case the provider shall provide evidence . . . that the provider serves (or could and is willing to serve) the challenged location.” If the provider accepts the allegations raised by the challenger, the provider must “submit a correction for the challenged location in the online portal within 30 days of its portal reply.” The rules state that a provider’s failure to respond to the challenge within the applicable timeframe “shall result in a finding against the provider.” “If the provider denies the allegation(s) raised by the challenger,” the rules state that “the provider and the challenger shall have 60 days after the provider submits its reply to attempt to resolve the challenge.” The rules further provide that if the parties are unable to reach consensus within 60 days after submission of the provider’s reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal, after which the Commission will review the evidence and make a determination, either: (i) in favor of the challenger, in which case the provider shall update its BDC information within 30 days of the decision; or (ii) in favor of the provider, in which case the location will no longer be subject to the “in dispute/pending resolution” designation on the coverage maps.

4. To codify the requirements of the IIJA, we amend our rules to state that in cases where a fixed broadband provider disputes the allegations raised by the challenger, the response from the provider will be final and complete when the provider reports on the status of its efforts to resolve the challenge, at which time, the 90-day deadline for adjudication of the challenge will begin to run. For example, if a consumer submits a challenge to a fixed provider’s availability data on February 28 and, after initial review, Commission staff accepts the challenge and alerts the provider (via the BDC system) of the challenge on March 1, the service provider would have until April 30 to either concede or dispute the challenge allegations (by submitting an “initial response” to the challenge in the BDC system). If the provider disputes the challenge allegation on April 30, then the parties would have until June 29 to attempt to resolve the challenge and for the service provider to report on the outcome of those discussions by submitting a “final response” to the challenge in the BDC system. This status report is the “final response by [the] provider.” Accordingly, if the provider continues to dispute the challenge in its

final response (*i.e.*, the challenge has not been resolved by the parties), the 90-day deadline will commence once the provider submits its final response. If the provider submits its final response on the deadline of June 29, Commission staff would thus be required to adjudicate the challenge no later than September 27.

5. The only challenges that require FCC adjudication are those that the challenged provider does not concede and for which the challenger and the challenged provider are unable to reach a consensus. We therefore find that the deadline for FCC action most appropriately begins once the provider has submitted its final response reporting on the status of the parties' efforts to resolve a disputed challenge. Starting the 90-day period when a provider reports on the status of the parties' efforts to resolve the challenge, and not earlier, is consistent with the statutory objective that the adjudication period begin "after the date on which a final response by a provider to a challenge to the accuracy of a map . . . is complete." We find that this process will also help the Commission adjudicate challenges efficiently because Commission staff will be able to begin the process of review and adjudication as soon as they have information on the outcome of the dispute resolution process.

6. The process we outline above is largely consistent with current Commission practice; however, we modify the existing process in two respects. First, the 90-day deadline for Commission adjudication of a fixed challenge will begin on the day after the service provider submits the status report, regardless of whether that report is provided on or before the 60th day allowed for under the rules. Our former practice was to begin the 90-day period on the day after the deadline for submission of the status report, even when the challenged provider submits the report prior to the deadline. Based on the Commission's experience adjudicating challenges, this change in our process is appropriate in order to more expeditiously adjudicate fixed challenges when a final status report is filed prior to the end of the full 60-day period. Second, we clarify that when a provider corrects or updates its final response before the end of the 60-day resolution period, the adjudication period will restart upon the date of the recertification of the final response (unless the Commission has already adjudicated the challenge prior to the reversion of the final response).

7. Mobile Service Challenges. The Commission's rules provide that, for

areas with a cognizable challenge to the accuracy of mobile broadband data and coverage maps, "providers either must submit a rebuttal to the challenge within a 60-day period of being notified of the challenge or concede and have the challenged area identified on the mobile coverage map as an area that lacks sufficient service." The rules also provide that "[i]f needed to ensure an adequate review, [Office of Economics and Analytics (OEA)] may also require that the provider submit other data in addition to the data initially submitted" This supplemental data must be submitted within 60 days of OEA's request.

8. We amend our mobile service challenge rules to provide that, when a mobile provider disputes a challenge, the provider's response will be final and complete on the 60th day after the provider is notified of the challenge (*i.e.*, the deadline for submitting challenge rebuttal data). The 90-day adjudication deadline required under the IIA will begin to run on the day after the deadline for submitting the challenge rebuttal data, and this will also apply in cases where a provider responds to a challenge sooner than 60 days after it is notified of the challenge. In cases where Commission staff request supplemental data from a provider after receiving the provider's initial response, the adjudication period will restart the day after the deadline by which the supplemental data is due to the Commission (within 60 days of the request for supplemental data). Initiating the adjudication period the day after the deadline for submitting the challenge rebuttal data, or the day after any supplemental data requested by staff is due, will ensure that the Commission has sufficient information to adjudicate challenges and will create administrative efficiencies by synchronizing the timing for resolving challenges with the monthly notifications we issue to providers regarding the status of challenged areas. We recognize that we are adopting different procedures for calculating the adjudication deadline for mobile availability challenges than for fixed challenges. However, this difference is justified because the data involved in submitting fixed and mobile challenges differ considerably, as do the methodologies for staff review and adjudication of fixed and mobile challenges. Mobile challenges are created through on-the-ground speed test data and, in most cases, mobile service providers respond to challenges using similar on-the-ground speed test data—both of which are submitted into

the BDC system in a structured format. The BDC system performs analyses of these speed test results based upon hexagonal areas, and Commission staff use the results of these analyses to determine whether or not a challenge should be upheld or overturned. In contrast, fixed availability challenges are based upon a variety of Challenge Category Codes, with a large degree of variation in the types of evidence and information submitted both to create a challenge as well as by fixed providers in seeking to overturn challenges. We note that, under the process we adopt in the Fourth Report and Order, mobile challenges will be resolved considerably more quickly in most instances than the time allowed under the deadline due to the methodology used to review and process mobile challenge data. Accordingly, we believe that this different treatment of mobile and fixed challenge review and adjudication is warranted.

B. Audits

9. Background. The Broadband DATA Act requires the Commission to verify the accuracy of the data reported by broadband internet access service providers. The Act also requires that the Commission conduct regular audits of the information submitted by providers in the BDC. Under the Commission's rules, the Commission must "conduct regular audits of the information submitted by providers in their [BDC] filings," which "(1) [m]ay be random, as determined by the Commission; or (2) [c]an be required in cases where there may be patterns of filing incorrect information, as determined by the Commission." In the Second Report and Order (85 FR 50886, August 18, 2020), the Commission determined that it will audit availability data and other information submitted by all types of providers of broadband internet access service (*e.g.*, mobile and terrestrial fixed wireless, fixed wired, and satellite). The Commission further specified that audit tools will include field surveys, investigations, and annual random audits to verify data accuracy, and that audits may additionally be initiated based on an unusual number of crowdsourced complaints.

10. The Commission has implemented its statutory obligations to verify the accuracy of the data reported in biannual BDC submissions in a variety of ways. As an initial matter, the Commission developed an entirely new system for ingesting, validating, and aggregating provider availability data for publication on the NBM. The new BDC system requires all data to be submitted in a structured format according to

rigorous data specifications and imposes comprehensive data-quality checks at the time data is uploaded and submitted into the BDC. These checks identify either “hard” errors that require a correction by the filer prior to certifying and submitting the data, or “soft” flags that alert the filer to a potential anomaly or error and requires an explanation if no change to the data is made. These measures ensure that service providers file higher-quality data.

11. After the close of each biannual BDC filing window, Commission staff conduct verifications of the submitted data to test their accuracy and reliability. These efforts include: review of the “soft” system flags, supporting data submitted in conjunction with availability data, and other filer data to identify potential anomalies or errors; outreach to filers based upon these reviews requesting their correction or explanation of the data; and vetting of subsequent changes to or explanations of the data by providers. Commission staff have performed several thousand data verifications using this process. In addition, Commission staff have initiated formal verification inquiries of the data submitted by certain fixed and mobile broadband providers. In response to such inquiries, providers have been required to submit explanation information relevant to the inquiry, such as network infrastructure data for the targeted verification area.

12. In addition to these verifications, Commission staff have initiated audits of discrete coverage areas within the service availability reported by several mobile service providers. OEA and Wireless Telecommunications Bureau (WTB) staff have conducted these audits in coordination with the Broadband Data Task Force, Enforcement Bureau, Office of Engineering and Technology (OET), and Commission leadership. Commission staff have conducted two variations of mobile audits to date. The first involve on-the-ground testing of mobile service performance in resolution 8 hexagonal cells (“hex areas”) within a single county. Commission staff, in coordination with its third-party contractors, selected the target county to audit and conducted on-the-ground testing based upon a variety of factors, including the number of service providers who claim some amount of network coverage in the county, the number of accessible hex areas in the county, the population density of the county, and the marginal coverage in the area. The second variation of audits involves requests for infrastructure data from service providers for a handful of randomly selected counties. These counties were

selected using several of the factors used to identify areas for on-the-ground testing as well as other factors, such as the geography and topography of the counties.

13. To standardize the types of information the Commission requests through formal verification inquiries and the second variation of mobile audits, as well as to provide transparency and certainty to service providers, the Commission has released an updated data specification for provider infrastructure data submitted in the challenge, verification, and audit processes. This data specification sets forth standardized, structured data that all service providers (fixed wireline, terrestrial fixed wireless, mobile wireless, and satellite) should be prepared to submit in response to verification inquiries and audits (as well as in response to challenges in instances where mobile wireless service providers are able to respond to mobile challenges with infrastructure data).

14. Discussion. Notwithstanding the clear mandates in the Broadband DATA Act, the Second Report and Order, and the Commission’s rules that we verify and audit availability data as part of the BDC, we take this opportunity to clarify the procedural mechanics of our audit rules. Accordingly, we begin by formally delegating authority to OEA, in coordination with WTB, the Wireline Competition Bureau (WCB), and the Space Bureau (SB), to continue to perform audits using the processes and data specifications currently available. We also reaffirm the authority of OEA, in coordination with the relevant bureaus and offices, to continue performing fixed and mobile data verifications using existing methods or any other methods and data specifications it may develop in the future for verifying availability data. We direct OEA, in coordination with WTB, WCB, and SB, to establish methodologies and procedures for selecting service providers (either fixed or mobile) and targeted locations or areas subject to random audit, as well as for determining “patterns of filing incorrect information” sufficient to warrant an audit. In the latter case—as well as in the case of verification inquiries—the methodology(ies) will continue to be based on anomalies or inconsistencies in the data a provider submits as part of its biannual submission and/or information submitted through, or behavior demonstrated in, the availability challenge processes or crowdsourcing submissions.

15. This delegation of authority specifically includes the authority to

identify and select specific providers and geographic areas or Broadband Serviceable Locations subject to formal verification or audit. As part of this delegation, OEA is vested with authority to develop processes or procedures for randomly selecting geographic areas or locations to audit, as well as for determining “cases where there may be patterns of filing incorrect information,” consistent with our rules. OEA, in coordination with WTB, WCB, and SB, is best qualified to make individualized determinations of the areas or locations that should be audited (subject to the conditions in § 1.7006(a) outlined above), given its subject-matter expertise in reviewing the underlying availability data and its understanding of resources (e.g., budget, staff time) available to perform audits.

16. We further delegate authority to OEA, in coordination with WTB, WCB, and SB (as appropriate), to collect all data required to conduct a thorough and complete audit, including, but not limited to, the information set forth in the BDC Infrastructure Data Specification, on-the-ground mobile performance data (in the case of audits of mobile coverage areas), and any other data OEA determines are necessary to assess an entity’s claims that it makes service available to audited locations or areas. This authority permits OEA, in coordination with the relevant bureaus and offices, to use third-party contractors to gather and analyze the collected data, subject to the requirement that Commission staff supervise and direct any third-party contractors used to gather or analyze the data.

C. Ministerial Changes

17. The part 1, subpart V rules in title 47 refer to the “Digital Opportunity Data Collection” or “DODC.” This is the name formerly given to the data collection that the Commission now refers to as the Broadband Data Collection or BDC. In the Fourth Report and Order, we make ministerial changes to our rules to replace references to the “Digital Opportunity Data Collection” or “DODC” with references to the Broadband Data Collection or BDC, as appropriate. These rule amendments are exempt from notice-and-comment requirements of the Administrative Procedure Act (APA) because they are procedural rules that “do not themselves alter the rights or interests of parties.” Notice and comment for these rule changes are also unnecessary because the edits are non-substantive and have no impact on regulated parties or the public.

I. Declaratory Ruling

A. Restoration of Locations and Areas Removed Through Availability Challenges, Audits and Verifications

18. We next issue a declaratory ruling clarifying that providers must submit more detailed data in subsequent BDC filings when claiming availability for locations or areas that were previously removed through the challenge, verification or audit processes. In doing so, we specify the types of existing data specifications for demonstrating availability at previously removed locations or areas for certain types of challenges. The Broadband DATA Act required that the Commission adopt rules for “the biannual collection and dissemination of granular data . . . relating to the availability and quality of service with respect to terrestrial fixed, fixed wireless, satellite, and mobile broadband internet access service,” and “processes through which the Commission can verify the accuracy of data” submitted by broadband service providers. The Broadband DATA Act recognizes that, due to ongoing changes in the availability of internet services across the United States and its Territories, the Broadband Data Collection is an iterative process and that the NBM must be updated regularly with refreshed data to reflect the on-the-ground reality of mass-market broadband availability. Providers must therefore report availability data as of June 30 and December 31 of each year, which may include expanded coverage since the provider’s last filing (due, for example, to build-out of additional infrastructure since the previous submission) and, in some cases, reduced coverage (due, for example, to the retirement of discontinued technologies or infrastructure, or to network capacity constraints preventing the connection of new customers).

19. We clarify that in cases where a provider’s claimed availability at a location (in the case of a fixed provider) or in an area (in the case of a mobile provider) is removed from the NBM as the result of a lost or conceded challenge, a verification inquiry, or an audit (together, a “Removed Location or Area”), our rules require the provider to submit updated availability data in a subsequent BDC filing if it can demonstrate that it can make service available to the Removed Location or Area. We interpret the Commission’s rules, as well as our statutory obligation to verify the accuracy of the data displayed on the NBM, to require a restoration process for Removed Locations or Areas in order to ensure that the data on the NBM remain

accurate and to improve the usefulness of the coverage maps. In so doing, we delegate authority to OEA, in coordination with WCB, WTB, OET, and SB, to develop detailed data specifications setting out the categories of information a provider must submit when seeking to restore a previously Removed Location or Area through a subsequent BDC filing.

20. If a provider’s reported availability at a location or in an area is removed from the NBM as the result of a verification, audit, or challenge, a Removed Location or Area is created in the BDC system. The ways in which these Removed Locations or Areas are generated is described below.

21. Verifications and Audits. As discussed above, the Commission has robustly implemented its statutory obligations to verify the accuracy and reliability of broadband availability data that providers submit to the Commission and to audit provider-reported availability data. If, in response to a Commission-initiated verification or audit, a provider is unable to submit sufficient information supporting its reported coverage at a location or area, the verification or audit may lead to a Removed Location or Area, which would include all or part of the area subject to the verification or audit.

22. Service Availability Challenges. The Broadband DATA Act directed the Commission to “establish a user-friendly challenge process through which consumers, State, local, and Tribal governmental entities, and other entities or individuals may submit coverage data to the Commission to challenge the accuracy of” the information on the NBM. In the Third Report and Order (86 FR 18124, April 7, 2021), the Commission adopted rules establishing the fixed availability challenge process, including the procedures the Commission uses to resolve fixed availability challenges. Similarly, the Commission adopted rules for challenges to mobile wireless coverage data based upon lack of service or poor service quality, such as slow delivered speeds.

23. A service availability challenge may result in a Removed Location or Area for several reasons. First, a provider may affirmatively concede a challenge. Second, a provider’s failure to respond to a challenge within the applicable timeframes results in a finding against the provider, thereby leading to an automatic concession. An automatic concession may be (i) intentional, because the provider agrees with the challenger and chooses to allow the challenge to automatically result in a finding against that provider

or (ii) unintentional, due to a missed deadline, a misunderstanding of the BDC processes, or some other act or omission. Finally, a fixed or mobile availability challenge could be adjudicated by the FCC in the challenger’s favor. When a provider concedes or loses a challenge, it must update its availability data to align with the lost or conceded challenge and certify the updated data; the location or area lost or conceded as a result of the challenge process thereby constitutes a Removed Location or Area.

24. Since the launch of the NBM on November 18, 2022, the verification, audit, and challenge processes have been active and have led to meaningful updates to the map. In just the first year following the map’s launch, approximately 3.7 million fixed availability challenges were accepted and submitted to providers for response, resulting in more than 2.5 million updates to the fixed availability data on the NBM. In approximately the same timeframe, 35 cognizable mobile challenges resulted in 18 corrections to mobile wireless coverage data on the NBM. To date, FCC staff have initiated thousands of fixed data verification inquiries, as well as audits, which have resulted in updates to hundreds of provider submissions. These processes are open and ongoing, and new verification efforts, audits, and challenges are regularly initiated and resolved. Meanwhile, significant Federal investments in broadband infrastructure have been either awarded or deployed since the launch of the NBM, which will produce meaningful expansions of broadband availability across the United States and Territories.

25. Given the various ways in which broadband service availability can both expand and contract, it is entirely possible, and in fact, very likely, that a provider who previously reported mass-market broadband internet service available at a Removed Location or Area may subsequently make such service available to the Removed Location or Area. It is critical that the BDC be able to capture these types of developments in broadband availability over time.

B. Legal Authority for Implementing Location Restoration

26. Pursuant to the Act, the BDC captures changes in broadband availability data over time to ensure that the NBM remains accurate. Each BDC filing is a snapshot of broadband availability on a particular date, and each verification, audit, and/or challenge is applicable to availability information at that particular time. However, Removed Locations or Areas

“persist” from one BDC filing to the next, in order to promote active participation in the challenge, verification, and audit processes by service providers and to alleviate the need for challengers and the Commission to repeatedly correct previously adjudicated locations or areas. Therefore, it is essential that providers submit updated data into the BDC for Removed Locations and Areas, and that the BDC provide an efficient, standardized way for the NBM to reflect where a provider reports in a subsequent filing that it can make service available at a previously Removed Location or Area. Without such a requirement or pathway to restore Removed Locations or Areas, the NBM would become outdated, and therefore less accurate—contrary to both Congress’s and the Commission’s intent.

27. Accordingly, we clarify that the requirement that BDC “filings shall be made each year on or before March 1 (reporting data as of December 31 of the prior year) and September 1 (reporting data as of June 30 of the current year)” includes an obligation that providers submit data on service availability to Removed Locations or Areas. Because the BDC rules require providers to report their broadband availability data accurately for each filing round and certify that those filings are accurate, it would be a violation of the Commission’s rules for a provider to not report coverage at a Removed Location or Area where it now makes service available.

28. Requiring updates based upon changed circumstances is consistent with our statutory obligation to “establish . . . processes through which the Commission can verify the accuracy of the data submitted” by service providers in the BDC. This includes a process for verifying data submitted through the challenge process “in order to ensure the reliability of that data.” The Broadband DATA Act cannot hold its intended purpose if a service provider is not required to and does not have a pathway for reporting service availability to a location that, though previously unserved, is now capable of receiving the reported service. Clarifying this requirement, and establishing a pathway for restoring a previously Removed Location or Area improves the usefulness of the coverage maps by ensuring that the data on the NBM are timely and accurate. As noted by CTIA—The Wireless Association, where a provider has completed new deployments, service upgrades, or otherwise added more capacity to its network, the BDC must allow that provider to include those locations in a

subsequent filing; without such a mechanism to restore these locations, the NBM would be underinclusive and could cause confusion for consumers.

29. Moreover, clarifying this requirement and establishing a pathway for reporting Removed Locations or Areas is consistent with prior Commission direction in the context of mobile wireless coverage data submissions. The Commission previously contemplated that changed circumstances could lead to improved coverage at an area previously lost by a mobile wireless provider in the mobile challenge process. In the Third Report and Order, the Commission stated that if a mobile provider “that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.” While the Commission did not include similar language regarding fixed challenges, the rationale applies equally to both types of broadband services: if a provider lost or conceded a challenge but the provider is now able to produce additional evidence supporting its claim that it can make broadband service available at the previously Removed Location or Area, the BDC must implement a pathway to restoration.

30. We make clear that the obligation to submit updated data in subsequent filings extends to locations and areas that were removed because the provider previously failed to participate in the challenge processes or provided insufficient evidence in response to the challenge. For example, where a provider automatically conceded a challenge due to a misunderstanding of our rules or the BDC system, it is possible that the provider actually made service available at the resulting Removed Location or Area at the time the challenge was submitted. Similarly, because FCC adjudications are limited to the evidence submitted by the challenger and the provider, a challenge could be upheld due to insufficient evidence submitted by the provider in response to the challenge, even if the provider actually makes service available at the Removed Locations or Areas. In all of these instances, in order for the NBM to accurately reflect, on an ongoing basis, the broadband services that are available at each location or area, we must require providers to submit updated data and establish a pathway for restoring a Removed Location or Area.

C. Data Requirements for Restoration

31. In order to preserve the integrity of the challenge processes, including our obligation under the Broadband DATA Act to “mitigate the time and expense incurred by, and the administrative burdens placed on, entities and individuals” in our challenge processes, providers must submit data to support a request in a subsequent availability filing to include a Removed Location or Area. Further, a data requirement mitigates the administrative burdens on the Commission to conduct verifications and audits of data submitted by providers at Removed Locations or Areas in subsequent filings.

32. Specifically, a provider must submit detailed information demonstrating that it can now make service available at the Removed Location or Area. The data elements included in the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes are indicative of the kind of information that we expect to be persuasive in the restoration of locations or areas removed from the NBM as a result of the challenge process, verification inquiries or audits, where infrastructure data would be relevant. Providers are already familiar with these existing data specifications, and for the most part already retain this information. Specifically, fixed provider infrastructure data would be relevant for consumer and bulk fixed availability challenges lost under Challenge Category Codes 4, 5, 6, 8, or 9, and bulk fixed availability challenges lost under Challenge Category Codes 1 or 2. Additionally, mobile provider infrastructure data would be informative when providers seek to restore coverage areas lost in the mobile challenge process as well as removed in response to verification inquiries or audits. While these existing data specifications are persuasive for restoration of locations and areas previously removed based on the above-referenced challenge codes, these data are not relevant to all challenge codes. Further, these data specifications do not include speed test data for mobile service. We, therefore, seek comment, in the proposed rule published elsewhere in this issue of the **Federal Register**, on what information commenters believe would be persuasive in the restoration of fixed availability data removed from the NBM under the remaining Challenge Category Codes, as well as the potential use of on-the-ground speed test data for restoration of mobile coverage areas.

33. We additionally clarify that the data requirements for restoring a provider's availability to a previously Removed Location or Area are distinct from the rules and standards governing availability challenges. A provider's restored availability information can be subsequently challenged in accordance with rule § 1.7006(d) (for fixed availability data) and (e) and (f) (for mobile availability data).

34. We direct OEA, in consultation with WCB, WTB, OET, and SB, to develop and publish data specifications detailing the information a provider must submit when seeking to restore a previously Removed Location or Area through a subsequent BDC filing—starting with the infrastructure data included in the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes. We also direct OEA, in consultation with the other named bureaus and offices, to make the necessary system changes to implement the clarifications in the Declaratory Ruling. After the data specifications are published, a provider may upload the specific information necessary to restore a Removed Location or Area in the BDC system. Where Commission staff deems that information sufficient to demonstrate availability, the location or area will be restored on the National Broadband Map.

II. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program, Digital Opportunity Data Collection Third Further Notice of Proposed Rulemaking (Third FNPRM) released in July 2020 (85 FR 50911, August 18, 2020). The Federal Communications Commission (Commission) sought written public comment on the proposals in the Third FNPRM, including comments on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

36. In the Fourth Report and Order, the Commission takes steps to adopt certain requirements mandated by the Broadband DATA Act, as well as adopting improvements to the data collection. Specifically, the Fourth Report and Order modifies the Broadband Data Collection (BDC) rules to codify expedited challenge

adjudication deadlines as required by the Infrastructure Investment and Jobs Act (IIJA), such as a 90-day deadline for fixed services challenges, as well as provide a specific delegation of authority to the Office of Economics and Analytics (OEA), in coordination with certain other bureaus and offices, to conduct audits of broadband data submitted by providers (as required under the Broadband DATA Act). Through the adoption of these rules, the Commission is implementing targeted changes that further address its long-standing objective of working towards closing the digital divide by improving the processes for filers, some of whom consist of small entities.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

37. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

38. 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 comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

39. 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.¹ 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.

40. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We

therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

41. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

42. Broadband internet Access Service Providers. The broadband internet access service provider industry has changed since the definition was introduced in 2007. The data cited below may therefore include entities that no longer provide broadband internet access service and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband internet access

service. We note that, although we have no specific information on the number of small entities that provide broadband internet access service over unlicensed spectrum, we included these entities in our Initial Regulatory Flexibility Analysis.

43. Wired Broadband internet Access Service Providers (Wired ISPs). Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

44. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 Communications Marketplace Report, we believe that the majority of wireline internet access service providers can be considered small entities.

45. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (*e.g.*, dial-up ISPs) as well as Voice over internet Protocol (VoIP) service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had

revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

46. Wireline Providers.

47. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

48. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

49. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies

firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

50. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

51. Competitive Local Exchange Carriers (CLECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250

employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

52. Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

53. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all

of these providers can be considered small entities.

54. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

55. Wireless Providers—Fixed and Mobile.

56. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

57. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services

using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

58. Wireless Communications Services. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

59. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

60. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the

number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

61. 1670–1675 MHz Services. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

62. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a “small business” is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

63. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the

context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

64. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

65. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

66. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the

auction of licenses for these services. In auctions for these licenses, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

67. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

68. Specialized Mobile Radio Licenses. Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard,

these 119 SMR licensees can be considered small entities.

69. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

70. Lower 700 MHz Band Licenses. The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including frequency division duplex (FDD)- and time division duplex (TDD)-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

71. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for

the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

72. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

73. Upper 700 MHz Band Licenses. The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

74. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

75. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

76. 700 MHz Guard Band Licensees. The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency bands. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

77. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band

licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

78. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

79. Air-Ground Radiotelephone Service. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

80. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the

entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

81. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The Commission’s small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

82. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

83. Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3); 2000–2020 MHz and 2180–2200 MHz (AWS–4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer

employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

84. According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses. The Commission’s small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

85. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

86. 3650–3700 MHz band. Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700 MHz band fall in the Wireless Telecommunications Carriers (except Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for

2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

87. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

88. Fixed Microwave Services. Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

89. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits

may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

90. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

91. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

92. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms

employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

93. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

94. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of

employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

95. Satellite Service Providers.

96. 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 \$38.5 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 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 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.

97. All Other Telecommunications. This industry 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. Providers of internet services (e.g., dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the

majority of "All Other Telecommunications" firms can be considered small.

98. Cable Service Providers.

99. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

100. Cable and Other Subscription Programming. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

101. Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

102. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a

cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

103. All Other Telecommunications.

104. Electric Power Generators, Transmitters, and Distributors. The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

105. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation,

Transmission, and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

106. We expect that some of the rules adopted in the Fourth Report and Order will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. The Fourth Report and Order modifies the BDC rules to codify the expedited availability challenge adjudication deadlines to implement the IIJA mandate. Commission staff already functionally implemented this deadline for the availability challenge process as required by the IIJA. In an effort to comply with the Broadband DATA Act, we now memorialize in our rules the procedures that Commission staff have followed since the start of the challenge process. The Fourth Report and Order also delegates authority to OEA to collect any and all data required to conduct a thorough and complete audit process. Finally, we formally amend the name given to the data collection from the “Digital Opportunity Data Collection” to the “Broadband Data Collection.” As to the cost of compliance, at present, the record contains insufficient information to either quantify compliance costs for small entities as a result of the adopted rules, or determine whether there will be a need for small entities to hire attorneys, engineers, consultants, or other professionals.

107. The Commission believes that any additional burdens imposed by our audit of provider data are outweighed by the significant benefit to be gained from more precise broadband deployment data. As discussed above, although the Commission cannot quantify the cost of compliance with the requirements in the Fourth Report and Order, we believe the modifications to the BDC rules are necessary to comply with the Broadband DATA Act and complete accurate broadband coverage maps.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

108. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small

entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

109. The Commission’s actions in the Fourth Report and Order are primarily in response to the legislative enactment of the Broadband DATA Act to develop better quality, more useful, and more granular broadband deployment data, as well as our mandate to codify expedited challenge adjudication deadlines as required by the IIJA. In considering the comments in the record, we were mindful of the time, money, and resources that some small entities incur to complete these requirements.

110. For example, in implementing the IIJA’s requirements, we considered alternatives for how the Commission could address situations where a challenger and a challenged provider cannot reach a consensus as § 1.7006(d)(6) requires. In the Fourth Report and Order, we set forth that the shot-clock for Commission action should begin once the provider has reported on the status of the parties’ efforts to resolve the challenge. Taking this step allows small and other entities to have sufficient time to resolve challenges on their own, where possible, before Commission staff become involved while helping the Commission adjudicate challenges more efficiently.

G. Report to Congress

111. The Commission will send a copy of the Fourth Report and Order, including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Fourth Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fourth Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Ordering Clauses

112. Accordingly, *it is ordered*, pursuant to sections 1 through 4, 7, 201, 254, 301, 303, 309, 319, 332, 403, and 641 through 646 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 157, 201, 254, 301, 303, 309, 319, 332, 403, 641 through 646, the Fourth Report and Order and Declaratory Ruling *is adopted*.

113. *It is further ordered* that part 1 of the Commission’s rules *is amended* as set forth in Appendix A of the Fourth Report and Order.

114. *It is further ordered* that the Fourth Report and Order *shall be* effective 30 days after publication in the **Federal Register**.

115. *It is further ordered* that the Declaratory Ruling *shall be* effective upon adoption by the Commission.

116. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of the Fourth Report and Order and Declaratory Ruling in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

117. *It is further ordered* that the Office of the Secretary *shall send* a copy of the Fourth Report and Order, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission
Marlene Dortch,
Secretary.

FEDERAL COMMUNICATIONS COMMISSION

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

■ 2. Amend § 1.7006 by:

- a. Revising paragraph (a) and paragraph (d)(6) introductory text;
- b. Redesignating paragraphs (e)(5) through (7) as paragraphs (e)(6) through (8);
- c. Adding a new paragraph (e)(5);
- d. Redesignating paragraphs (f)(6) and (7) as paragraphs (f)(7) and (8); and
- e. Adding a new paragraph (f)(6).

The revisions and additions read as follows:

§ 1.7006 Data verification.

(a) *Audits.* The Office of Economics and Analytics, in coordination with the Wireless Telecommunications Bureau, Wireline Competition Bureau, and

Space Bureau, shall conduct regular audits of the information submitted by providers in their Broadband Data Collection filings. The audits:

(1) May be random, as determined by the Office of Economics and Analytics; or

(2) Can be required in cases where there may be patterns of filing incorrect information, as determined by the Office of Economics and Analytics.

* * * * *

(d) * * *

(6) If the parties are unable to reach consensus within 60 days after submission of the provider's reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal. After the affected provider reports on the status of these efforts (including any amended report submitted prior to the 60-day deadline), the Commission shall have 90 days to review the evidence and make a determination, either:

* * * * *

(e) * * *

(5) Commission staff will resolve the challenge within 90 days following the 60th day after which the provider is notified of the challenge (*i.e.*, the deadline for submitting challenge rebuttal data), except that, should the Office of Economics and Analytics (OEA) request supplemental information from a provider after receiving the provider's initial challenge response, the Commission will resolve the challenge within 90 days following the 60th day after which staff request such supplemental data (*i.e.*, 90 days after the deadline for when the supplemental data is due to OEA).

* * * * *

(f) * * *

(6) Commission staff will resolve the challenge within 90 days following the 60th day after which the provider is notified of the challenge (*i.e.*, the deadline for submitting challenge rebuttal data), except that, should the OEA request supplemental information from a provider after receiving the provider's initial challenge response, the Commission will resolve the challenge within 90 days following the 60th day after which staff request such supplemental data (*i.e.*, 90 days after the deadline for when the supplemental data is due to OEA).

* * * * *

§§ 1.7004 through 1.7010 [Amended]

■ 3. In addition to the amendments set forth above, in 47 CFR part 1, remove the text “Digital Opportunity Data Collection” wherever it appears and add in its place the text “Broadband Data

Collection” in §§ 1.7004 through 1.70010.

[FR Doc. 2024–16935 Filed 8–14–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 12–108; FCC 24–79; FR ID 235228]

Accessibility of User Interfaces, and Video Programming Guides and Menus

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requires manufacturers of covered apparatus and multichannel video programming distributors to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. This action will further the Commission's efforts to enable individuals with disabilities to access video programming through closed captioning.

DATES:

Effective date: Effective September 16, 2024.

Compliance date: Compliance with 47 CFR 79.103(e) is not required until the Commission has published a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (Order), in MB Docket No. 12–108; FCC 24–79, adopted on July 18, 2024 and released on July 19, 2024. The full text of this document will be available at <https://docs.fcc.gov/public/attachments/FCC-24-79A1.pdf> and via ECFS at <https://www.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), 1–844–4–FCC–ASL (1–844–432–2275) (videophone).

Synopsis

This Order furthers our efforts to enable individuals with disabilities to access video programming through closed captioning. Closed captioning displays the audio portion of a television program as text on the screen, providing access to news, entertainment, and information for individuals who are deaf and hard of hearing. The Federal Communications Commission requires the provision of closed captioning on nearly all television programming, as well as on a large portion of internet protocol (IP)-delivered programming. Through the Commission's implementation of the Television Decoder Circuitry Act of 1990 (TDCA) and the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), it has made significant progress in enabling video programming to be accessible to persons who are deaf and hard of hearing. Pursuant to the TDCA, the Commission adopted standards for the display of closed captions on digital television receivers, and those standards enable users to customize caption display by changing the font, size, color, and other features of captions. Subsequently, pursuant to the CVAA, the Commission adopted display standards for other video devices, specifically for apparatus designed to receive or play back video programming transmitted simultaneously with sound. However, many consumers continue to have difficulty accessing the closed captioning display settings on televisions and other video devices—a technical barrier that prevents the use and enjoyment of captioning. Today we take steps to alleviate this problem and thereby ensure meaningful access to captioning.

Specifically, the rule we adopt requires manufacturers of covered apparatus¹ and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. We afford covered entities flexibility in how they meet this obligation, and the Commission will determine whether settings are readily accessible to consumers by evaluating the following factors: proximity, discoverability,

¹ As discussed below, the requirements adopted herein apply to devices covered by section 303(u) of the Act, in other words, apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size, except that the requirements do not apply to third-party, pre-installed applications that are otherwise covered by section 303(u).

previewability, and consistency and persistence. We adopt a compliance deadline of two years after publication of this Order in the **Federal Register**.

Prior to adoption of the TDCA, consumers needed to purchase a separate TeleCaption decoder device and connect it to a television set in order to display closed captions. The TDCA amended section 303 of the Communications Act of 1934, as amended (the Act), to require that television receivers contain built-in decoder circuitry designed to display closed captioning. It also amended section 330 of the Act to require that the Commission's rules provide performance and display standards for such built-in decoder circuitry. In the TDCA, Congress observed that the availability of televisions with built-in decoders "will significantly increase the audience that can be served by closed-captioned television" and outlined the significant benefits of closed captioning for people who are deaf and hard of hearing as well as other segments of the population, including children and older Americans who have some loss of hearing. Congress also mandated in section 330(b) of the Act that the Commission take appropriate action to ensure that closed captioning service continues to be available to consumers as new video technology is developed.

In 1991, the Commission adopted rules that codified standards for the display of closed captioned text on analog television receivers. Following the transition to digital broadcasting, the Commission in 2000 adopted technical standards for the display of closed captions on digital television receivers "to ensure that closed captioning service continues to be available to consumers." In particular, the Commission adopted with some modifications section 9 of EIA-708, an industry standard addressing closed captioning for digital television, which allows the caption display to be customized for a particular viewer by enabling the viewer to change the appearance of the captions to suit his or her needs. When the Commission adopted the technical standards, it explained that the "capability to alter fonts, sizes, colors, backgrounds and more, can enable a greater number of persons who are deaf and hard of hearing to take advantage of closed captioning."

In 2010, Congress enacted the CVAA to "update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming." Section 203 of the

CVAA broadened section 303(u) of the Act, which previously applied to "apparatus designed to receive television pictures broadcast simultaneously with sound," to cover "apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size." Such apparatus must "be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming." In 2012, the Commission adopted performance and display standards for such built-in decoder circuitry in accordance with section 330(b) of the Act, and in particular it adopted functional requirements to ensure that consumers can modify caption display features for IP-delivered programming on covered apparatus. These rules require that apparatus provide functionality that allows users to change the presentation, color, opacity, size, and font of captions, caption background color and opacity, character edge attributes, and caption window color. But the rules do not mandate how users access such features on the device. In the Commission's subsequent proceedings on implementing the accessibility requirements of sections 204 and 205 of the CVAA, Consumer Groups described the difficulties consumers who are deaf and hard of hearing face in accessing closed captioning display features on apparatus used to view video programming.

In November 2015, in a Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in the above-captioned docket, the Commission proposed to adopt rules that would require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning, and on the Commission's authority to do so under the TDCA.² Among other things, the *Second FNPRM* asked whether the Commission should require the inclusion of closed captioning display settings no lower than the first level of a menu, whether such an approach would provide industry with sufficient flexibility, and whether there are "alternative ways to

² In the *Further Notice of Proposed Rulemaking* in MB Docket No. 12–108, the Commission had previously inquired whether sections 204 and 205 of the CVAA provide the Commission with authority to adopt such a requirement. Given our conclusion herein that our authority derives from the statutory provisions of the TDCA, as codified in sections 303(u) and 330(b) of the Act, we find it unnecessary to reach this issue.

implement this requirement." In January 2022, the Media Bureau released a Public Notice seeking to refresh the record on the proposals contained in the *Second FNPRM*.³ While some comments in the refreshed record assert that caption display settings are accessible, others explain that problems with the accessibility of such settings continue to persist.

In January 2023, the Media Bureau released another Public Notice, seeking comment on a proposal in the record that the Commission require compliance with the following factors when determining whether captioning display settings are readily accessible: proximity, discoverability, previewability, and consistency and persistence.⁴ On March 14, 2024, NCTA and a coalition of consumer groups filed in the record a joint proposal to make caption display settings readily accessible.⁵ The Media Bureau released a Public Notice seeking comment on the joint proposal.⁶

Below, we first find that we have authority under the TDCA to require that closed captioning display settings are readily accessible to consumers. Second, we adopt the requirement that such settings must be "readily accessible," and we detail factors the Commission will require when making this determination. Third, we explain our finding that the public interest benefits outweigh the costs for a requirement that the closed captioning display settings be readily accessible. Fourth, we find that the rule we adopt herein applies to the full range of devices covered by section 303(u) of the Act, and that both manufacturers of covered apparatus and MVPDs are responsible for compliance with the rule, except that the requirements do not apply to third-party, pre-installed applications that are otherwise covered by section 303(u). Fifth, we discuss the availability of waivers or exemptions based on achievability and technical

³ The *January 2022 Public Notice* was published in the **Federal Register**. See Federal Communications Commission, Accessibility Rules for Closed Captioning Display Settings, 87 FR 2607 (Jan. 18, 2022).

⁴ The *2023 Caption Display Settings Public Notice* was published in the **Federal Register**. See Federal Communications Commission, Accessibility Rules for Closed Captioning Display Settings, 88 FR 6725 (Feb. 1, 2023).

⁵ The proposal's signatories represent the following organizations: NCTA, National Association of the Deaf, TDIforAccess (TDI), Communication Service for the Deaf, and Hearing Loss Association of America.

⁶ The *2024 Caption Display Settings Public Notice* was published in the **Federal Register**. See Federal Communications Commission, Accessibility Rules for Closed Captioning Display Settings, 89 FR 20965 (March 26, 2024).

feasibility. Finally, we establish a compliance deadline of two years after publication of the *Third Report and Order* in the **Federal Register**.

Authority. We conclude that the Commission has authority under the TDCA to require that closed captioning display settings be readily accessible to consumers. Section 303(u)(1)(A) of the Act authorizes the Commission to require that “apparatus designed to receive or play back video programming transmitted simultaneously with sound” must “be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.” Section 330(b) of the Act directs the Commission to adopt rules to “provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming” and, “[a]s new video technology is developed,” to take such action as it “determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers.”

We find that sections 303(u) and 330(b) authorize the Commission, in implementing the TDCA, to consider the practical usability of closed captioning features by consumers and to adopt “performance and display standards” that will make closed captioning “available to consumers” by ensuring the usability of the display options. We find that meaningful access to user display settings “is essential to making closed captioning ‘available’ to consumers” within the meaning of the TDCA.⁷ As Consumer Groups explain, “[i]f a consumer cannot readily locate and use display settings, then closed captioning itself is not truly ‘available’ because the consumer cannot ensure that captions are rendered in a readable and accessible format,” and, thus the directive and purpose of the statute will not be fulfilled. Given “the increased volume and variety of both the programming and devices available to consumers” today, it is “more important now than ever” that the Commission modify its rules to ensure that closed captioning is meaningfully—not just nominally—available to viewers in order to serve Congressional intent.⁸ The record shows that expecting consumers to “search[] for settings which are buried in menus” is an “intimidating and frustrating experience.”⁹ Thus, simply including captioning circuitry somewhere in a device is not enough to satisfy the

requirements of the statute; for the captions to be “available” as Congress intended, consumers must be able to adjust the caption display settings in a manner that makes the captions accessible—i.e., “available” to the consumer.

We find that the structure, text, purpose, and history of the TDCA support Commission authority to regulate consumer access to closed captioning display settings. First, the statutory structure and text support this interpretation. Section 303(u)(1)(A) directs the Commission to adopt regulations that, among other things, require (if technically feasible) that covered devices “be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.” Section 330(b) directs the Commission to adopt “performance and display standards” and to take such action as it deems necessary to ensure that closed captioning continues to be “available,” as new technology is developed. Congress did not define the term “available” for purposes of section 330(b). We believe that the best reading is to interpret “available” to mean that consumers can readily access the various functions and features of closed captioning capability. We find that this reading is supported by the statute as a whole and the surrounding text. Specifically, section 330(b) identifies certain requirements that Commission rules “shall provide” in implementing section 303(u), including “performance and display standards,” a requirement that is sufficiently broad to encompass regulation of how closed captioning is accessed by consumers. Indeed, Consumer Groups discuss the meaning of the word “performance” in the phrase “performance and display standards,” explaining that “[a]n interpretation of the statute that would prohibit the Commission from setting standards for easy access to configuration controls would undermine” Congress’s accessibility goals, and the “grant of authority to implement performance standards” provides the Commission with “substantial discretion” in adopting requirements “to specify how users might interact with functions required by those performance standards.” We agree. By exercising our authority in this manner, we fulfill the statutory requirement to include in our rules “performance” standards for closed captioning. In addition, section 330(b) directs the Commission “[a]s new video technology is developed” to “take such action as [it] determines appropriate to

ensure that closed-captioning service . . . continue[s] to be available to consumers.” The “take such action as [it] determines appropriate” mandate further supports a broad, rather than narrow, view of the Commission’s authority to “ensure that closed-captioning service . . . continue[s] to be available to consumers”—an objective advanced by ensuring access to closed caption display options. We thus believe this interpretation of the statute best reflects the ordinary meaning of the statute and best serves the statutory purpose, as discussed below.

Second, our interpretation is consistent with the express purpose of the TDCA, which is to increase the number of consumers who can avail themselves of closed captioning, with increased demand spurring the provision of more captioned programming. In enacting the TDCA, Congress stated that “to the fullest extent made possible by technology,” persons who are deaf and hard of hearing “should have equal access to the television medium.” Third, we observe that the legislative history reveals that Congress believed the TDCA would increase the audience for closed captioned programming and thereby create market incentives for investment in closed captioned programming. If a covered apparatus has the ability to process and display closed captions but does so in a way that makes it practically infeasible or undesirable for consumers to use that capability, the intent of broadening the potential audience for captioned programming is undermined. By requiring that closed captioning performance and display functionality be “readily accessible,” we fulfill the purpose of the TDCA and Congressional intent as reflected in the legislative history by ensuring that captions are meaningfully available, and we can increase the likelihood that the audience for closed captioned programming will continue to grow as unmet needs are fulfilled, consistent with the statutory purpose.

We do not agree that relying on sections 303(u)(1)(A) and 330(b) of the Act here is “a belated Commission reinterpretation of the TDCA.”¹⁰ To the contrary, the Commission historically has recognized and exercised authority under sections 303(u) and 330(b) of the Act, prior to the enactment of the CVAA, in a manner that supports its exercise of that authority to regulate access to closed captioning display options here. Previously, the Commission concluded that “[i]t is

⁷ See Consumer Groups 2016 Comments at 3.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ CTA 2016 Comments at 6–7; CTA 2022 Comments at 9.

essential” that closed captions be readable, and it relied on sections 303(u) and 330(b) of the Act to adopt closed captioning rules that required consumers to be able to modify settings such as font size and color. Interpreting the TDCA to authorize regulations ensuring that consumers can easily access the required display settings to make closed captions readable, therefore, is entirely consistent with our prior interpretations. For the same reason, there is no logical basis to conclude that Congress, with respect to the TDCA modifications it adopted via the CVAA, interpreted the TDCA as not having granted the Commission authority to regulate access to display settings, as some commenters advocate.

Further, we reject the argument that the penultimate sentence of section 330(b) does not support the adoption of new requirements here because currently there is “no threat to the availability of closed-captioning service.”¹¹ To the contrary, we find that the requirements we are adopting herein are a proper exercise of our authority under section 330(b) because the record shows that the development of new technology for viewing video programming has made it more difficult for consumers to access the necessary caption display settings. Specifically, consumers today watch video programming on a multitude of different devices, and “it is difficult for consumers to readily anticipate where display settings are located because the location varies depending on the device used.”¹² With the proliferation of online video programming, a consumer that views captioned video programming using the same application or website on multiple devices may adjust the display settings for one device, only to find that the settings need to be adjusted again when the programming is viewed on a different device.

We also disagree with commenters who argue that the directives of sections

303(u) and 330(b) are satisfied as long as closed captioning circuitry or capability is included somewhere in their devices, that the statute’s use of the term “available” should be read narrowly to exclude consideration of the accessibility of the closed captioning by consumers,¹³ and that section 330(b) does nothing more than “authorize the Commission to update specifications as necessary to keep up with new video technologies.”¹⁴ As explained above, Congress used broad language in section 330(b), authorizing the Commission to “take such action as [it] determines appropriate” to ensure the continued availability of closed captioning. We thus reject ACA’s assertion that the Commission’s authority under section 330(b) “is limited to updating the specific technical requirements identified in the TDCA” to avoid requiring manufacturers to adhere to “outdated technical requirements.” Further, our interpretation best serves the statutory purpose of ensuring that persons who are deaf and hard of hearing “should have equal access to the television medium.” Thus, we believe our adoption of a rule ensuring the accessibility of closed captioning display functions falls within the broad scope of this language. The language also informs our interpretation and implementation of our authority under section 303(u) to ensure that video apparatus is “equipped” with closed captioning capabilities, which requires both that the apparatus possesses the necessary capabilities and that consumers are able to access them.¹⁵ Thus, our advancement of the objectives identified in section 330(b) also supports our use of section 303(u)(1)(A) authority to adopt the requirements of this order.¹⁶

¹³ NCTA cites as support for its statutory analysis the approach the Commission took in the *TDCA Report and Order* and the *DTV Closed Captioning Order*, but both of those orders are distinguishable. First, the *TDCA Report and Order* was a pre-digital order that also predated the amendment of the TDCA to extend beyond television sets. Second, the *DTV Closed Captioning Order* applied only to DTV receivers.

¹⁴ ACA 2016 Reply at 6.

¹⁵ Interpreting the second to last sentence of section 330(b) to, at a minimum, inform our interpretation and implementation of section 303(u) is consistent with the remaining text of section 330(b). Among other things, that language directs the Commission to adopt rules implementing section 303(u) that “provide performance and display standards for [] built-in decoder circuitry or capability designed to display closed captioned video programming.” As explained above, the rules we adopt here readily fit within the scope of “performance and display standards.”

¹⁶ NCTA overstates the significance of certain language from the legislative history of the TDCA as allegedly demonstrating that the Commission is precluded from interpreting the second to last

We further reject arguments that the statutory language does not permit the Commission to regulate the manner in which consumers are able to access and use such circuitry or capability. AT&T, for example, points to language in section 330(b) directing the Commission to ensure that covered apparatus “be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval,” consistent with specific “signal and display specifications.” Yet, that text is preceded by the phrase, “Such rules shall further require,” which belies the notion that Congress intended to use that language to limit the Commission’s authority to the implementation of the identified specifications. To the contrary, we conclude that the reference in section 330(b) of the Act to “performance and display standards,” which Congress did not define, includes the regulation of how consumers are able to access and use closed captioning. To interpret the language more narrowly, as some commenters advocate, would have the perverse result of allowing a manufacturer or MVPD to bury those settings so deep in a complicated series of menus that they are not readily accessible, undermining the purpose of the statute to ensure they are “available to consumers.” Further, the reference that AT&T highlights in the statute to the “line 21 of the vertical blanking interval” relates only to analog transmission. There is no vertical blanking interval in digital transmissions. The digital transition occurred in 2009 for the majority of stations, and the requirement contained in this sentence cannot transfer directly into a digital environment. Thus the requirement contained in this sentence cannot reasonably be read to limit the Commission’s authority here. The directive in section 330(b) that the Commission “take such action as [it] determines appropriate” supports a broad view of the Commission’s authority to ensure that closed captioning “continue[s] to be available to consumers.”

sentence of section 330(b) as a grant of authority. See NCTA 2016 Comments at 4, n.13. By its terms, that excerpt is an “example” of the relevance of the second to last sentence of section 330(b), rather than an exhaustive description of the role of that provision. That language from the TDCA Senate Report also reinforces the view that, at a minimum, the considerations identified in section 330(b) inform our interpretation and implementation of our authority under section 303(u). Moreover, this legislative history demonstrates our authority to take steps reasonably necessary, as demonstrated above, to “ensure” that closed captioning continues to be “widely available” to consumers.

¹¹ See NCTA 2016 Comments at 4. That sentence reads: “As new video technology is developed, the Commission shall take such action as [it] determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers.” NCTA claims that “the legislative history shows that this particular sentence was not intended to provide additional authority to the Commission, but instead reflects Congress’ desire to ensure that the particular technical requirements Congress directed the Commission to adopt would be revised as necessary to keep pace with future technology changes.” We disagree with NCTA’s interpretation of the legislative history. The legislative history that NCTA cites merely indicates an intention to permit the Commission not to impose the same requirements for both older and newer technologies so long as closed captioning remains widely available to consumers.

¹² Consumer Groups 2016 Comments at 7.

Further, Congress's enactment in the CVAA of sections 303(aa) and (bb) of the Act does not undercut the Commission's exercise of its authority under sections 303(u) and 330(b) of the Act. Section 303(aa) contains accessibility requirements for certain digital apparatus functions and features, while section 303(bb) contains accessibility requirements for certain navigation device functions and features. First, we reject suggestions that sections 303(aa) and (bb) are more specific than sections 303(u) and 330(b) and thus are controlling with regard to Commission authority to regulate consumer access to closed captioning display settings. These arguments invoke the general canon of interpretation that "specific statutory language should control more general language when there is a conflict between the two."¹⁷ Such an interpretation would represent a narrowing of the authority that the Commission previously understood itself to have and that it has exercised, and there is no indication that Congress intended the CVAA to have such an effect. It is more consistent with the accessibility objectives of the CVAA to conclude that Congress intended sections 303(u), (aa), (bb), and 330(b) of the Act to be available collectively as a source of Commission authority to pursue disability access objectives.¹⁸ While sections 303(aa)(3) and (bb)(2) specifically address access to closed captioning activation, they are silent regarding access to closed captioning display options.¹⁹ Had Congress intended to curtail the Commission's authority to take further action under section 330(b) to promote the continued availability of closed captioning service, it could have done so explicitly. It did not, and we find it unlikely that Congress intended to do so *sub silentio*.

Second, contrary to the suggestion of some commenters, we find that Congress's decision to require closed caption activation via a mechanism reasonably comparable to a key, button,

or icon does not mean that it considered and rejected such a requirement for closed captioning display settings.²⁰ Rather, as stated above, we find that Congress intended the relevant provisions of the Act—section 303(u), as amended by the CVAA; sections 303(aa) and (bb), added to the Act by the CVAA; and section 330(b), added to the Act by the TDCA—to be available collectively as a source of Commission authority regarding disability access issues. Given Congress's interest in expanding access to video programming through the CVAA, we do not believe that it intended the provisions of that statute to negate the express language of section 330(b) to ensure that closed captions continue to be available to consumers as new video technology is developed, nor the overall intent of the TDCA to bring more programs that are closed captioned into the homes of Americans. Congress required closed caption activation via a certain mechanism in the CVAA, but Congress left it to the Commission's discretion to determine whether and to what extent to regulate other matters pertaining to the ability of consumers to access closed captioning on video apparatus pursuant to its earlier grant of authority, including specifically through establishment of "performance and display standards."

Third, we disagree with commenters who contend that Congress would not have needed to adopt provisions in the CVAA directing the Commission to require closed caption activation through a mechanism reasonably equivalent to a button, key, or icon if the Commission already had authority pursuant to the TDCA to regulate access to closed captioning display settings. There are legally meaningful differences in the Commission's authority under section 303(u) as compared to sections 303(aa) and (bb) of the Act, which indicate that Congress intended to give the Commission new authority to accomplish a particular purpose, rather than supplant the Commission's authority to adopt closed-captioning regulations pursuant to a specific legal standard under section 303(u). For example, section 303(u)(1)(A) directs the Commission to adopt closed captioning requirements that apply if compliance is "technically feasible," whereas sections 303(aa)(3) and (bb)(2)

contain no such limitation.²¹ Additionally, the Commission has statutory authority to exempt certain apparatus from the requirements of section 303(u) that it cannot exercise with respect to the requirements of sections 303(aa)(3) and (bb)(2). Further, the CVAA established deadlines for the Commission to adopt rules initially implementing the requirements of sections 303(aa)(3) and (bb)(2) that differ from those for implementing the CVAA's revisions to section 303(u). There is no logical basis to conclude that the "button, key, or icon" requirement in sections 303(aa)(3) and (bb)(2) presupposes the absence of authority in sections 303(u)(1) or 330(b) to adopt different regulations to ensure that closed captioning performance and display functions continue to be "available" to consumers. Thus, we conclude that enactment of sections 303(aa)(3) and (bb)(2) does not diminish our authority to adopt the new rule set forth herein.

Finally, as a separate and independent basis of authority, in addition to the TDCA, we find authority to adopt accessibility requirements under sections 4(i) and 303(r) of the Act. The Commission is specifically delegated authority under the Act to require that covered apparatus must "be equipped" with closed caption capability and to adopt rules as it "determines appropriate to ensure that closed-captioning service . . . continue[s] to be available to consumers" "[a]s new video technology is developed." Ensuring that the required caption capabilities are actually accessible by consumers is essential to fulfill these statutory requirements. Otherwise, if a consumer cannot readily locate and use display settings to ensure that captions are rendered in a readable and accessible format, then closed captioning itself is not truly "available" as required under the statute. The rules we adopt today are thus necessary to carry out the specific requirements set forth in sections 303(u) and 330(b) of the Act.

Access to Closed Captioning Display Settings Must Be "Readily Accessible." As proposed in the *Second FNPRM*, we adopt a rule that requires covered

¹⁷ *NCTA v. Gulf Power*, 534 U.S. 327, 335–336 (2002).

¹⁸ The stated purpose of the CVAA is "[t]o increase the access of persons with disabilities to modern communications, and for other purposes."

¹⁹ Similarly, the provisions in sections 204 and 205 of the CVAA that were not incorporated in sections 303(aa) and (bb) of the Act are silent regarding access to closed captioning display options. Contrary to CTA's suggestion, sections 204 and 205 did not "express[] an intent to limit the Commission's authority" in this regard. In addition, sections 303(aa)(1) and (2) apply to an unenumerated universe of "functions" to be made accessible to individuals who are blind or visually impaired, and thus also are not more specific than sections 303(u)(1)(A) and 330(b) regarding the requirements for closed captioning display options that we adopt here.

²⁰ This argument invokes the "expressio unius est exclusio alterius" canon of interpretation, which "presum[es] that an omission is intentional where Congress has referred to something in one subsection but not in another." *NAB v. FCC*, 569 F.3d 416, 421 (D.C. Cir. 2009) (citing *Russello v. United States*, 464 U.S. 16, 23 (1983)).

²¹ The Commission previously concluded that section 303(bb)(2) contains no limiting language and therefore imposes an unconditional obligation, noting that it does not contain "upon request" language or any reference to specific types of individuals found elsewhere in section 205 of the CVAA; lacks language found elsewhere that allows entities to provide required functionalities using separate equipment or software; and is not qualified by the phrase "if achievable," in contrast with other provisions. Section 303(aa)(3) likewise lacks any limiting language.

manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus pursuant to our authority under the TDCA. Congress directed the Commission to provide performance and display standards for built-in decoder circuitry or capability designed to display closed captioned video programming and to take action to ensure that closed captioning continues to be available to consumers as video programming technology evolves. The rule we adopt herein serves these statutory directives. As discussed below, we afford covered entities (MVPDs and manufacturers) flexibility in how they meet this obligation, and the Commission will determine whether settings are readily accessible to consumers by evaluating the following factors, as described in the March 2024 joint proposal: proximity, discoverability, previewability, and consistency and persistence.²² Below we explain the public interest benefits of these new requirements. We also describe which devices and entities are covered by the rule, set forth exemptions for achievability and technical feasibility, and set a compliance deadline of two years from publication of the rule in the **Federal Register**.

“Readily Accessible.” “Readily Accessible” Requirement in General. We first require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus. To determine whether particular settings are readily accessible, the Commission will require compliance with the following factors, which we further define below: proximity, discoverability, previewability, and consistency and persistence.²³ Failure to comply with

any of the factors may be deemed a violation of the Commission’s rules.²⁴

The readily accessible requirement, which the Commission will evaluate based on the four factors, will ensure that consumers who are deaf and hard of hearing can easily access closed captioning display settings, while still giving covered entities flexibility in the manner of compliance.²⁵ While display settings already may be readily accessible for some devices, using such settings generally has not been easy for consumers.²⁶ As Consumer Groups explain, “these functional requirements provide a workable middle ground between strict design mandates and the laissez faire approach called for by industry commenters, allowing the industry substantial flexibility while requiring it to finally address the long-standing gaps in the accessibility of closed captioning display setting interfaces.”²⁷ We believe that this approach will alleviate the challenges faced by consumers who are deaf and hard of hearing in accessing closed captioning and will ensure that these

Commission should adopt in this area to ensure consistency with international standards, we are unable to take any further action in response to the cited pleadings.

²⁴ While ACA Connects expresses concern that some of the factors could be contradictory, we believe that is no longer the case given the meaning of the factors we adopt below. In the event that an allegation of non-compliance arises, the covered entity will need to demonstrate how it has complied with the applicable requirements. For example, if there is an allegation that a covered entity has not provided the required employee training discussed below, the entity could, for instance, offer information by providing training materials and a training schedule.

²⁵ The adoption of flexible factors that we will require in determining if caption display settings are readily accessible should alleviate ACA Connects’ concern that rigid standards could “squench innovation.” Similarly, we expect the flexibility inherent within the factors to alleviate ITI’s concern that stringent requirements could lead to “a cluttered, overly-complex user interface” that could confuse users and have a particular negative impact on individuals with cognitive difficulties.

²⁶ For example, Consumer Groups note that changing closed captioning settings for the most popular streaming service requires many users to engage in a 10-step process that involves leaving the application and navigating the service’s website.

²⁷ But see Letter from J. David Grossman, Vice President, Regulatory Affairs, CTA, and Brian Markwalter, Senior Vice President, Research & Standards, CTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 4 (June 30, 2022) (claiming that these factors “represent a very heavy regulatory lift that neither the Commission nor industry has properly investigated”). We disagree with CTA’s claim, both because any regulatory burden will be alleviated by the flexible nature of the factors, and because the reply comments and subsequent 2023 and 2024 comments and replies did not demonstrate that applying these flexible factors will be unduly costly or otherwise unduly burdensome to industry. To the contrary, we intend the factors to clarify for industry how the Commission will evaluate whether particular settings are readily accessible.

viewers can adjust the font, size, color, and other features of closed captions wherever they are watching video programming on devices without the undue complexity experienced today. This approach is also consistent with how the Commission has implemented accessibility requirements for closed captioning activation mechanisms on video devices pursuant to sections 204 and 205 of the CVAA.²⁸

Proximity. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are “proximate.” For this purpose, “proximity” requires that covered entities “will place . . . the closed caption display settings . . . in one area of the settings (either at the operating system or application level) that is accessed via a means reasonably comparable to a button, key, or icon.”²⁹ Consumer Groups initially argued that this factor should require access to closed captioning settings in the first level of a menu.³⁰ Industry objected to this approach as too rigid. Consumer Groups then modified their proposed definition of “proximity,” clarifying that it is intended to ensure that consumers need not navigate a lengthy set of steps and/or switch devices or applications to access closed caption display settings.

²⁸ With the exception of a Petition for Reconsideration filed by Consumer Groups regarding use of voice control and gestures for closed captioning activation, no party filed an appeal of the *Report and Order and Further Notice*. We need not address the argument that we lack sufficient notice to adopt the proposed factors, because the Media Bureau subsequently issued the *2023 Caption Display Settings Public Notice* and the *2024 Caption Display Settings Public Notice* and published both documents in the **Federal Register**, giving notice to all interested parties that this proposal was up for consideration. We further note that the Commission’s authority to adopt the factors stems from the same authority it has to adopt the readily accessible requirement generally, as discussed above.

²⁹ Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA—The Internet & Television Association, *et al.*, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 1 (Mar. 14, 2024) (NCTA/Consumer Groups Mar. 14, 2024 Ex Parte). We recognize that the joint proposal was to “place all accessibility functions—including, but not limited to, the closed caption display settings and caption on/off—in one area of the settings. . . .” The rules established in this Order, however, do not apply to any accessibility functions other than closed captioning display settings. In addition, the Commission’s rules already require that closed captioning and audio description “can be activated through a mechanism that is reasonably comparable to a button, key, or icon.” 47 CFR 79.109(a)(1)–(2), (b). We encourage covered entities to make all accessibility functions, including closed captioning display settings and caption on/off, available in the same location.

³⁰ We recognize that commenters previously evaluated some of what we now deem “proximity” as part of the “discoverability” factor. The meaning of “proximity” that we adopt here is tailored to fit the joint proposal within the four-factor framework.

²² Although the March 2024 joint proposal does not explicitly reference the previously proposed four factor framework, we believe it fits within that framework. Accordingly, we adopt the contents of the joint proposal as clarifying or modifying the meaning of the previously proposed factors.

²³ We note that ITI expresses vague concerns that the proposal uses terms, definitions, and requirements that “do not necessarily reflect internationally-accepted practices for this technology” Information Technology Industry Council (ITI) 2023 Comments at 2. See also CTA/ITI 2023 Reply at 3–4 (stating that any new rules should “[h]armonize with existing international standards to avoid confusion and imposing additional burdens on companies”); Letter from Rachel Nemeth, Sr. Director, Regulatory Affairs, and Brian Markwalter, Senior Vice President, Research & Standards, Consumer Technology Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 2 (Apr. 28, 2023). Given the lack of specific information in the record as to precisely what rules the

The subsequent March 2024 joint proposal did not specifically reference that modification and instead further refined the approach to provide that caption display settings should be available in one area of the settings that can be accessed via a means reasonably comparable to a button, key, or icon. We find that requiring proximity pursuant to the revised definition is in the public interest because it will ensure that consumers do not need to complete many steps or switch devices or applications to access closed caption display settings, and it is hereby required by our rules. We believe that the presence of ready access to caption display settings is paramount to the utility of such settings, and the “proximity” requirement will further that aim.

Under the approach we adopt today, industry is afforded flexibility in how precisely to ensure that closed captioning display settings are made readily accessible pursuant to the proximity factor, so long as the settings are available in one area that is accessible via a means reasonably comparable to a button, key, or icon. Making closed captioning display settings available solely or primarily through the use of voice control likely would not be considered proximate. In an *Order on Reconsideration*, the Commission previously found that closed captioning activation mechanisms that rely solely on voice control do not fulfill the requirement of sections 204 and 205 of the CVAA and our implementing rules that such mechanism be reasonably comparable to a button, key, or icon. The Commission was persuaded by a Petition for Reconsideration filed by Consumer Groups indicating that voice activation is not simple and easy to use for many individuals who are deaf and hard of hearing. We believe that a similar rationale applies here. We cannot find that caption display settings are reasonably accessible if many of the individuals who are intended to benefit from the settings, in other words those consumers who are deaf and hard of hearing, would not actually be able to access them. As in the *Order on Reconsideration*, we clarify that covered entities are not prohibited from using voice controls to provide access to the area of the settings that contains the closed captioning display settings as long as there is an alternative way that is reasonably comparable to a button, key, or icon for individuals who are deaf and hard of hearing to readily access closed captioning display features. In addition, CTA indicated that at least one

device manufacturer was considering a long press of a button on the remote to bring up closed captioning display settings. Compliance with the factors we adopt today is a fact-specific determination, and as a result, we decline to rule definitively on whether any particular means of providing closed captioning display settings is “readily accessible.” We agree with CTA that the long press of a remote control button may be consistent with the proximity requirement, which requires a mechanism reasonably comparable to a dedicated button, key, or icon, but we emphasize that the long press, like any mechanism, also would need to be evaluated to determine compliance with each of the other factors to be considered readily accessible.

Discoverability. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are “discoverable.” For this purpose, to ensure that the settings are “discoverable,” covered entities must: (1) conduct usability testing to determine if caption display settings can be easily found by working with consumers and disability groups as part of the testing process; (2) make good faith efforts to correct problems identified during the consumer testing process; and (3) train customer-facing employees on how to advise customers with regard to caption display settings. This approach is consistent with the March 2024 joint proposal between NCTA and Consumer Groups. We note that as proposed in some comments, discoverability would have considered whether it is simple and intuitive for a viewer to find closed captioning display settings. Some commenters objected to that formulation as too subjective. The formulation in the March 2024 joint proposal that we adopt here has the benefit of being more objective because it requires entities to conduct usability testing, demonstrate efforts to address problems that arise during such testing, and train customer-facing employees. In addition, this approach is not superfluous of any other existing or new requirement.³¹ We believe that discoverability, the ability to find the settings, is central to users’ ability to benefit from and receive the value of closed captioning and is therefore in the public interest and is hereby required by

³¹ We note that manufacturers and MVPDs are already required to provide information to consumers about how to access and use accessibility features on devices. See 47 CFR 79.107(a)(5) and (d)–(e), 79.108(d) and (f). The new employee training requirement will provide further consumer benefits.

our rules. We decline to specify the type of employee training that must be provided, instead concluding that regulated entities should retain flexibility to determine the type of employee training needed in their particular circumstances to ensure that settings are discoverable.

Previewability. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are “previewable.” For this purpose, “previewability” means whether viewers are able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings. As explained in the March 2024 joint proposal between NCTA and Consumer Groups, previewed captions must appear “via a caption box overlaying the programming,” such that [c]ustomers will still be able to see the underlying programming. . . .” The caption preview may include “stock text or caption previews, rather than the captions carried on the specific program,” which “will enable customers to preview captions even in situations where the channel the customer is watching may not include captions at a particular time, e.g., during a commercial break or portions of programming that are uncaptioned due to the nature of the content.” Although the Commission’s rules already require apparatus to enable “the user to preview default and user selection of the caption features required by this section,”³² that provision does not require the preview function to be accessible without exiting the programming. We find that requiring previewability to the extent described herein is in the public interest because it will enable a viewer to see how particular caption display settings work with the program the viewer is watching, and it is hereby required by our rules.³³ A previewability requirement as defined herein will make it efficient for consumers to adjust captions, while giving designers flexibility as to precisely how they modify their interfaces to facilitate previewability.

Consistency and Persistence. In determining whether specific closed captioning display settings are readily accessible, the Commission will require that the settings are “consistent and persistent.” In keeping with the March 2024 joint proposal, for this purpose,

³² 47 CFR 79.103(c)(10).

³³ We believe this requirement is consistent with CTA’s position that when consumers view video programming on smaller screens they may need to scroll to permit full visibility of all display settings.

“consistency and persistence” means: (1) MVPDs that provide navigation devices must “expose closed caption display settings via an application programming interface (API) that an over-the-top app provider can use upon launch of their app on the device,”³⁴ the API must “enable the app provider to use the device-level caption settings for its own content, if it chooses,” and “covered entities must notify application developers about this API or similar method through any reasonable means;” (2) MVPDs that provide their own video programming app hosted on third-party devices “will [utilize] the operating system-level closed caption settings of the [apparatus] upon launch of the app on the device;” and (3) manufacturers must ensure that such apparatus “make[] those settings available to applications via an API or similar method.”³⁵ Consumer Groups have explained the difficulties of using different settings for each application on the same platform, and of maintaining the same settings across different platforms. As Consumer Groups explain, a consistency and persistence requirement will subject consumers to “fewer procedures to customize captions for the same service used on different devices and for different services accessed on the same device,” which will reduce the frequency with which consumers must adjust captions.

The approach to consistency and persistence that we adopt today is narrower than the approach previously advocated by the Consumer Groups, which would have required covered entities to ensure that their closed captioning display settings are consistent when the same service is

used on different devices and persistent when different services are used on the same device. Industry raised several significant concerns with this broader definition of the “consistency and persistence” factor. We believe that the narrower approach to consistency and persistence that we adopt today, which includes specific requirements that are tailored to the role of each party, will help make display settings more readily accessible to users and therefore is in the public interest.

We recognize that any consistency and persistence requirement could raise certain issues, including how caption display settings should be stored and transmitted, how to address privacy and competitive implications that may arise, and whether to prioritize a preset setting versus a conflicting setting that a user subsequently inputs or a setting input on a device versus a conflicting setting input on an application accessed via the device. However, we do not believe these implementation issues are impediments to the development of solutions that satisfy the consistency and persistence requirement as defined here and we agree with NCTA that these issues “should not stop the Commission from taking positive steps now to benefit consumers.” With respect to CTA’s objection that the requirement could compel disclosure of sensitive personal information in violation of state or federal privacy laws, we find that such objections are vague and unsubstantiated and we disagree that the requirements adopted here to provide consumers with consistent settings when different services are used on the same device would have such a result.³⁶ Similarly, while CTA explains that a television has no way to know if the person using it is the most recent user or a guest, the API-based approach set forth in the joint proposal still will improve the consumer experience and we do not believe that advancements in accessibility should be stalled because video equipment may be accessed by multiple viewers. To the extent compliance concerns remain even with the narrower approach we adopt today, we note that “achievability” and “technical feasibility” exemptions remain available to covered entities, as discussed further below.

Public Interest Benefits of New Display Settings Requirement. We find that the public interest benefits outweigh the costs for a requirement that the closed captioning display

settings be readily accessible. In enacting the TDCA, Congress stated that “to the fullest extent made possible by technology,” persons who are deaf and hard of hearing “should have equal access to the television medium.” In the *Second FNPRM*, the Commission stated that there are important public interest considerations that weigh in favor of ensuring that consumers are able to readily access user display settings for closed captioning. The record supports the continued need for this access, providing numerous examples of user interfaces across various popular platforms, services, and devices that are apparently not readily accessible.³⁷ When it adopted technical standards for the display of closed captions on digital television receivers, the Commission concluded that “[o]nly by requiring decoders to respond to these various [display] features can we ensure that closed captioning will be accessible for the greatest number of persons who are deaf and hard of hearing, and thereby achieve Congress’ vision.” According to Consumer Groups, the ability to alter font, size, color, and other display features of captions is “a critical component of accessing closed captioning” for individuals who are deaf and hard of hearing, allowing them to change the appearance of captions to best meet their particular needs.

Although the rules the Commission adopted in 2000 were intended to provide consumers with the benefits of customizing the appearance of closed captions, these features are not readily accessible to many consumers who are deaf and hard of hearing. When consumers cannot readily access the closed captioning display settings, the benefits of our rule allowing the customization of closed caption display are greatly diminished. Consumer Groups explained in 2016 that “many consumers face the intimidating and frustrating technical barrier of display settings that are difficult to locate and utilize, which prevents viewers from being able to easily customize the captions to be readable.” There is little evidence in the record of significant progress since the Commission proposed caption display settings requirements in 2015. Having to take cumbersome steps to access display settings that make closed captions readable may discourage individuals who are deaf and hard of hearing from using closed captioning to make video programming accessible. If consumers

³⁴ An API is an application programming interface. We understand that some devices or applications covered by our rules may use other tools comparable to APIs, such as application programming kits (APKs) or software development kits (SDKs). All references herein to APIs shall be read to include any such comparable development tools that allow one device or application to coordinate with another.

³⁵ NCTA/Consumer Groups Mar. 14, 2024 Ex Parte at 2; Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12–108, at 3 (July 12, 2024) (NCTA July 12, 2024 Ex Parte). Consistent with CTA’s ex parte filing, we clarify that compliance with (1) and (2) above focuses on MVPDs as entities that provide customers with access to video programming through navigation devices or the MVPD’s own apps that customers access on third party devices. Compliance with (3) above reflects similar requirements for manufacturers as entities that manufacture apparatus. Consistent with NCTA’s ex parte filing, language in (1) above fortifies a requirement from the joint proposal. One example of a “reasonable means” for the required notice would be “a developer portal the developer must use to get its app onto the device.” NCTA July 12, 2024 Ex Parte at 3.

³⁶ CTA’s comments do not cite any specific state or federal privacy statute or case law that would be implicated by the rule we adopt or describe how the requirement could potentially violate such requirements.

³⁷ While the record also contains examples of some accessible user interfaces, that does not change the fact that many user interfaces are not readily accessible.

are unable to read default captions (e.g., if the size of the font is too small) and are unable to locate and use display settings to change the appearance of the captions, they are precluded from using closed captioning at all.

As explained above, our action ensures that the Commission can meet its continuing obligation under the TDCA to take appropriate action to ensure that closed captioning remains available to consumers as new video technology is developed. As Consumer Groups explain, making closed captioning display settings easy to find and use is especially important given the multitude of devices and programming options available to consumers today, which may each require customization to suit a user's needs.³⁸ We agree with Consumer Groups that “the[] goals of removing technical barriers and ensuring practical accessibility and readability of captions would all be advanced by the proposed rule.” The benefits of the rule will extend not only to the deaf and hard of hearing population, but also to other members of the public that utilize closed captioning, including in public places such as restaurants, bars, hotels, hospitals, and nursing homes.

While the record reflects that there will be some costs to industry to comply with the rule we adopt herein, we find that the substantial benefits to consumers outweigh those costs. In the *Second FNPRM*, we inquired about the costs of the proposal as well as the impact of the proposed rule on small entities. The record does not contain any specific figures or estimates quantifying the costs of compliance. However, industry commenters indicate that modifying access to closed captioning display settings may be “a significant undertaking involving design, development, testing, and manufacture [and] involving coordination among ‘multiple internal and external design and engineering teams.’”³⁹ These commenters assert that the efforts will involve more than a small software modification, but they do not allege that these efforts would be prohibitively burdensome or costly. Other industry commenters state that “[a]dopting a new requirement

regarding closed caption display settings . . . would chill innovation.”⁴⁰ However, we find that the flexibility allowed in determining how to comply will mitigate this possibility. Taking into account the industry comments, we find that the extensive benefits outlined above will outweigh the compliance costs to industry. The benefits extend to the approximately 48 million Americans who are deaf and hard of hearing, as well as to the DeafBlind community and the millions of individuals with low vision, including many senior citizens.⁴¹ As Consumer Groups state, “The ability to adjust captioning settings is particularly essential for people who have both hearing and vision disabilities. For example, people who are DeafBlind, low vision or color blind often rely on high-contrast visuals and interfaces to be able to read information on screens. By ensuring that these individuals can easily find and adjust the caption display settings, the rules we now adopt will provide the autonomy needed for these individuals to independently customize captions on their own—i.e., to select the color, size, and contrast that best fits their personalized needs for optimal readability and comprehension of content. Enhancing access to video programming in this manner will ensure that such individuals can fully benefit from the news, information and entertainment that video programming makes available to the rest of the general public.” We also believe that the costs of compliance will be mitigated because we give covered entities flexibility in the manner of compliance, which allows them to choose a cost-effective solution, and because the requirements do not apply to third-party, pre-installed applications. Further, to the extent there are companies that already provide closed captioning display settings in a readily accessible manner, they will not need to incur any additional costs to comply.

In the initial comment period, industry commenters asserted that the Commission should take a “wait-and-see approach” to determine if additional accessibility rules are necessary. In particular, industry commenters asserted that manufacturers had been working hard to comply with the accessible user interfaces requirements

adopted pursuant to sections 204 and 205 of the CVAA, which were subject to a December 20, 2016 compliance deadline, and that it was premature for the Commission to adopt new rules before evaluating the technical innovations developed by covered entities to meet these accessibility obligations. However, while the accessible user interfaces rules require that closed captioning be activated by a mechanism reasonably comparable to a button, key, or icon on digital apparatus and navigation devices, these requirements do not govern how closed captioning display settings should be accessed on such devices. Further, the record at that time contained few specific examples of how closed captioning display settings actually would be made available to consumers after the December deadline. While the accessible user interface rules and the 2016 compliance deadline were not intended to address access to closed captioning display settings, the Commission now has the benefit of a refreshed record that reflects a lack of progress since the 2016 deadline, and a basis to find that the closed captioning display setting requirements the Commission initially proposed remain necessary. Thus, we do not believe that the section 204 and 205 accessibility requirements obviate the need for Commission action with respect to closed captioning display settings, and we see no reason to further delay rules that are sorely needed by consumers who are deaf and hard of hearing to address the “long and frustrating history” of inaccessible display settings.⁴²

Covered Devices. As proposed in the *Second FNPRM*, the rule we adopt herein applies to the devices covered by section 303(u) of the Act—apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size, as interpreted consistently with our precedent in the *IP Closed Captioning Order*, except that,

³⁸ We thus disagree with ACA Connects’ contention that the Commission has failed to identify “how the continued availability of closed captioning service would be frustrated in the absence of consumers’ ability to readily access closed captioning display settings.” Rather, we agree with Consumer Groups that consumers must be able to readily access closed captioning display settings to ensure that those captions are readable.

³⁹ CTA 2016 Reply at 7 (quoting Telecommunications Industry Association (TIA) 2016 Comments at 2.

⁴⁰ CTA 2022 Comments at 1; CTA 2023 Comments at 8 (“Locking in user interfaces to conform to the Advocacy Groups’ proposal can slow future innovation and degrade the experience of individuals seeking to adjust more than just closed captioning display settings.”).

⁴¹ Individuals who are low vision and also rely on closed captions may need to modify caption settings to make the captions readable.

⁴² See Consumer Groups 2013 Comments at 8. See also Consumer Groups 2016 Reply at 4 (“These unsupported assurances stand in stark contrast to the experiences of Consumer Groups, which indicate that closed captioning settings remain difficult to access and, in many instances, are becoming less accessible.”) (footnote omitted). We thus reject the argument of CTA that rather than adopt new requirements, the Commission “should encourage industry to continue to respond to user experiences, research and feedback to offer improved user interfaces that benefit all consumers, including those with disabilities.” CTA 2023 Comments at 11–12.

consistent with the joint proposal, the readily accessible requirements do not apply to third-party, pre-installed applications.⁴³ Further, consistent with our precedent, the following are not subject to the requirements adopted herein: (1) apparatus exempt from the requirement to be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming (e.g., display-only video monitors, and professional or commercial equipment); (2) equipment for which the requirement has been determined to be not achievable or technically feasible; or (3) equipment for which the requirement has been waived (e.g., apparatus primarily designed for purposes other than receiving or playing back video programming). In CVAA orders subsequent to the *IP Closed Captioning Order*, the Commission consistently interpreted the term apparatus to include only applications that are pre-installed by the device manufacturer or that the manufacturer requires the consumer to install after sale. However, the Commission stated that it “will continue to monitor the development of accessible technology in this area and will reevaluate whether we should require the accessibility of consumer-installed MVPD applications at a later date if it appears necessary to ensure access to MVPD programming” by persons with disabilities. Although at that time the Commission observed that there are technical challenges in ensuring that consumer-installed MVPD applications comply with accessible user interface requirements, we recognize that the industry is constantly evolving. Similarly, for purposes of the readily accessible requirement, we credit the decision of the joint proposal to exclude both consumer-installed applications and third-party, pre-installed applications.⁴⁴ The exclusion of third-party, pre-installed applications is reasonable in this instance because inclusion would “pose substantially more practical and technical difficulties”⁴⁵ due to the types of

requirements that are at issue herein—for instance customer service training and usability testing—and the independence of app developers on the one hand and MVPDs and manufacturers on the other. However, we intend to continue to monitor the constantly evolving video programming industry to ensure that people with disabilities are not left behind. Accordingly, if we find that MVPDs and/or manufacturers are not making their applications accessible, or if third-party, pre-installed applications, or new technologies, present accessibility challenges because display settings are not readily accessible, the Commission will consider initiating a rulemaking to determine whether we should impose additional readily accessible requirements.⁴⁶

Consumer Groups agree that the rule should be applied broadly to the full range of devices covered by section 303(u) of the Act, which would “promote Congress’s goal of ensuring that closed captioning is available to consumers.” AT&T and CTA, on the other hand, argue that the Commission’s authority with respect to the TDCA is limited to the accessibility of broadcast television receivers. Contrary to the contention of these industry commenters, the Commission has authority under sections 303(u) and 330(b) of the Act to apply its new rules for consumer access to closed captioning display settings to apparatus beyond broadcast televisions. Although Congress’s focus at the time of enactment of the TDCA was on broadcast television-related technical standards, that does not preclude a broader interpretation today. Section 303(u)(1), by its terms, applies broadly to all “apparatus designed to receive or play back video programming transmitted simultaneously with sound.” Although this phrase is not defined in the statute, Congress had amended the original language in 303(u), which had referred to “apparatus designed to receive television pictures broadcast simultaneously with sound.” The Commission has interpreted section 303(u)(1)’s scope broadly. The Commission’s interpretation of section 303(u) as extending beyond broadcast televisions thus reflects the ordinary meaning of the statute. Because section 330(b), in pertinent part, simply refers to the “apparatus described in section

303(u),” our analysis of the scope of section 330(b) mirrors our interpretation of the scope of section 303(u).

Covered Entities. Both manufacturers of covered apparatus and MVPDs are responsible for compliance with the rule we adopt herein. The Commission sought comment in the *Second FNPRM* on whether both manufacturers and MVPDs should be obligated to make it easier for consumers to locate and control closed captioning display settings. Consumer Groups argue that manufacturers and MVPDs should share responsibility in ensuring that consumers can locate and use display settings, particularly because MVPDs have ongoing relationships with subscribers who are likely to turn to them to resolve any issues with accessibility features. We are persuaded by Consumer Groups that there are significant benefits of imposing these requirements on MVPDs as well as manufacturers, including that a consumer who is viewing video programming via an MVPD service would be more likely to contact the MVPD for assistance with user display settings. Industry commenters argue that the TDCA cannot be applied to MVPDs because the Commission’s prior rulemakings implementing the TDCA imposed requirements only on manufacturers. We disagree. Whereas the initial order in this proceeding applied certain rules to navigation devices, which were the responsibility of MVPDs, and certain rules to apparatus, which were the responsibility of manufacturers, the overall result was that both manufacturers and MVPDs were subject to the requirements. Similarly in this Order, we hold MVPDs responsible for the apparatus they distribute to consumers, and manufacturers responsible for the apparatus they manufacture.

While the joint proposal submitted in March 2024 was focused on the cable context, it indicated that “the proposals could also serve as a model for other MVPDs and equipment manufacturers.” We believe that it is appropriate and reasonable to adopt the joint proposal to apply to all covered entities. The Media Bureau specifically sought comment on whether the joint proposal should “apply broadly to the devices covered by section 303(u) of the Communications Act of 1934, as amended, and to both manufacturers of covered apparatus and MVPDs.” In response, CTA argued that the Commission “should not hold manufacturers responsible for aspects of the complex video ecosystem that they do not control and over which they do

⁴³ We note that section 303(u) imposes requirements on apparatus “if technically feasible.”

⁴⁴ We note that the Consumer Groups request that in light of NCTA’s clarification of the joint proposal with respect to the exclusion of third-party, pre-installed applications for MVPDs that the Commission consider whether the same concerns exist for device manufacturers. NCTA clarifies that this joint proposal exclusion is contemplated for both MVPDs and manufacturers and CTA notes the importance to consumers “of a consistent experience across covered entities with respect to pre-installed applications.” We agree and include the exclusion for all covered entities.

⁴⁵ Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, to Marlene H.

Dortch, Secretary, FCC, MB Docket No. 12–108, at 1 (July 10, 2024).

⁴⁶ In the absence of such a rulemaking, we do not at this time require MVPDs or manufacturers to provide software updates that they would not otherwise provide.

not have sufficient leverage to require compliance with regulatory obligations.” We agree, and we note that the rules we adopt today hold manufacturers responsible for apparatus they manufacture and MVPDs responsible for apparatus they provide to their customers. We agree with Consumer Groups that “just because responsibilities need to be coordinated among various video programming participants is no reason for these responsibilities not to be mandated and fulfilled.”⁴⁷

We agree with Consumer Groups that we have the authority to apply the rules we adopt today to MVPDs, as well as manufacturers. Sections 303(u) and 330(b) of the Act operate in tandem. Under section 303(u), the Commission establishes requirements for covered apparatus to be equipped with closed captioning, audio description, and emergency information capability. The first sentence of section 330(b) of the Act, in turn, states that “[n]o person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States” any apparatus that fails to satisfy the requirements adopted pursuant to section 303(u) of the Act. In other words, the duty to meet the apparatus requirements adopted under section 303(u) applies to any person engaging in the activities identified in section 330(b). MVPDs regularly “ship in interstate commerce” or “import . . . into the United States” the set-top boxes that they distribute to customers. In this respect, the requirements adopted under section 303(u)(1)(A) relating to closed captioning capability flow through to MVPDs by restricting the devices they can ship or import for distribution to their customers. We therefore conclude that, pursuant to the express terms of section 330(b), which states that “no person shall” engage in the specified activities, we will apply our new rule implementing sections 303(u) and 330(b) of the Act to MVPDs for the purpose of proscribing the actions enumerated in the first sentence of section 330(b).⁴⁸

Although the statute defines the term “interstate commerce,” it does not separately define the phrase “ship in interstate commerce,” or provide

express guidance on how that phrase should be applied to specific types of shipments. We therefore interpret this phrase in a way that best reflects the ordinary meaning of the text and meets the statutory objectives of section 330(b) and section 303(u). We believe it is best to interpret the phrase to apply to the entire transportation path from the point at which the goods leave the seller’s warehouse to the point at which the buyer, such as an MVPD, delivers the goods to its own customers—in this context an MVPD’s subscribers. Thus, we conclude that the term “interstate commerce” encompasses “commerce” in apparatus deployed by MVPDs to their subscribers, and we interpret the phrase “no person shall ship in interstate commerce” to proscribe an MVPD’s deployment of noncompliant set-top boxes or other covered apparatus to subscribers’ premises after the applicable compliance deadline, where covered apparatus originated from out of state or traversed state lines.

Our conclusion is supported by cases in which the phrase “in interstate commerce” has been interpreted to refer to the entire stream or flow of commerce with respect to a product. Those cases hold that the flow of interstate commerce does not end once an intrastate shipment begins where a seller transporting goods intrastate “made interstate sales or was ‘otherwise directly involved in national markets’ or . . . the ‘local market . . . is an integral part of the interstate market in other component commodities or products.’”⁴⁹

In the circumstances at issue here, MVPDs are an active link in the continuous flow of equipment to their subscribers. They typically order equipment from manufacturers that is shipped interstate for deployment to their subscribers. Thus, an MVPD is the pivotal intermediary between the apparatus manufacturer and the MVPD’s subscribers, essentially making choices on behalf of its subscribers. This is materially different from situations in which a manufacturer sells to a wholesaler, the wholesaler sells to multiple retailers, and consumers shop at retailers and decide what to buy. Under these circumstances, we find that MVPDs engage in interstate commerce

when they procure equipment across state lines and deploy it to subscribers to enable them to view their programming.

This conclusion is reinforced by the statutory context. The statute is intended to protect consumers with disabilities by ensuring that equipment that the MVPD selects on their behalf serves their needs. In this context, it makes sense to view all of the links in the chain as a continuous stream of commerce ultimately destined for the MVPD subscriber.⁵⁰ And given the MVPD’s intermediary role, interpreting the phrase “ship in interstate commerce” to apply to the MVPD’s deployment of apparatus to subscribers’ premises best reflects the ordinary meaning of the statutory text and best serves the statutory purpose of ensuring that all consumers who are deaf and hard of hearing should have equal access to television programming. In light of this statutory purpose, and against the backdrop of judicial precedent interpreting the phrase “in interstate commerce,” we conclude that an MVPD that procures covered apparatus from a manufacturer located in another state or foreign country and deploys it to subscribers is shipping apparatus in interstate commerce.⁵¹ Accordingly, we interpret the phrase “no person shall ship in interstate commerce” as prohibiting MVPDs from deploying non-compliant apparatus to subscribers after the applicable compliance deadline. Further, from a

⁵⁰ The legislative history does not discuss the definition of “interstate commerce.” It appears that congressional deliberations were informed by the 1960 legal opinion of the FCC’s then-General Counsel, John L. Fitzgerald, which observed: “The congressional power under the commerce clause is not confined simply to the regulation of commerce among the states but extends to those activities intrastate which so affect interstate commerce as to make regulation of them proper means to the attainment of a legitimate end.” See All Channel Television Receivers and Demixture, Hearings Before the Committee on Interstate and Foreign Commerce, House of Representatives, on HR. 8031 et al. at 124–25, 128 (Mar. 5, 6, 7, and 9, 1962) (including the 1960 Legal Opinion of FCC General Counsel John L. Fitzgerald for the record). See also H. Rep. No. 87–1559 at 6 (Apr. 9, 1962) (discussing the constitutionality of the All Channel Television Receivers Act and noting opinions provided by the FCC’s General Counsel and the Department of Justice); S. Rep. No. 87–1526 at 5 (May 24, 1962) (same).

⁵¹ The MVPD is shipping apparatus “within the flow of interstate commerce—the practical, economic continuity in the generation of goods and services for interstate markets and their transport and distribution to the consumer.” *Gulf Oil Corp.*, 419 U.S. at 195. See also FCC General Counsel Opinion at 128 (“The congressional power under the commerce clause is not confined simply to the regulation of commerce among the states but extends to those activities intrastate which so affect interstate commerce as to make regulation of them proper means to the attainment of a legitimate end.”).

⁴⁷ Consumer Groups state further that the Commission previously apportioned responsibilities among some of the same entities when it adopted the IP closed captioning requirements in 2012, and the television closed captioning quality requirements in 2016.

⁴⁸ This approach is consistent with our existing apparatus rules governing the accessibility of video programming, which apply to MVPDs to the extent that they engage in the enumerated activities.

⁴⁹ *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195–96 (1974) (cited in *Able Sales v. CAPR*, 406 F.3d56, 64 (1st Cir. 2005)). We recognize that specific outcomes under a flow of commerce analysis can vary somewhat in different decisions and in different contexts. In interpreting section 330 of the Act, we need not, and do not, seek to replicate the specific approach taken in any of those other regulatory contexts, but draw upon principles from that precedent that are useful, including in carrying out the goals and purposes of the Act.

policy perspective, we agree with Consumer Groups that MVPDs play an integral role in ensuring that closed captioning service is available because, unlike manufacturers, they have an ongoing relationship with consumers. In addition, to the extent any MVPD manufactures covered apparatus, we note that section 330(b) applies to such MVPDs for that reason alone. For all of these reasons, the statutory language and policy objectives both support application of the rule to MVPDs.

Waivers and Exemptions.

Achievability. Because we derive our authority for the rule we adopt herein from section 303(u)(1) of the Act, we find that the requirement for readily accessible caption display settings for covered apparatus that use a picture screen less than 13 inches in size is subject to the achievability provision set forth in section 303(u)(2)(A). Section 303(u)(2)(A) of the Act, as amended by section 203 of the CVAA, specifies that apparatus described in section 303(u)(1) that use a picture screen that is less than 13 inches in size must meet the requirements of that section only if such requirements “are achievable (as defined in section 617 of this title).” In the *Second FNPRM*, the Commission sought comment on whether the provisions related to achievability in section 303(u) of the Act apply to the requirement that consumers be able to readily access user display settings for closed captioning. Industry commenters argued that we should allow covered entities to seek an exemption on the grounds of achievability, while Consumer Groups argued that it is unnecessary to adopt an achievability exemption because compliance with the rule will involve only a minor software modification. We find that covered apparatus that use a picture screen less than 13 inches in size must meet the requirements of section 303(u)(1), which requires covered apparatus to be equipped with built-in closed caption decoder circuitry or capability designed to display closed captioned video programming, only if such requirements “are achievable.”

The Act defines “achievable” to mean “with reasonable effort or expense,” as determined by the Commission. The Commission will determine whether compliance is “achievable” on a case-by-case basis, consistent with the approach taken by the Commission when implementing section 203 of the CVAA.⁵² In particular, the Commission will consider the following factors in determining whether compliance with

the requirements adopted herein is achievable in particular circumstances: (1) the nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or provider; and (4) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. If a covered entity believes that it is not achievable for it to comply with the rule we adopt herein, it may either (i) seek a determination from the Commission that compliance with the rule is not achievable before manufacturing or importing the apparatus; or (ii) raise as a defense to a complaint or Commission enforcement action that a particular apparatus does not comply with the rules because compliance was not achievable.⁵³ If a party seeks a determination of achievability before manufacturing or importing the apparatus, it should follow the procedures for an informal request for Commission action pursuant to § 1.41 of our rules.

Technical feasibility. In the *Second FNPRM*, we also sought comment on whether the technical feasibility exemption in section 303(u) of the Act applies to the requirement that consumers be able to readily access user display settings for closed captioning. As discussed above, we find that it does. In particular, the requirements set forth in section 303(u) of the Act, including the requirement that covered apparatus be equipped with built-in closed caption decoder circuitry or capability designed to display closed captioned video programming, apply only “if technically feasible.” According to industry commenters, the Commission should permit covered entities to seek an exemption based on technical infeasibility. Consumer Groups, on the other hand, contend that the Commission should not adopt a technical feasibility exemption because

compliance can be achieved through a simple technical modification, making such an exemption unnecessary. However, section 303(u) clearly specifies that compliance is required only “if technically feasible.”

We interpret the term “technically feasible” consistent with Commission precedent. Notably, to demonstrate that compliance is technically infeasible, covered entities must show that changes to the design of the apparatus to make closed captioning display settings readily accessible are not physically or technically possible, and not just that they are “merely difficult.” We permit parties to raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or to file a request for a ruling under § 1.41 of the Commission’s rules as to technical infeasibility before manufacturing or importing the product.

Legacy navigation devices. We decline to adopt a blanket exemption for “legacy navigation devices that are provided by small and medium-sized MVPDs,” as ACA Connects advocates.⁵⁴ To the extent ACA Connects is concerned about devices that were manufactured prior to the compliance deadline, any such concern should be alleviated by our decision not to apply the requirements to such apparatus. It appears that ACA Connects’ concern applies to such previously manufactured devices, but to the extent the concern extends to some other category of devices, we reiterate that the waiver and exemption processes adopted herein are available to MVPDs on a case-by-case basis. Because the record does not indicate that an MVPD would need to avail itself of an exemption or extension for every “legacy navigation device,” we find that the availability of case-by-case waivers or exemptions is a preferable solution to an overbroad blanket exemption.

Streamlined process for small and medium-sized providers. ACA Connects asks the Commission to adopt a streamlined waiver process for small and medium-sized providers, enabling them to obtain a waiver without the use of any external resources. We find that the existing waiver and exemption processes are sufficiently flexible to be workable for small and mid-sized providers. Providers have the flexibility to raise achievability and technical feasibility either prior to manufacture or

⁵³ To provide one example, CTA expresses concern “that on small or less sophisticated devices, overlaying the captioning menu over currently playing video may be challenging to implement on some combinations of hardware and operating systems.” To the extent a manufacturer has this concern about a particular device, it may seek to avail itself of the achievability provision.

⁵² The Commission will rely on the existing provision in § 79.103(b)(3) of its rules.

⁵⁴ ACA Connects defines “legacy navigation device(s)” as “any set-top box or navigation device that MVPDs sell or lease to their subscribers that provides access to the MVPDs’ ‘closed systems’ by decrypting MVPD video programming streams for display on television receivers.”

in response to a complaint. Adopting a different process here for small and medium-sized providers would be inconsistent with prior orders adopting the same achievability and technical feasibility provisions. ACA Connects has failed to justify why the same process that has been used in prior proceedings implementing the same provisions should be modified here.

Compliance Deadline. We adopt a compliance deadline after the Office of Management and Budget completes its review of any new or modified information collection requirements under the Paperwork Reduction Act or two years after publication of the *Third Report and Order* in the **Federal Register**, whichever is later. In the *Second FNPRM*, we inquired about the appropriate time frame for requiring covered entities to ensure that consumers are able to readily access user display settings for closed captioning.⁵⁵ According to Consumer Groups, “[i]ncluding user display settings in the first level of a menu would require only a small software modification and would not require any hardware design changes,” and thus, an extended period to come into compliance is unnecessary. CTA disputes this contention, arguing that Consumer Groups “fail[] to acknowledge the complexity of implementing rules regarding closed captioning display settings.”⁵⁶ NCTA, TIA, AT&T, and EchoStar request at least two years to comply, while CTA and ACA Connects assert that three years is a reasonable implementation period. Consumer Groups initially sought a one year compliance deadline, but in the comment cycle following the March 2024 joint proposal they requested two years.

Based on our review of the record, we adopt the compliance deadline included in the joint proposal as clarified in ex

parte presentations. Specifically, compliance is required for devices that use next generation operating systems deployed more than two years after publication of the *Third Report and Order* in the **Federal Register**. We find the compliance deadline is reasonable, though we encourage covered manufacturers and MVPDs to offer readily accessible closed captioning display settings as soon as it is technically feasible for them to do so. Consistent with the initial order in this proceeding, the requirements adopted herein will not apply to devices manufactured prior to the deadline.⁵⁷ MVPDs should, however, “provide new equipment upon request to any customer who is deaf or hard of hearing,” as stated in the March 2024 joint proposal. MVPDs should provide notice to customers who are deaf or hard of hearing when new operating systems are deployed. Based on the record, it appears that the requirement to make closed captioning display settings readily accessible may involve more than a “small software modification.” Even software changes may involve a more substantial design and development process than a simple update.

When the Commission adopted a rule requiring manufacturers of apparatus subject to § 79.105 of the Commission’s rules to provide a mechanism that is simple and easy to use for activating the secondary audio stream for audible emergency information, it gave covered entities approximately 17 months to comply. In that proceeding, we similarly acknowledged that covered entities “will need some time for the design, testing, and implementation of a simple and easy to use activation mechanism for the secondary audio stream on covered apparatus,” and concluded that the time granted was sufficient to achieve these steps. In practice, the deadline proved sufficient, with no waiver requests filed pertaining to the requirement contained in § 79.105. Likewise, we believe that a 24-month period will provide covered entities with sufficient time to achieve the steps necessary to comply with the rule adopted herein.⁵⁸

⁵⁷ ACA maintains that any obligation placed on MVPDs should apply only “to navigation devices purchased after a certain future date,” and that our rule should not prohibit the use of existing inventory after the compliance deadline. By declining to apply the requirements to apparatus manufactured prior to the deadline, we will ensure that MVPDs are able to utilize their existing inventory.

⁵⁸ Some industry commenters ask for an extended compliance timeline, arguing that this would be consistent with the timeframe needed for product development and our prior implementation of

We decline to adopt a later compliance deadline for certain mid-sized and smaller MVPDs, as ACA Connects requests, because we find that such an approach is unnecessary and unworkable here. First, a longer deadline for smaller MVPDs is unnecessary because a compliance deadline based on the date of manufacture will ensure that MVPDs can utilize their existing inventory, and because MVPDs will not need to rely on their market power to compel manufacturers to comply since the rules explicitly apply to both entities. Second, a longer deadline for smaller MVPDs is unworkable because it would result in a situation in which provision of a given device that was manufactured after the deadline applicable to manufacturers, but before the deadline applicable to smaller MVPDs, would be a violation for the manufacturer but not the MVPD. We note additionally that an extended deadline for mid-sized and smaller MVPDs was justified when the Commission adopted multiple accessibility requirements in the initial *Report and Order*, whereas here we adopt a single requirement for accessible closed captioning display settings. To the extent particular MVPDs find that they are unable to comply with the requirements adopted herein, the waiver or exemption procedures discussed above are available to them.

Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Third Report and Order. In summary, the Third Report and Order requires closed captioning display settings to be “readily accessible.” The action is authorized pursuant to the Television Decoder Circuitry Act of 1990, Public Law 101–431, 104 Stat. 960, and the authority found in sections 4(i), 4(j), 303(r), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j),

CVAA accessibility rules. However, such longer timeframes were justified when the Commission adopted more extensive accessibility requirements than we are adopting in this Order. For example, we established a three-year compliance period in the initial *Report and Order* implementing sections 204 and 205 of the CVAA because there we adopted multiple requirements related to accessible program guides and menus and closed captioning and audio description activation mechanisms. Additionally, while CTA suggests that a minimum of five years would be needed to comply with a “consistency and persistence” requirement, we find that the narrow approach we adopt to the “consistency and persistence” requirement does not justify a longer timeframe. Industry commenters have failed to provide the details necessary to support a compliance timeline longer than two years here.

⁵⁵ In particular, we sought comment on Consumer Groups’ request that the compliance deadline coincide with the December 20, 2016 deadline for the requirement to provide an accessible closed captioning activation mechanism pursuant to sections 204 and 205 of the CVAA. Given the passage of time, Consumer Groups’ proposal to use that deadline has become moot.

⁵⁶ Providing greater specificity, EchoStar explains that making display settings available in the top level of a menu would require EchoStar to rewrite software for each set-top box remote control based on its current design and would require EchoStar to rewrite both the factory code and production code for all types of set-top boxes that it manufactures. As EchoStar explains, “[t]his factory code controls the default accessibility features for the set-top box which the consumer can customize as part of the installation process. Once the set-top box is connected to a properly aimed satellite dish, [a] production code specific to each set-top box model is downloaded and used in normal operation.”

303(r), 303(u), 330(b). The types of small entities that may be affected by the action fall within the following categories: Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), Direct Broadcast Satellite (DBS) Service, Satellite Master Antenna Television (SMATV) Systems also known as Private Cable Operators (PCOs), Home Satellite Dish (HSD) Service, Open Video Systems, Broadband Radio Service and Educational Broadband Service, Incumbent Local Exchange Carriers (Incumbent LECs), Competitive Local Exchange Carriers (LECs), Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, and Audio and Video Equipment Manufacturing.

The projected reporting and recordkeeping requirements include that covered entities must notify application developers about the application programming interface (API) or similar method by which covered MVPDs providing navigation devices must expose closed captioning display settings. This notification can be accomplished by any reasonable means. More generally, in the event that an allegation of non-compliance arises against an entity, regardless of the size of the covered entity, it will need to demonstrate how it has complied with the applicable requirements. For example, if there is an allegation that a covered entity has not provided the required employee training, it could refute that allegation by reference to training materials or a training schedule. The *Third Report and Order* permits small and other covered entities to seek exemptions from the adopted requirements on the basis that compliance is not technically feasible and/or not achievable, pursuant to section 303(u) of the Act and consistent with our precedent in the *IP Closed Captioning Order*.⁵⁹ To demonstrate that compliance is not achievable—cannot be accomplished with reasonable effort or expense—or is not “technically feasible” will require small and other entities to have records, and to make a filing with the Commission to substantiate such claims. Small and other entities will also have to keep and be able to produce records associated with their compliance in the event they are subject to a dispute or complaint about accessibility.

The other compliance requirements that are applicable to covered small entities include the adoption of a rule that requires manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning on covered apparatus. To determine whether particular settings are readily accessible, the Commission requires compliance with the following factors: proximity, discoverability, previewability, and consistency and persistence. The Commission does not otherwise dictate the precise manner of compliance as long as such settings are readily accessible. This approach will ensure that consumers who are deaf and hard of hearing can easily access closed captioning display settings, while still giving small and other covered entities flexibility in the manner of compliance and allowing companies to develop innovative solutions for accessibility.

The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments in response to the proposed rules in this proceeding.

To minimize the significant economic impact the rules adopted in the *Third Report and Order* may have on small entities, in the *Second FNPRM* the Commission inquired whether the provisions of section 303(u) of the Act that allow the Commission to tailor its rules, as necessary, to small entities for whom compliance with such rules is economically burdensome should apply. Consistent with our determination that Section 303(u) of the Act should apply, we considered and find that small entities are able to avoid potentially economically burdensome compliance with the requirements in the *Third Report and Order* to ensure that users can readily access closed captioning display settings if they are able to demonstrate to the Commission that such compliance is not “achievable” (i.e., cannot be accomplished with reasonable effort or expense, with the provision limited by statute to apparatus that use a picture screen less than 13 inches in size) or is not “technically feasible.” Two of the four statutory factors that we must consider in assessing achievability are particularly relevant to small entities: (i) the nature and cost of the steps needed to meet the requirements, and (ii) the technical and economic impact on the entity’s operations.

In general, we afford covered entities flexibility in how they make closed captioning display settings readily accessible to consumers, and will determine whether settings are readily accessible to consumers by evaluating

the following factors: proximity, discoverability, previewability, and consistency and persistence. This approach will ensure that small and other covered entities can choose how to make closed captioning display settings available, as long as such settings are readily accessible to consumers, enabling these entities to decide what works best for them. Our approach will also allow the Commission to address the impact of the rules on individual entities on a case-by-case basis, and to modify application of our rules to accommodate individual circumstances thereby potentially reducing the costs of compliance for such entities. The Commission’s adopted definition of the four required factors that we will evaluate to determine whether small and other entities have met their obligation to make display settings readily accessible to consumers is based on a March 2024 joint proposal filed in the record by NCTA and certain Consumer Groups. The meaning of the “discoverability” factor evolved from a previously proposed meaning, which industry objected to as being too subjective, to a meaning that focuses on consumer testing and employee training. This objective definition should make it easier and simpler for covered entities to ensure they are in compliance. Similarly, the meaning of the “consistency and persistence” factor evolved from a previously proposed broader definition, which industry objected to as raising several problems, to a meaning that focuses largely on the use of application programming interfaces (APIs) or comparable tools and the coordination between covered entities. This narrow approach should also make it easier and simpler for small and other covered entities to comply. Additionally, rather than requiring compliance for third-party, pre-installed applications, the Commission explicitly states that the readily accessible requirements do not apply to such applications, which is consistent with the March 2024 joint proposal and will further ease compliance burdens for all entities, including small entities.

In response to commenter ACA Connects, as discussed above, the Commission considered and rejected the request for a blanket compliance exemption for small and medium-sized providers of legacy navigation devices, a streamlined waiver process for such providers, and a later compliance deadline. Our decision is consistent with prior orders, and the record did not provide sufficient justification for the Commission to adopt any other

⁵⁹ Note that in accordance with the statute, achievability only applies to covered apparatus that use a picture screen less than 13 inches in size, whereas technical feasibility may apply to any covered apparatus.

proposed alternatives. To the extent particular small entities find that they are unable to comply with the requirements adopted in the *Third Report and Order*, the waiver and exemption procedures are available to them.

Based on these considerations, the Commission believes that we have appropriately considered both the interests of individuals with disabilities and the interests of small and other entities who will be subject to the rules, consistent with Congress's intent that "to the fullest extent made possible by technology," persons who are deaf and hard of hearing "should have equal access to the television medium."

Paperwork Reduction Act. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ordering Clauses. Accordingly, *it is ordered* that, pursuant to the Television Decoder Circuitry Act of 1990, Public Law 101–431, 104 Stat. 960, and the authority found in sections 4(i), 4(j), 303(r), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 330(b), this *Third Report and Order is adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

It is further ordered that, pursuant to the Television Decoder Circuitry Act of 1990, Public Law 101–431, 104 Stat. 960, and the authority found in sections 4(i), 4(j), 303(r), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 330(b), the Commission's rules *are hereby amended* as set forth in Appendix A, effective thirty (30) days after the date of publication in the **Federal Register**. Compliance with new § 79.103(e) of the Commission's rules, 47 CFR 79.103(e), which may contain new or modified information collection requirements, will not be required until the Office of Management and Budget

has completed its review of any information collection requirements that the Media Bureau determines are required under the Paperwork Reduction Act or two years after the date of publication in the **Federal Register**, whichever is later. The Commission directs the Media Bureau to announce the compliance date for § 79.103(e) by subsequent Public Notice and to revise § 79.103(e) accordingly.

It is further ordered that the Commission's Office of the Secretary *shall send* a copy of this *Third Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this *Third Report and Order* in MB Docket No. 12–108 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 79

Cable television, Communications equipment, Satellite communications, Television.

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 part 79 to read as follows:

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.103 by revising the section heading and adding paragraph (e) to read as follows:

§ 79.103 Closed caption decoder and display requirements for apparatus.

* * * * *

(e) *Access to closed captioning display settings.* Manufacturers of apparatus subject to paragraph (a) of this section and multichannel video programming distributors must ensure that consumers are able to readily access user display settings for closed captioning on apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the

United States and uses a picture screen of any size, if technically feasible, except that the requirement does not apply to third-party, pre-installed applications, and for apparatus that use a picture screen of less than 13 inches in size the requirement is mandated only if doing so is achievable as defined in this section.

(1) In determining whether closed captioning display settings are readily accessible, the Commission will require compliance with the following factors:

(i) *Proximity.* This factor considers whether the closed captioning display settings are available in one area of the settings that is accessed via a means reasonably comparable to a button, key, or icon.

(ii) *Discoverability.* This factor considers whether the user has the ability to easily find the closed captioning display settings. To ensure settings are discoverable, manufacturers of apparatus subject to paragraph (a) of this section and multichannel video programming distributors are required to:

(A) Conduct usability testing to determine if caption display settings can be easily found by working with consumers and disability groups as part of the testing process;

(B) Make good faith efforts to correct problems identified during the consumer testing process; and

(C) Train customer-facing employees on how to advise customers with regard to caption display settings.

(iii) *Previewability.* This factor considers whether viewers are able to preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings.

(iv) *Consistency and persistence.* This factor requires covered entities to:

(A) With regard to an MVPD's provision of navigation devices, expose closed caption display settings via an application programming interface (API) or similar method that an over-the-top application provider can use upon launch of their application on the device. The API or similar method must enable the application provider to use the device-level caption settings for its own content, if it chooses, and covered entities must notify application developers about this API or similar method through any reasonable means;

(B) With regard to providing an MVPD's own video programming application hosted on third-party devices, utilize the operating system-level closed caption settings of the apparatus upon launch of the application on the device; and

(C) Ensure that apparatus they manufacture make closed caption settings available to applications via an API or similar method.

(2) Compliance with this requirement is required for devices that use next generation operating systems deployed after FCC publishes a rule in the **Federal Register** establishing the compliance date.

Note: The compliance date is after the Office of Management and Budget has completed its review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act or August 17, 2026, whichever is later.

(3) This paragraph (e) places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before August 17, 2026.

[FR Doc. 2024–17479 Filed 8–14–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, 223, 226, and 252

[Docket DARS–2024–0026]

RIN 0750–AM21

Defense Federal Acquisition Regulation Supplement: Sustainable Procurement (DFARS Case 2024–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to align the DFARS with changes made to the Federal Acquisition Regulation.

DATES: Effective August 15, 2024.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises the DFARS to align it with changes made to the Federal Acquisition Regulation (FAR). FAR Case 2022–006, published in the **Federal Register** on April 22, 2024, at 89 FR 30210, reorganized and updated FAR part 23. Changes included consolidation of content into particular subparts within part 23 and renaming part 23 along with some of its subparts.

FAR Case 2022–006 also moved nonenvironmental matters, to include requirements for a drug-free workplace, from FAR part 23 to part 26.

To align the DFARS with the FAR, this final rule implements corresponding changes to the DFARS. This rule changes the title of DFARS part 223 to “Environment, Sustainable Acquisition, and Material Safety” and the title of subpart 223.3 to “Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.” This rule adds subpart 223.1, Sustainable Products and Services, and moves the content from subparts 223.4 and 223.8 to the newly added subpart 223.1. It moves the content of subpart 223.5, Drug-Free Workplace, to newly added subpart 226.5, Drug-Free Workplace. Consequently, this rule also relocates the contract clause at DFARS 252.223–7004, Drug-Free Work Force, to DFARS 252.226–7003, Drug-Free Work Force.

As a result of this reorganization, and to correspond to changes in the FAR, this rule renumbers or revises the headings of certain DFARS paragraphs. In addition, editorial changes are made in 252.226–7003, paragraph (a), to conform with drafting conventions for definitions.

None of the changes in this rule affect the DFARS substantively. This rule does not alter policy or requirements stated in the DFARS.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it only renames an existing DFARS part and existing subparts, and relocates DFARS subparts and paragraphs, to align the DFARS with changes made in the FAR. None of these changes to the DFARS are substantive.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. It merely relocates an existing clause from DFARS 252.223–7004, Drug-Free Work Force, to DFARS 252.226–7003, Drug-Free Work Force, without substantive change. The rule does not impact the applicability of any existing solicitation provisions or contract clauses to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 211, 212, 223, 226, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition
Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 211, 212, 223, 226, and 252 as follows:

- 1. The authority citation for 48 CFR parts 211, 212, 223, 226, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS**211.271 [Amended]**

- 2. Amend section 211.271 by removing “subpart 223.8” and adding “223.107–4” in its place.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 3. Amend section 212.301 by revising the heading of paragraph (f)(ix) introductory text to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(ix) *Part 223—Environment, Sustainable Acquisition, and Material Safety.* * * *

* * * * *

PART 223—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

- 4. Revise the heading for part 223 to read as set forth above.
- 5. Add subpart 223.1 to read as follows:

Subpart 223.1—Sustainable Products and Services

Sec.

223.107–1 Products containing recovered materials.

223.107–4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

Subpart 223.1—Sustainable Products and Services**223.107–1 Products containing recovered materials.**

(e) *Procedures.* Follow the procedures at PGI 223.107–1(e).

223.107–4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with section 326, Public Law 102–484 (10 U.S.C. 3201 note prec.). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

- 6. Revise the heading for subpart 223.3 to read as follows:

Subpart 223.3—Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials

- 7. Amend section 223.302 by revising the section heading to read as follows:

223.302 Hazardous material identification and notice of material safety data.

* * * * *

223.303 [Redesignated as 223.304]

- 8. Redesignate section 223.303 as section 223.304.

223.304 [Amended]

- 9. Amend newly redesignated section 223.304 by revising the section heading to read as follows:

223.304 Contract clauses.

* * * * *

Subpart 223.4 [Removed and Reserved]

- 10. Remove and reserve subpart 223.4, consisting of section 223.405.

Subpart 223.5 [Removed and Reserved]

- 11. Remove and reserve subpart 223.5, consisting of sections 223.570, 223.570–1, and 223.570–2.

Subpart 223.8 [223 Removed]

- 12. Remove subpart 223.8, consisting of section 223.802.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

- 13. Add subpart 226.5 to read as follows:

Subpart 226.5—Drug-Free Workplace

Sec.

226.570 Drug-free work force.

226.570–1 Policy.

226.570–2 Contract clause.

Subpart 226.5—Drug-Free Workplace**226.570 Drug-free work force.****226.570–1 Policy.**

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

226.570–2 Contract clause.

(a) Use the clause at 252.226–7003, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts—

(1) For commercial products and commercial services;

(2) When performance or partial performance will be outside the United States and its outlying areas, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.223–7001 [Amended]**

- 14. Amend section 252.223–7001 in the introductory text by removing “223.303” and adding “223.304” in its place.

252.223–7004 [Removed and Reserved]

- 15. Remove and reserve section 252.223–7004.

- 16. Add section 252.226–7003 to read as follows:

252.226–7003 Drug-Free Work Force.

As prescribed in 226.570–2, use the following clause:

Drug-Free Work Force (Aug 2024)

(a) *Definitions.* As used in this clause—

Employee in a sensitive position means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

Illegal drugs means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the “Mandatory Guidelines for Federal Workplace Drug Testing Programs” (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

[FR Doc. 2024–18108 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 252

[Docket DARS–2024–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes.

DATES: Effective August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes to correct mistakes regarding commercial services in DFARS 212.207; the mistakes were part of DFARS Case 2018–D066, Definition of “Commercial Item.” This final rule also corrects a typographical error in a solicitation provision.

List of Subjects in 48 CFR Parts 212 and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 252 as follows:

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.207 [Amended]

■ 2. Amend section 212.207—

■ a. In paragraph (b) introductory text by removing “commercial products and”; and

■ b. In paragraph (b)(iii)(A) by removing “paragraph (1)” and adding “paragraph (2)” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.215–7010 in Alternate I—

■ a. By revising the provision date; and

■ b. In paragraph (d)(1) by removing “237.7002(e)” and adding “234.7002(e)” in its place.

The revision reads as follows:

252.215–7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Alternate I (Aug 2024)

* * * * *

[FR Doc. 2024–18109 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2024–0024]

RIN 0750–AL87

Defense Federal Acquisition Regulation Supplement: Strategic and Critical Materials Stock Piling Act Reform (DFARS Case 2023–D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that revises the name of the Strategic Materials Protection Board.

DATES: Effective August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises the DFARS to implement section 1411 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 1411 repeals 10 U.S.C. 187, which established the Strategic Materials Protection Board, and amends section 10 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–1) to establish the Strategic and Critical Materials Board of Directors. Therefore, this final rule removes the name “Strategic Materials Protection Board” and inserts the new name “Strategic and Critical Materials Board of Directors” in the DFARS.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency

issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule only revises all references to the Strategic Materials Protection Board in the DFARS, with no impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the Federal Register. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of

FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 225 as follows:

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Amend section 225.7003–3 by revising paragraph (b)(1) to read as follows:

225.7003–3 Exceptions.

* * * * *

(b) * * *

(1) Electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to 50 U.S.C. 98h–1, determines that the domestic availability of a particular electronic component is critical to national security.

* * * * *

■ 3. Amend section 225.7018–3 by revising paragraph (c)(2) to read as follows:

225.7018–3 Exceptions.

* * * * *

(c) * * *

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to 50 U.S.C. 98h–1 determines that the domestic availability of a particular electronic device is critical to national security (but see PGI 225.7018–3(c)(2) with regard to samarium-cobalt magnets used in electronic components); or

* * * * *

[FR Doc. 2024–18107 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration****49 CFR Part 1540****Air Cargo Security Threat Assessments; Technical Amendment**

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Transportation Security Administration (TSA) is issuing this technical amendment to the air cargo security threat assessment procedures to correct a technical oversight that limited the type of immigration information noncitizens may submit as part of the immigration vetting process.

DATES: This rule is effective as of August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Ronoy Varghese, Policy Analyst, Air Cargo, Policy, Plans and Engagement, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598; telephone: (571) 227-2230; email: Ronoy.varghese@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION: You can find an electronic copy of this rule using the internet by accessing the Government Publishing Office's web page at <https://www.govinfo.gov/app/collection/FR> to view the daily published **Federal Register** edition or by accessing the Office of the Federal Register's web page at <https://www.federalregister.gov>. Copies are also available by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at <https://advocacy.sba.gov/resources/reference-library/sbreffa/>.

I. Discussion of the Rule

This technical amendment revises 49 CFR 1540.203(c)(8) to correct a technical oversight that limited the type of

information prospective noncitizen¹ air cargo workers and other individuals with access to cargo could submit when applying for a security threat assessment (STA). As described in the Air Cargo Screening Interim Final Rule, 74 FR 47672 (Sept. 16, 2009), the procedures for the STA are codified in 49 CFR part 1540, subpart C. Section 1540.203 requires all applicants to submit certain biographic information to TSA to conduct the STA.²

Paragraph 1540.203(c)(8) requires noncitizens to submit an Alien Registration Number (ARN) that TSA uses to access the pertinent immigration databases. TSA must have this information, or other appropriate identifying documents and information, to complete the immigration portion of the STA. Because there are other documents and information in addition to an ARN that noncitizens may possess that TSA can use to complete the vetting process, it is unnecessary to limit the acceptable documents to the ARN.

For example, applicants may use the Form I-551, Permanent Resident Card; a foreign passport containing a Form I-551 stamp; and certain categories of Form I-766, Employment Authorization Document. Also, applicants may have Customs and Border Protection (CBP) Form I-94 Arrival/Departure Record information that TSA can use to access the database. Note that noncitizens in the U.S. no longer need to complete a paper CBP Form I-94, but can access their Form I-94 online and provide it to employers, schools/universities, or government agencies as needed. (CBP encourages travelers to retrieve their arrival/departure information automatically from the CBP I-94 website, available at <https://i94.cbp.dhs.gov/I94/#/home>.)

Limiting the information noncitizens may submit to only an ARN prevents individuals who possess other appropriate documents and information from applying for the STA. This was an oversight in the rule drafting phase that TSA now corrects through this technical amendment.

This technical amendment does not alter the immigration standard established under part 1540.203, but rather allows eligible individuals to submit other official and legitimate

¹For purposes of this discussion, TSA uses the term "noncitizen" to be synonymous with the term "alien" as it is used in the Immigration and Nationality Act ("INA" or "Act"). See INA 101(a)(3), 8 U.S.C. 1101(a)(3); *Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020).

²This information is used to conduct multiple checks as part of the STA process, including intelligence-related checks and confirming an applicant's identity. See 49 CFR 1540.205.

documents and information to complete the STA. TSA is amending the application form to clarify the documents and information that an applicant may submit to TSA to complete the immigration portion of the STA. TSA will maintain a list of documents on its website that noncitizen applicants may submit as part of the vetting process to facilitate an immigration check.

II. Good Cause and Procedural Rule Exceptions From Notice and Comment and Delayed Effective Date

TSA is issuing this final rule change as a technical amendment without a notice of proposed rulemaking or delayed effective date. The Administrative Procedure Act (APA) authorizes agencies to forgo the notice and comment requirements if it "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B); see also 5 U.S.C. 553(d)(3) (allowing agency to forgo a delayed effective date for a substantive rule upon a finding of good cause).

TSA believes notice and comment concerning the submission of additional immigration documents is unnecessary as it is a limited, insubstantial amendment meant to correct a drafting oversight. It is unnecessary to seek notice and comment on the rule changes because the new language imposes no new substantive burden and corrects an oversight in drafting. Further, it is unnecessary for the rule to have a delayed effective date as the amendment merely expands the types of documents and information an applicant may provide when applying for an STA and is not a substantive change to the rule. For these reasons, TSA believes that bypassing the ordinary notice and comment procedure and the delayed effective date requirement is justified in the totality of the circumstances.

In addition, 5 U.S.C. 553(b)(A) permits agencies to forgo notice and comment when issuing "rules of agency organization, procedure, or practice," i.e., a procedural rule. "A useful articulation of the exemption's critical feature is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency." ³ The exemption "preserve[s] agency flexibility when dealing with limited situations where substantive

³ *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980).

rights are not at stake.”⁴ Here, TSA is correcting an oversight in drafting that relates solely to forms of evidence before the agency. As a matter of agency procedure and practice, TSA is allowing noncitizens to submit additional available and acceptable records in their possession that TSA can use in the vetting process to facilitate an immigration check. In addition, the delayed effective date requirements under 5 U.S.C. 553(d) do not apply to procedural rules.

III. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public, and under the provisions of 44 U.S.C. 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995.

B. Executive Orders 12866 and 13563 Assessment

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

The Office of Management and Budget (OMB) has not designated this technical amendment a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action. This technical amendment reduces the regulatory burden on noncitizens by revising 49 CFR 1540.203(c)(8) to consider additional information and documents that STA applicants can submit to TSA to conduct its immigration check. This technical amendment does not create or change any substantive requirements.

C. Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (RFA)⁵ requires that agencies consider the impacts of their rules on small entities. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The RFA's regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). As discussed previously, DHS did not issue a notice of proposed rulemaking for this action as exempted by 5 U.S.C. 553(b). Therefore, a regulatory flexibility analysis is not required for this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–38, UMRA) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule or final rule for which the agency published a proposed rule, which includes any Federal mandate that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

Regulations are only reviewable under UMRA when an agency has published a notice of proposed rulemaking as defined by 5 U.S.C. 553(b).⁶ This rule is exempted from notice and comment under 5 U.S.C. 553(b). TSA did not publish a notice of proposed rulemaking; thus, this rule is exempt from UMRA's requirements pertaining to the preparation of a written statement.

E. Executive Order 13132

Under Executive Order 13132 (Federalism), agencies must consider whether a rule has federalism implications. TSA has determined that this rule does not have federalism implications because it does not create a substantial direct effect on states, on the relationship between the national government and states, or the distribution of power and responsibilities among the various levels of government.

⁵ Public Law 96–354 (94 Stat. 1164, Sept. 19, 1980), codified at 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁶ *See* 2 U.S.C. 658(10); 5 U.S.C. 601(2).

F. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Trade Agreement Act does not consider legitimate domestic objectives, such as essential security, as unnecessary obstacles. The statute also requires that international standards be considered, and where appropriate, that they be the basis for U.S. standards. This technical amendment will not have an adverse impact on international trade.

G. Energy Impact Analysis

TSA assessed the energy impact of this action in accordance with the Energy Policy and Conservation Act (EPCA),⁷ and determined that this technical amendment is not a major regulatory action under the provisions of the EPCA.

H. Environmental Analysis

TSA has reviewed this technical amendment for purposes of the National Environmental Policy Act of 1969 (NEPA)⁸ and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion numbers A3(a) (for actions of a strictly administrative or procedural nature) and (b) (that implement, without substantive change, statutory or regulatory requirements) in DHS Management Directive 023–01 (formerly Management Directive 5100.1), Environmental Planning Program, and Instruction Manual 023–01–001–01, Rev. 1, which guides TSA compliance with NEPA.

I. The Congressional Review Act

Before a rule can take effect, 5 U.S.C. 801, the Congressional Review Act, requires agencies to submit the rule and a report indicating whether it is a major rule to Congress and the Comptroller General. Under 5 U.S.C. 804(3)(C), rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties are not considered to be a rule for the purposes of the Congressional Review Act. This technical amendment is a rule of agency organization, procedure, or practice that will not substantially affect the rights or obligations of non-agency parties, thus is not required to be submitted for review under the CRA.

⁷ As codified at 42 U.S.C. 6362.

⁸ As codified at 42 U.S.C. 4321–4347.

⁴ *American Hospital Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987).

List of Subjects in 49 CFR Part 1540

Air carriers, Airports, Aviation safety, Security measures.

For the reasons stated in the preamble, the Transportation Security Administration amends 49 CFR part 1540 as follows:

**PART 1540—CIVIL AVIATION
SECURITY: GENERAL RULES**

■ 1. The general authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44925, 44935–44936, 44942, 46105.

■ 2. Amend § 1540.203 by revising paragraph (c)(8) to read as follows:

§ 1540.203 Security threat assessment.

* * * * *

(c) * * *

(8) If the applicant is not a U.S. citizen, the applicant’s Alien Registration Number; a Form I–94 Arrival and Departure record containing

an I–94 number; or other document as authorized by TSA and listed on the TSA website as permissible for this purpose.

* * * * *

Dated: August 8, 2024.

David P. Pekoske,

Administrator.

[FR Doc. 2024–18282 Filed 8–14–24; 8:45 am]

BILLING CODE 9110–05–P

Proposed Rules

Federal Register

Vol. 89, No. 158

Thursday, August 15, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2023-1624; Airspace
Docket No. 24-ACE-7]

RIN 2120-AA66

Establishment of Class E Airspace; Rose Hill, KS

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to establish Class E airspace at Rose Hill, KS. The FAA is proposing this action to support new instrument procedures at this airport.

DATES: Comments must be received on or before September 30, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2023-1624 and Airspace Docket No. 24-ACE-7 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 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.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go 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.

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

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface Class E surface airspace at Cook Airfield, Rose Hill, KS, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed

electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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-14FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective

September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing to amend 14 CFR part 71 by:

Establishing Class E airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Cook Airfield, Rose Hill, KS. This action is to support new instrument procedures and IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE KS E5 Rose Hill, KS [Establish]

Cook Airfield, KS

(Lat. 37°33′55″ N, long. 097°10′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Cook Airfield.

* * * * *

Issued in Fort Worth, Texas, on August 6, 2024.

Steven Phillips,

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

[FR Doc. 2024–17896 Filed 8–14–24; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0327; FRL–12106–01–R9]

Finding of Failure To Attain the 1997 8-Hour Ozone Standards; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Los Angeles-South Coast Air Basin (“South Coast”) ozone nonattainment area failed to attain the 1997 8-hour ozone national ambient air quality standard by its June 15, 2024 “Extreme” area attainment date. This proposed determination is based on quality-assured and certified ambient air quality monitoring data from 2021 through 2023.

DATES: Comments must be received on or before September 16, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0327 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments

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

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, ARD–2, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 972–3964; email address: vagenas.ginger@epa.gov.

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

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I. Background

A. Regulatory Context

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the presence of sunlight.¹ These two pollutants, referred

¹ The State of California refers to reactive organic gases (ROG) rather than VOC in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical

to as ozone precursors, are emitted by many types of sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.²

Under section 109 of the Clean Air Act (CAA or “Act”), the EPA promulgates national ambient air quality standards (NAAQS or “standards”) for pervasive air pollutants, such as ozone. The NAAQS are concentration levels whose attainment and maintenance the EPA has determined to be requisite to protect public health and welfare. In 1979, under section 109 of the CAA, the EPA established primary and secondary standards for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period.³

On July 18, 1997, the EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period.⁴ The EPA set the 1997 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standards were set. The EPA determined that the 8-hour standard would be more protective of human health, especially for children and for adults who are active outdoors, and for individuals with a preexisting respiratory disease, such as asthma.

In March 2008, the EPA completed another review of the primary and secondary ozone standards and

tightened them further by lowering the level for both to 0.075 ppm.⁵ The EPA revoked the 1997 8-hour ozone NAAQS effective April 6, 2015;⁶ however, to comply with anti-backsliding requirements of the Act, areas designated nonattainment at the time that the 1997 8-hour ozone NAAQS was revoked remain subject to certain requirements based on their classification at the time of revocation, including requirements related to nonattainment contingency measures under CAA sections 172(c)(9) and 182(c)(9) and, for “Severe” and “Extreme” areas, major source fee programs under CAA section 185.⁷ The EPA’s determination that an area failed to attain by its attainment date, which is made under CAA section 301 and consistent with section 181(b)(2), triggers these anti-backsliding requirements. *See South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138, 1147 (D.C. Cir. 2018).

The South Coast ozone nonattainment area, excluding areas of Indian country,⁸ lies within the jurisdiction of the South Coast Air Quality Management District (SCAQMD or “District”). Under California law, SCAQMD is responsible for adopting and implementing stationary source rules in the South Coast, such as the fee program rules required under CAA section 185, while the California Air Resource Board (CARB) adopts and implements consumer products and mobile source rules subject to the requirements of CAA section 209. CARB submits the District and State rules to the EPA.

An area is considered to have attained the 1997 8-hour ozone standard if there are no violations of the standard, as determined in accordance with 40 CFR 50.9, based on three consecutive years of complete, quality-assured, and certified monitoring data. A violation occurs when the ambient ozone air quality monitoring data show that the 3-year average of the annual fourth-highest daily maximum 8-hour average

ozone concentrations at an ozone monitor is greater than 0.08 ppm.⁹

B. History of the 1997 8-Hour Ozone NAAQS in the South Coast

The South Coast ozone nonattainment area consists of Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. It encompasses an area of approximately 6,600 square miles and is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east.¹⁰ The population of the South Coast region is over 17 million people.¹¹

Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, the EPA designated the South Coast as nonattainment for the 1997 8-hour ozone standard and classified it as “Severe-17” under CAA section 181(a)(1) and 40 CFR 51.903(a), table 1.¹² This designation and classification became effective on June 15, 2004.

In 2007, California requested that the EPA reclassify the South Coast ozone nonattainment area from Severe-17 to Extreme nonattainment for the 1997 8-hour ozone standard under CAA section 181(b)(3). On May 5, 2010, we granted California’s request and reclassified the area to Extreme effective June 4, 2010, with an attainment date of no later than June 15, 2024.¹³

II. EPA Analysis

A. Applicable Statutory and Regulatory Provisions

For the revoked 1997 8-hour ozone NAAQS, the EPA is required to determine whether an ozone nonattainment area attained the ozone standard by the area’s attainment date solely for purposes of triggering any applicable anti-backsliding requirements. For Extreme areas, applicable requirements triggered upon a finding that an area failed to attain by the attainment date are nonattainment contingency measures and CAA section

constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this proposed rule.

² EPA, Health Effects of Ozone Pollution, available at <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

³ 44 FR 8202 (February 8, 1979).

⁴ 62 FR 38856 (July 18, 1997). Primary standards provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Since the primary and secondary standards established in 1997 are set at the same level, we refer to them herein using the singular “1997 8-hour ozone NAAQS” or “1997 8-hour ozone standard.”

⁵ 73 FR 16436 (March 27, 2008).

⁶ 80 FR 12264 (March 6, 2015).

⁷ 40 CFR 51.1100(o).

⁸ “Indian country” as defined at 18 U.S.C. 1151 refers to: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

⁹ 40 CFR 50.10. As explained in section II.A of this document, due to rounding and truncation conventions the computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

¹⁰ For a precise definition of the boundaries of the South Coast 1997 8-hour ozone nonattainment area, see 40 CFR 81.305.

¹¹ 2022 AQMP, Figure 1–3.

¹² 69 FR 23858, 23882–84 (April 30, 2004) and 40 CFR 81.305.

¹³ 75 FR 24409. This reclassification excluded Indian country pertaining to the Morongo Band of Mission Indians and the Pechanga Band of Luiseño Mission Indians.

185 fee programs.¹⁴ A determination of whether an area's air quality meets the 1997 8-hour ozone standard is generally based on three years of complete, quality-assured, and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations ("SLAMS") in the nonattainment area and entered into the EPA's Air Quality System (AQS) database.¹⁵ Data from ambient air monitors operated by State/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in its AQS database when determining the attainment status of an area.¹⁶ All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR 50.10, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding, based on the truncating conventions in 40 CFR part 50, appendix I). This 3-year average is referred to as the "design value." When the design value is greater than 0.084 ppm at any monitor within the area, then the area is violating the NAAQS. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than or equal to 90 percent, and no single year has less than 75 percent

data completeness, as determined under appendix I of 40 CFR part 50.

The EPA is proposing to determine that the South Coast failed to attain the 1997 8-hour ozone standard by its applicable attainment date; that is, that the average of the annual fourth-highest daily maximum 8-hour average ozone concentration was above 0.08 ppm in the period prior to the applicable attainment date, *i.e.*, 2021–2023. This proposed determination is based on three years of quality-assured and certified ambient air quality monitoring data in AQS for the 2021–2023 monitoring period.

B. Monitoring Network Considerations

Section 110(a)(2)(B)(i) of the CAA requires States to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. In the South Coast, SCAQMD is responsible for assuring that the area meets air quality monitoring requirements. The District's annual network plans describe the air monitoring network as required under 40 CFR 58.10. The EPA reviews these annual network plans for compliance with specific requirements in 40 CFR part 58. With respect to ozone, we have found that the annual network plans submitted by SCAQMD meet the minimum monitoring requirements of 40 CFR part 58. While the EPA has identified some requirements that are not met in these annual network plans, these unmet requirements do not preclude us from determining that the South Coast has failed to attain the 1997 8-hour ozone NAAQS.¹⁷

Finally, the EPA conducts regular Technical Systems Audits (TSAs) where we review and inspect State and local ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data. For the purposes of this proposal, we reviewed the findings from the EPA's most recent TSA of SCAQMD's ambient air monitoring program.¹⁸ The results of this TSA do not preclude the EPA from determining that the South Coast ozone nonattainment area has failed to attain the 1997 8-hour ozone NAAQS.

C. Data Considerations

In accordance with 40 CFR 58.15, SCAQMD certifies annually that the previous year's ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate, taking into consideration the quality assurance findings.¹⁹ There were 27 ozone monitoring sites located throughout the South Coast in calendar years 2021 through 2023: 13 within Los Angeles County, three within Orange County, six within Riverside County, and five within San Bernardino County. Table 1 of this document summarizes the ozone monitoring data from the various monitoring sites in the South Coast ozone nonattainment area by showing the annual 4th highest daily maximum concentrations and design values over the 2021–2023 period. The data summarized in table 1 of this document are considered complete for the purposes of determining if the standard is met.²⁰

TABLE 1—SOUTH COAST OZONE NONATTAINMENT AREA FOURTH HIGH 8-HOUR OZONE AVERAGE CONCENTRATIONS AND DESIGN VALUES (ppm) FOR 2021–2023

General location	Site name (AQS ID)	4th Highest daily maximum			Design value (2021–2023)
		2021	2022	2023	
Los Angeles County:					
East San Gabriel Valley	Azusa (06–037–0002)	0.077	^a N/A	^a N/A	^b Invalid
East San Gabriel Valley	Glendora (06–037–0016)	0.090	0.094	0.102	0.095
Northwest Coastal LA County ...	West Los Angeles (06–037–0113) ..	0.059	0.058	0.064	0.060
Central Los Angeles	Los Angeles—North Main Street (06–037–1103).	0.068	0.073	0.075	0.072
West San Fernando Valley	Reseda (06–037–1201)	0.080	0.078	0.087	0.081

¹⁴ 40 CFR 51.1105(d)(2)(iii).

¹⁵ Generally, a "complete" data set for determining attainment of the ozone is one that includes three years of data. There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the standard.

¹⁶ 40 CFR 50.10; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D, and E.

¹⁷ We have included copies of SCAQMD's annual network plans for 2021–2023 in the docket for this

rulemaking, along with our reviews of these plans and our associated transmittal correspondence.

¹⁸ See letter from Elizabeth Adams, Director, Air and Radiation Division, U.S. EPA Region IX, to Dr. Matt Miyasato, Executive Officer, SCAQMD, dated March 18, 2021, and enclosure titled, "Technical Systems Audit Report, SCAQMD, June 1–June 5, 2020."

¹⁹ We have included SCAQMD's annual data certifications for 2020, 2021, and 2022 in the docket for this rulemaking.

²⁰ The criteria for data completeness are met at most of the ozone monitors over the 2021–2023 period, but are not met for the ozone monitors at the Azusa, LAX Hastings, Mission Viejo, Perris, and Upland stations. However, the failure of these five monitors to meet the completeness criteria does not bear on the question of whether the area is violating because several other monitors within the area are violating the NAAQS.

TABLE 1—SOUTH COAST OZONE NONATTAINMENT AREA FOURTH HIGH 8-HOUR OZONE AVERAGE CONCENTRATIONS AND DESIGN VALUES (ppm) FOR 2021–2023—Continued

General location	Site name (AQS ID)	4th Highest daily maximum			Design value (2021–2023)
		2021	2022	2023	
South Central Los Angeles County.	Compton (06–037–1302)	0.062	0.064	0.068	0.081
South San Gabriel Valley	Pico Rivera #2 (06–037–1602)	0.068	0.070	0.075	0.071
Pomona/Walnut Valley	Pomona (06–037–1701)	0.089	0.088	0.095	0.090
West San Gabriel Valley	Pasadena (06–037–2005)	0.081	0.081	0.086	0.082
South Coastal LA County	Signal Hill (06–037–4009)	0.060	0.058	0.062	0.060
East San Fernando Valley	North Hollywood (06–037–4010)	0.079	0.082	0.085	0.082
Southwest Coastal LA County ..	LAX Hastings (06–037–5005)	^a N/A	^a N/A	^a N/A	^b Invalid
Santa Clarita Valley	Santa Clarita (06–037–6012)	0.097	0.095	0.103	0.098
Orange County:					
Central Orange County	Anaheim (06–059–0007)	0.063	0.060	0.064	0.062
Saddleback Valley	Mission Viejo (06–059–2022)	0.078	^a N/A	^a N/A	^b Invalid
North Orange County	La Habra (06–059–5001)	0.070	0.070	0.077	0.072
Riverside County:					
Banning	Banning Airport (06–065–0012)	0.102	0.093	0.095	0.096
Temecula Valley	Temecula (06–065–0016)	0.078	0.070	0.069	0.072
Perris Valley	Perris (06–065–6001)	0.091	^a N/A	^a N/A	^b Invalid
Metropolitan Riverside County ..	Rubidoux (06–065–8001)	0.091	0.092	0.097	0.093
Mira Loma	Mira Loma (Van Buren) (06–065–8005).	0.093	0.087	0.095	0.091
Lake Elsinore	Lake Elsinore (06–065–9001)	0.090	0.086	0.086	0.087
San Bernardino County:					
Central San Bernardino Mountains.	Crestline (06–071–0005)	0.107	0.105	0.106	0.106
Northwest San Bernardino Valley.	Upland (06–071–1004)	0.097	0.098	^a N/A	^b Invalid
Central San Bernardino Valley ..	Fontana (06–071–2002)	0.099	0.095	0.105	0.099
East San Bernardino Valley	Redlands (06–071–4003)	0.112	0.103	0.105	0.106
Central San Bernardino Valley ..	San Bernardino (06–071–9004)	0.105	0.103	0.107	0.105

^a The required annual 75 percent completeness criterion was not met, therefore the annual 4th highest daily maximum values were not provided.

^b The design values for the Azusa, LAX Hastings, Mission Viejo, Perris, and Upland sites are invalid due to temporary or permanent closures of the sites. All other design values are valid.

Source: EPA, AQS Design Value (AMP480), Report Request ID: 2200476, July 10, 2024. Also see Memorandum dated July 19, 2024, from Jennifer Williams and Ben Wells, EPA, to Docket ID No. EPA–R09–OAR–2024–0327, Subject: “Correction to Design Values for the 1997 8-hour Ozone NAAQS in Los Angeles-South Coast Air Basin, CA Nonattainment Area.”

Generally, the highest ozone concentrations in the South Coast occur in the northern and eastern portions of the area. As shown in table 1 of this document, the highest 8-hour design value at any site in the South Coast ozone nonattainment area for 2021–2023 is 0.106 ppm at both the Crestline site in the Central San Bernardino Mountains and the Redlands site in the East San Bernardino Valley. The design value of 0.106 ppm represents a violation of the 1997 8-hour ozone standard.²¹ Table 1 of this document also shows that, while the highest design values occur in the East and Central San Bernardino Valley, violations occur throughout Los Angeles, Riverside, and San Bernardino Counties.

Taking into account the extent and reliability of the applicable ozone

monitoring network, and the data collected therefrom and summarized in table 1 of this document, we propose to determine that the South Coast ozone nonattainment area failed to attain the 1997 8-hour ozone standard (as defined in 40 CFR part 50, appendix I) by the applicable attainment date (*i.e.*, June 15, 2024).

III. Public Comment and Proposed Action

We are proposing to determine that the South Coast failed to attain the 1997 8-hour ozone NAAQS by its June 15, 2024 attainment date, based on quality-assured and certified ambient air quality monitoring data from 2021 through 2023. The EPA is determining whether this area failed to attain by the applicable attainment date solely for purposes of triggering applicable anti-backsliding requirements. For Extreme areas, applicable requirements triggered upon a finding that an area failed to attain by the attainment date are nonattainment contingency measures and CAA section 185 fee programs. We

will accept comments from the public on this proposal until September 16, 2024.

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 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action 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 any new information collection burden under the PRA not already approved by the OMB.

²¹ For more information, please see “National 8-hour primary and secondary ambient air quality standards for ozone” (40 CFR 50.10) and “Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone” (40 CFR part 50, appendix I).

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.

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 any enforceable duty on any state, local, or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.”

This proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, the EPA has notified the Tribes within the South Coast ozone nonattainment area of the proposed 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 concern an environmental health risk or safety risk.

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 Population

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record indicating that this action is inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 2, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–17573 Filed 8–14–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0016; FRL–12094–01–R3]

Air Plan Approval; Delaware; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve three State implementation plan (SIP) revisions submitted by the State of Delaware to amend Delaware’s motor vehicle emissions inspection and maintenance (I/M) programs, Statewide. Delaware has made several State regulatory amendments to its prior SIP-approved I/M program regulations, to both improve the program and to harmonize its two State I/M program regulations so that the entire State is subject to similar I/M requirements. These SIP revisions apply to both the federally mandated enhanced I/M program applicable to Kent and New Castle Counties that comprise Delaware’s portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE ozone nonattainment area, and also to the Sussex County program, where I/M is not federally required but where Delaware has a prior approved, SIP strengthening I/M program (similar in design to a basic I/M program). The amendments to Delaware’s I/M programs include: a change in program coverage to expand exemptions for new vehicles to seven years; addition of vehicle on-board diagnostic (OBD) testing requirements in the Sussex County program; expanded vehicle coverage to include vehicles weighing between 8,501 to 14,000 pounds gross vehicle weight rating (GVWR), for those vehicles model year 2008-and-newer; harmonization of I/M test requirements applicable to older vehicles to include curb idle exhaust and gas cap pressure tests for vehicles 1995-and-older (replacing existing two-speed idle tests on those vehicles previously performed in Kent and New Castle Counties); phase-in of increased minimum repair cost thresholds for obtaining a repair waiver in Sussex County; and the

addition of a Statewide prohibition on tampering-related repairs in qualifying for an emissions repair waiver. EPA's proposed action is in compliance with the Clean Air Act (CAA) because these SIP revisions comply with applicable requirements of the CAA and EPA regulations, and because this proposed revision of the SIP will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS). The intended effect of this action is to update the approved Delaware SIP to maintain consistency between the State-adopted I/M program rules and the federally approved SIP.

DATES: Written comments must be received on or before September 16, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0016 at www.regulations.gov, or via email to goold.megan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at rehn.brian@epa.gov.

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SUPPLEMENTARY INFORMATION: On March 13, 2023, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted three SIP revisions to EPA to amend its prior SIP-approved motor vehicle inspection and maintenance (I/M) programs applicable to all counties in Delaware.

I. Background

This section provides background for EPA's proposed actions on Delaware's three March 2023 I/M program-related SIP revisions. To provide context, herein we also provide background on the ozone national ambient air quality standard (NAAQS, or "standard") and on Delaware area designations under the ozone NAAQS, which are the pretext for the Federal mandate for CAA I/M program requirements. Finally, we discuss herein EPA requirements for I/M programs for affected ozone nonattainment areas.

A. Clean Air Act Requirements for I/M Programs

As a control measure to reduce air pollutant emissions from in-use motor

vehicles, the CAA requires states with areas designated as moderate, serious, severe, or extreme ozone nonattainment areas, or those lying within an ozone transport region (OTR) (and having a population exceeding designated population thresholds), to establish a motor vehicle I/M program, to inspect motor vehicles' emissions and, if necessary, to require maintenance or repairs to reduce in-use emissions from vehicles that fail such testing.¹ This emissions testing ensures that vehicles are well-maintained and operate as designed and that they do not exceed established vehicle pollutant limits.

Under the CAA, a "basic" I/M program is required for any area classified as a moderate ozone nonattainment area and having a 1990 Census-defined urbanized area with a population exceeding 200,000 persons.² A more stringent, "enhanced" I/M program is required in the Census-defined urbanized area of any ozone nonattainment area classified as serious or worse, where the 1980 Census-defined urbanized area population exceeds 200,000.³ Additionally, in order to prevent transport of air pollution, states or areas within a CAA-defined OTR shall implement "enhanced" I/M within any metropolitan statistical area (MSA) where the 1990 population exceeds 100,000 persons—regardless of the area's nonattainment designation or classification.⁴

B. Background on the History of the Ozone NAAQS and Resulting Delaware Area Ozone Nonattainment Designations and I/M Program Requirements

In 1970, Congress enacted the CAA and authorized the EPA to establish NAAQS for criteria pollutants shown to threaten human health, welfare, and the environment—including ozone. In January 1983, Delaware implemented its first I/M program under Title 7 Natural Resources & Environmental Control of the Delaware Administrative Code, Regulation 26 (7 DE Admin. Code 26) applicable to New Castle County, as a control measure in its SIP. Delaware later recodified this regulatory chapter to Regulation 1126.⁵

¹ See CAA sections 182(b)(4), (c)(3).

² See CAA 182(b)(4) and 40 CFR 51.350(a)(4) and (6).

³ See CAA 182(c)(3) and 40 CFR 51.350(a)(2) and (7).

⁴ See CAA 184(b)(1) and 40 CFR 51.350(a)(1).

⁵ Delaware's Regulation 1126 applies to the Sussex County SIP-strengthening I/M program, which is not required by the CAA, but is substantially similar to an EPA-defined basic I/M program—strengthening the SIP and harmonizing I/M testing across Delaware. Regulation 1131 (then Regulation 31) is a CAA-required, low-enhanced I/

1. Delaware Nonattainment Area Designation and I/M Program Requirements Under the 1979 1-Hour Ozone NAAQS

In 1990, Congress amended the CAA, by adding specific requirements for areas in nonattainment of a NAAQS. In 1991, EPA classified the Philadelphia-Wilmington-Trenton, PA-DE-NJ area as severe ozone nonattainment for the 1979 1-hour ozone NAAQS, triggering a requirement for Delaware to establish an enhanced I/M program (as discussed in the section below summarizing I/M requirements) for its portion of that multi-State nonattainment area—comprised of Kent and New Castle Counties.⁶ As the Wilmington, Delaware, area also lies in the Northeast OTR, as defined under CAA section 184, Delaware's portion of the Census-defined Philadelphia-Wilmington-Trenton metropolitan statistical area (MSA) having population exceeding 100,000 persons is also subject to enhanced I/M (*i.e.*, Kent and New Castle Counties). Sussex County, Delaware, was not part of the Philadelphia-Wilmington-Trenton nonattainment area (and thus not subject to enhanced I/M), and neither did it meet the MSA/population threshold criteria to subject the area to enhanced I/M under CAA section 184 requirements applicable to ozone transport areas.

In 1995 and 1998, Delaware submitted several SIP revisions to EPA, requesting approval of its enhanced I/M SIP revision to satisfy the 1990 CAA requirements for an enhanced I/M program for the Delaware portion of the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area. Delaware availed itself of flexibility in EPA's I/M rule at 40 Code of Federal Regulations (CFR) part 51, subpart S, that allows an enhanced I/M subject area to adopt an enhanced I/M program that meets an alternate "low enhanced" I/M performance standard if the area: (1) has an approved SIP pursuant to CAA requirements for Reasonable Further

Progress (for the period from 1990–1996); (2) does not have a disapproved plan for Reasonable Further Progress for the period after 1996; and (3) does not have a disapproved plan for attainment of the air quality standards for ozone.⁷ EPA refers to this program hereafter as the "low enhanced" I/M program. Delaware's low enhanced I/M program (applicable to the Kent and New Castle Counties of the Wilmington area) was codified at Delaware Code Title 7, Regulation 31.

I/M was not required by the 1990 CAA amendments in Sussex County, as it was designated marginal nonattainment and the Seaford area was not large enough to trigger the MSA-based CAA population threshold for OTR areas or ozone nonattainment-related CAA I/M applicability requirements.⁸ However, Delaware opted to enact I/M in the Sussex County area and submitted to EPA a SIP-strengthening I/M program for Sussex County as part of its 1995 and 1998 I/M SIP submissions to EPA. This SIP-strengthening program, similar in design to a basic I/M program, was codified under Title 7, Regulation 26 of the Delaware Code. The purpose of this Sussex County program was to maintain a Statewide I/M program and to provide additional emission benefits for the neighboring Philadelphia-Wilmington-Trenton 1-hour ozone nonattainment area.

Through a series of actions culminating in a final approval on September 30, 1999, EPA approved several 1995 and 1998 Delaware SIP revisions submitted to satisfy applicable 1990 CAA I/M requirements.⁹ EPA's September 1999 final rule approved

Delaware's new Regulation 31 "low enhanced" I/M program applicable to Kent and New Castle Counties, while retaining Regulation 26 to apply a "SIP strengthening" I/M program (akin to "basic" I/M) in Sussex County. Additional information on EPA's prior approval of Delaware's enhanced I/M program in the Delaware portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (as well as the SIP-strengthening I/M program for Sussex County) can be found in EPA's final approval actions taken upon those SIP revisions, as referenced in footnote 7 of this action.

2. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 1997 8-Hour Ozone NAAQS

In July 1997, EPA revised the ozone NAAQS, replacing the 1979 1-hour primary standard with a more stringent, 8-hour standard.¹⁰ EPA designated the entirety of Delaware as Moderate nonattainment under the 1997 8-hour ozone NAAQS as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area.¹¹ This 1997 Moderate ozone NAAQS classification subjected the area to basic I/M, for those areas also meeting the CAA urbanized area population threshold. The inclusion of Sussex County in the expanded nonattainment area boundary did not result in the expansion of the I/M program for the Philadelphia-Wilmington-Atlantic City nonattainment area, as Sussex County was not part of the census defined urbanized area in 1990 and thus did not trigger the requirement for a basic I/M program in Sussex County under the applicability thresholds under EPA's I/M rule.¹² Rather than be subject to basic I/M, the remainder of the Philadelphia-

⁷ See 40 CFR 51.351(g).

⁸ Section 107(d)(1)(C) provides that each ozone and CO area designated nonattainment, attainment, or unclassifiable immediately before the date of enactment of the CAAA was "designated, by operation of law," as a nonattainment, attainment, or unclassifiable area, respectively. Section 107(d)(2)(A) requires EPA to publish a **Federal Register** notification with respect to this designation, as well as the area's classification and boundary. EPA published these designations for the 1979 1-hr ozone NAAQS in the November 6, 1991 (56 FR 56694) **Federal Register**—listing Sussex County, Delaware as a marginal nonattainment area.

⁹ On May 19, 1997 (62 FR 27195), EPA conditionally approved Delaware's "low enhanced" inspection and maintenance program, submitted by DNREC on February 17, 1995 and supplemented on November 30, 1995. On September 30, 1999 (64 FR 52657), EPA converted its conditional approval of 1995 and 1998 Delaware's I/M SIP to full approval, on the basis of supplemental SIP revisions submitted by DNREC on June 16, 1998 and May 24, 1999. In an August 10, 2010 final rule (75 FR 48566), EPA approved administrative, non-substantive edits made by Delaware to some of rules codified under title 7, resulting in recodification of the Sussex County I/M Regulation 26 and its retitling to Regulation 1126.

¹⁰ On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS, replacing the 1979 primary 1-hour primary standard with an 8-hour standard, based on an ambient air monitoring site's 3-year average of the annual third-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm.

¹¹ Original 8-Hour Ozone (1997) areas were designated July 15, 2004. On June 8, 2007, the United States Court of Appeals vacated the subpart 1 portion of the Phase 1 Rule. The Former subpart 1 nonattainment areas were classified under subpart 2 on May 14, 2012 (77 FR 28424), effective June 13, 2012.

¹² See 40 CFR 51.350(a)(4) and (6). Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of the section, shall implement basic I/M in any 1990 Census-defined urbanized area with a population of 200,000 or more. Sussex County's population did not exceed the urbanized area population threshold for a basic I/M program, the county continued not to be subject to I/M and instead remained an optional, SIP-strengthening program, not bound by CAA I/M requirements.

M program applicable to the New Castle and Kent Counties,

⁶ On November 6, 1991 (56 FR 56994), EPA designated and classified the Philadelphia-Wilmington-Atlantic City consolidated metropolitan area (CMSA) as Severe-15 ozone nonattainment. This includes Kent and New Castle Counties in the Wilmington, Delaware, portion of that CMSA. CAA section 107(d)(1)(C) provides that each area designated nonattainment, attainment, or unclassifiable for the ozone NAAQS immediately before the date of enactment of the CAA "is designated, by operation of law," as a nonattainment, attainment, or unclassifiable area, respectively, and CAA section 107(d)(2)(A) required EPA to publish a **Federal Register** notification with respect to this designation, which EPA did with the November 6, 1991 document effective November 15, 1990.

Wilmington-Atlantic City 1997 ozone NAAQS nonattainment area (including Kent and New Castle Counties in Delaware) remained subject to more stringent enhanced I/M requirements (under the CAA section 184 OTR I/M provision and the area's continued Severe nonattainment classification under the 1979 1-hour ozone NAAQS).

The Philadelphia-Wilmington-Atlantic City 1997 ozone nonattainment area was eventually granted an attainment date extension and later determined to have attained the 1997 standard by its statutory attainment date.¹³ However, the Philadelphia-Wilmington-Atlantic City area was never redesignated to attainment of the 1997 NAAQS, and as such remained subject to I/M requirements under that NAAQS. In March 2015, EPA revoked the 1997 ozone NAAQS in favor of a more stringent ozone NAAQS issued in March 2008. However, due to anti-backsliding requirements, the enhanced I/M program requirement in Kent and New Castle Counties remained in place for the revoked NAAQS.¹⁴

3. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour ozone NAAQS.¹⁵ EPA designated the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (with Delaware's portion of the nonattainment area limited to New Castle County) and Seaford, Delaware as two, separate marginal ozone nonattainment areas for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012).¹⁶ This marginal designation did not add new I/M applicability requirements, allowing the existing SIP-approved I/M program to remain in place unchanged. The Delaware portion of the Philadelphia-Wilmington-Atlantic City area (New

Castle and Kent Counties) continued to be subject to enhanced I/M requirements under anti-backsliding provisions applicable to the prior 1979 ozone NAAQS and under the OTR requirements of CAA section 184.

On May 4, 2016, EPA issued the Philadelphia-Wilmington-Atlantic City area a 1-year attainment date extension to July 20, 2016, and determined that the Seaford nonattainment area attained the 2008 ozone NAAQS by the attainment date.¹⁷ On November 2, 2017, EPA determined that the Philadelphia-Wilmington-Atlantic City area attained the 2008 NAAQS by the July 2016 attainment date.¹⁸ Neither area has been subsequently redesignated to attainment for the 2008 ozone NAAQS under section 107(d)(3) of the CAA. While the Seaford area did not exceed the classification/population thresholds to be subject to I/M, the area continued to operate the prior SIP-approved program for anti-backsliding purposes.

4. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 2015 8-Hour Ozone NAAQS

On October 1, 2015, EPA again revised the 8-hour ozone NAAQS.¹⁹ EPA designated the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area (with Delaware's portion of the nonattainment area limited to New Castle County) as a marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS on April 30, 2018 (effective August 3, 2018).²⁰ As a result, under EPA's initial designations for the 2015 NAAQS, Delaware faced no new I/M obligation, but Kent and New Castle Counties continued to be subject to enhanced I/M requirements under the anti-backsliding requirements of the prior 1979 ozone NAAQS and under the OTR requirements of CAA section 184.

In October 2022, EPA determined that the Philadelphia-Wilmington-Atlantic City 2015 ozone nonattainment area failed to attain by its attainment date (August 3, 2021) and reclassified the area from marginal to moderate nonattainment.²¹ EPA established in that failure to attain/reclassification determination, that a basic vehicle I/M

SIP is required (due by January 1, 2023) for urbanized Moderate areas under the 2015 ozone NAAQS. Existing I/M program areas classified as moderate or worse nonattainment (including areas with a basic or enhanced I/M program implemented under a prior NAAQS) were required to submit a certification SIP demonstrating that the existing program continues to meet applicable CAA requirements for the new ozone NAAQS classification.²² Delaware submitted a SIP revision on March 4, 2024, for the purpose of demonstrating that the existing enhanced I/M SIP for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area meets all applicable requirements for a basic I/M program required by the 2015 ozone NAAQS. However, that SIP revision relies upon updates to the enhanced I/M SIP submitted to EPA as SIP revisions in March 2023 (that we propose to approve as part of this action). So, EPA intends to defer action on the March 4, 2024 I/M certification SIP submission until after we finalize the pre-requisite action on Delaware's March 2023 enhanced I/M update SIP submissions.

II. Summary of Delaware's March 2023 I/M SIP Revisions and EPA's Analysis

A. Overview of Delaware's March 13, 2023 SIP Submissions

Delaware submitted three SIP revisions on March 13, 2023, serving to update the State's existing, SIP-approved I/M programs. These March 2023 SIP revisions pertain to both of Delaware's two I/M programs—the enhanced I/M program applicable to Kent and New Castle Counties and the SIP-strengthening (akin to basic) I/M program in Sussex County. The first of these SIP revisions is an amendment to 7 DE Admin. Code 1131, pertaining to the low enhanced I/M program operated in Kent and New Castle Counties (referred to hereafter as the “Wilmington I/M program,” the “low enhanced I/M program,” or the “Regulation 1131” I/M program).

The second of the March 2023 SIP submittals amends 7 DE Admin. Code 1126 pertaining to the SIP-strengthening I/M program applicable to Sussex County (referred to as the “Sussex County” or “Regulation 1126” program). DNREC revised Regulations 1126 and 1131 to optimize the I/M program and to harmonize the requirements of the two programs, as well as to align Delaware's regulations with a change in State law (*i.e.*, House Bill 246 of the

¹³ On January 21, 2011 (76 FR 3840), EPA granted the Philadelphia-Wilmington-Atlantic City area a 1-year extension of its 1997 ozone attainment date (to June 2011). On March 26, 2012 (77 FR 17341), EPA determined that the Philadelphia-Wilmington-Atlantic City area attained the 1997 ozone NAAQS by the applicable attainment date.

¹⁴ EPA revoked the 1997 ozone NAAQS (March 6, 2015; 80 FR 12264), following promulgation of a more stringent 2008 ozone NAAQS on March 12, 2008.

¹⁵ 73 FR 16436 (March 27, 2008).

¹⁶ 77 FR 30088 (May 21, 2012). Note that Kent County, Delaware was not included in either the Philadelphia-Wilmington-Atlantic City or the Seaford ozone nonattainment areas for the 2008 ozone NAAQS, but Kent County was instead designated by EPA as unclassifiable/attainment. Under EPA's anti-backsliding rules, Kent and New Castle County continued to remain subject to enhanced I/M under prior NAAQS and under CAA section 184 OTR I/M program requirements.

¹⁷ 81 FR 26697.

¹⁸ 82 FR 50814.

¹⁹ See 80 FR 65292 (October 26, 2015).

²⁰ See 83 FR 25776 (June 4, 2018). For the 2015 ozone NAAQS, the Delaware portion of the Philadelphia-Wilmington-Atlantic City 2015 ozone nonattainment area includes Kent and New Castle Counties in Delaware. In the same action, EPA designated the Seaford area (Sussex County) as attainment for the 2015 ozone NAAQS.

²¹ See 87 FR 60897 (October 7, 2022).

²² *Id.* See Section II.E of the October 7, 2022 final rule (87 FR 60897, 60906) and the April 13, 2022 proposal (87 FR 21842).

2017 Delaware General Assembly legislative session), which altered subject vehicle applicability of the program by changing the exemption for new vehicles from five to seven years.²³

Delaware's third SIP submittal of March 2023 serves to correct an error made by the State in a 2012 State regulatory action, which inadvertently incorporated *Delaware's Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131* into Regulation 31. Delaware never requested that EPA incorporate the 2012 version of Regulation 1131 into the SIP, so that error did not translate to the SIP. However, Delaware's March 2023 SIP revision requests that EPA incorporate the now non-regulatory *Plan for Implementation* as additional supporting materials for inclusion into the SIP, for the purpose of meeting Federal I/M requirements at 40 CFR part 51, subpart S, not addressed by the revised Regulations 1126 and 1131.

These regulatory updates to Regulation 1131 serve to update the rules to reflect changes made by Delaware to revise its low-enhanced I/M program as described (*i.e.*, to increase new vehicle I/M program exemptions to seven years, to expand vehicle coverage to include medium-duty vehicles; to change idle testing requirements to curb idle testing, etc.). Additionally, the version of Regulation 1131 being incorporated by reference updates the prior SIP-approved Regulation 31 program to reflect a State regulatory format change made since EPA last approved the SIP, essentially recodifying that program. The proposed

revised Regulation 1131 being incorporated by reference includes the State-adopted January 1, 2023 revised Regulation 1131 (State effective January 11, 2023). The January 1, 2023 sections of Regulation 1131 being adopted include sections 1.0, 2.0 (including 2.1 through 2.6), 3.0 (including revised definitions), 4.0 (including 4.1 through 4.5), 5.0 (including 5.1 through 5.4), 6.0 (including 6.1), 7.0 (including 7.1 and 7.2), 8.0 (including 8.1 through 8.4), and 9.0 (including 9.1 through 9.3). Sections 10 through 13 of Regulation 31 are being removed from the SIP, as are Appendices 1(d), 3(a)(7), 3(c)(2), 4(a), 5(a), 5(f), 6(a), 6(a)(5), 6(a)(8), 6(a)(9), 7(a), 8(a), and 9(a)—as revised by the State on May 15, 2012 (with the State effective date of June 11, 2012).

In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Delaware's revised Title 7, Regulation 1126 entitled "Motor Vehicle Emissions Inspection Program—Sussex County," as published as a final rule in the Delaware Register on January 1, 2023 (effective January 11, 2023). The amended sections of Regulation 1126 being incorporated by reference include Sections 1.0 (including 1.1 through 1.6), 2.0 (including revised definitions), 4.0 (including 4.1 through 4.5), 5.0 (including 5.1 through 5.4), 6.0 (including 6.1), 7.0 (including 7.1 and 7.2), 8.0 (including 8.1 through 8.4), and 9.0 (including 9.1 through 9.3). Section 3.0 of Regulation 1126 and Technical Memorandum 1 and 2 to Regulation 1126 are removed and reserved, based on the January 1, 2023 State rule revisions.

In an August 11, 2010 action, EPA approved into the SIP Delaware's administrative recodification of 7 DE Code 1126.²⁴ Delaware subsequently finalized a State administrative recodification of 7 DE Admin Code 1131 but did not then submit that administrative change as a SIP revision to EPA. As a result, EPA did not at that time approve into the SIP the State's recodification of Regulation 1131. Delaware's March 2023 SIP revision contains a January 2023 State regulation amendment to Regulation 1131, which is based on a prior 2012 revision of that rule that Delaware had not previously requested be approved as part of the SIP. The relevant regulation in the SIP was most recently approved by EPA in October 2001, when it was still Regulation 31 in the Delaware Code. The 2023 SIP revision serves to incorporate by reference the 2023 version of the State rule revision into the Delaware SIP. The effect of doing so will be to incorporate the latest 2023 State rule amendments, as well as the 2012 State amendments. The effect of approving the PFI SIP would be to remove from Regulations 1126 and 1131 some oversight and administrative provisions formerly contained in regulatory addendums and appendices to Regulation 1126 and 1131 and instead to include them in the SIP as additional State supporting materials.

B. Review of Delaware's March 2023 SIP Revisions for Compliance With EPA Requirements

1. Compliance With EPA's Enhanced I/M Performance Standard Requirements

²³ See 21 Delaware Code 2143.

²⁴ See 75 FR 48566.

As part of its rule specifying I/M requirements, codified at 40 CFR part 51, subpart S, EPA established a “model” program for areas required to implement either basic or enhanced I/M programs.²⁵ A state compares its own I/M program design choice with EPA’s applicable model program design. The EPA model program serves as a benchmark, or “performance standard,” the emissions results of which serve as means to compare the resultant emission benefits. The performance standard provides a gauge by which the state and EPA can evaluate the effectiveness of each state’s basic or enhanced I/M program, from the perspective of ozone precursor emissions reductions. As such, states are required to demonstrate that their enhanced or basic I/M programs achieve applicable areawide emission levels that are equal to, or lower than, those which would be realized by the implementation of EPA’s respective model I/M program.

With respect to the enhanced I/M performance standard, EPA originally

designed a single enhanced performance standard option under the 1992 version of its I/M requirements rule.²⁶ However, on September 18, 1995, EPA promulgated the “low enhanced” performance standard described in the Background portion of this action.²⁷ The low enhanced performance standard is a less stringent enhanced I/M performance standard established to avail areas having an approved SIP for Reasonable Further Progress (RFP) for 1996, and that do not have a disapproved post-1996 RFP plan, or a disapproved plan for attainment of the ozone NAAQS. Delaware has demonstrated compliance with CAA requirements for RFP and attainment planning for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area—and thus has used the “low enhanced” performance standard in its prior approved I/M SIP and can continue to do so for updates to its currently approved I/M SIP. The revised performance standard modeling included as part of Delaware’s 2023 SIP submittal is designed to demonstrate

compliance with this “low enhanced” performance standard.

States seeking to amend an I/M program for an area with an existing CAA-mandated, SIP-approved I/M program (e.g., exemption of additional model years of vehicles from their program) must demonstrate that the program continues to meet the applicable performance standard. This might entail upgrading the program in some other way (e.g., by increasing vehicle type or weight class coverage subject to the program) in order to demonstrate the applicable performance standard is still being met. In addition to the performance standard, per CAA section 110(l) the revised program must be shown not to interfere with an area’s ability to attain the NAAQS in a timely manner.²⁸

Table 1, in this document, compares EPA’s low enhanced I/M performance standard with Delaware’s latest program for the March 2023 SIP revisions amending the Wilmington area low enhanced I/M program SIP.

TABLE 1—LOW ENHANCED PERFORMANCE STANDARD COMPARISON FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY OZONE NONATTAINMENT AREA (KENT AND NEW CASTLE COUNTIES)²⁹

I/M program element	EPA low enhanced performance standard	Delaware’s low enhanced I/M program
Network Type	Centralized	Centralized.
Program Start Date	Existing programs—1983; Newly subject areas—1995	New Castle County—1995; Kent County—1991.
Test Frequency	Annual	Biennial.
Model Year Coverage	1968 and newer	1968 and newer (7 newest model years exempt).
Vehicle Type Coverage	Light-duty gasoline vehicles (LDGVs) and light-duty gasoline trucks (LDGTs), up to 8,500 lbs gross vehicle weight rating (GVWR).	1968 and newer LDGVs and LDGTs, up to 8,500 lbs GVWR; and 1970 and newer Medium Duty Gasoline Vehicles (MDVs), up to 14,000 lbs GVWR. ³⁰
Exhaust Emission Test ³¹	Idle Test, (1968–1995 model years) ³²	Curb Idle test (1968–1995 LDVs and LDTs; and 1970–1995).
Emission Standards	1981 and newer—1.2% CO. 1981 and newer—220 ppm HC.	1981 and newer—1.2% CO. 1981 and newer—220 ppm HC.
Emission Control Device Visual Inspection ³³ .	1968–71 PCV valve; 1972 and newer EGR valve	1981 and newer Catalytic converter.
On-board Diagnostics II (OBDII) Inspection.	1996 and newer LDGVs and LDGTs	1996 and newer LDGVs and LDGTs, up to 8,500 lbs GVWR; and 1997 and later LDDVs (light-duty diesel vehicles), up to 8,500 lbs GVWR; and 2008 and newer MDVs (gasoline or diesel), up to 14,000 lbs GVWR. ^{34 35}

²⁵ See 40 CFR 51.351 and 51.352.

²⁶ See original version of EPA’s I/M Requirements Rule (note this version has since been superseded by multiple rule updates), at 57 FR 52950 (November 5, 1992). The enhanced performance standard is specified at 40 CFR 51.351 (57 FR 52950, 52988).

²⁷ See “EPA’s Inspection and Maintenance Flexibility Amendments” Final Rule, at 60 FR 48029 (September 18, 1995).

²⁸ See EPA’s *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* [EPA–420–B–22–034 October 2022], p. 4.

²⁹ See 40 CFR 51.351(g) for the Alternate Low Enhanced Performance Standard.

³⁰ Delaware is newly extending applicability to include 1996 MDVs (up to 14,000 lbs GVWR), subject to OBD testing, with 1970 and newer MDVs subject to curb idle tailpipe testing. Delaware

exempts all pre-1996 model year, diesel-powered vehicles from the I/M program.

³¹ Except for OBDII equipped vehicles, which instead receive an OBDII check in lieu of idle testing. EPA’s position on the use of OBD testing, in lieu of idle tailpipe testing, is detailed in EPA’s Amendments to I/M Program Requirements Incorporating OBD Checks final rule (66 FR 18156; April 5, 2001).

³² See appendix B to 40 CFR part 51, subpart S.

³³ EPA’s MOVES model no longer models the impacts of all enhanced I/M performance standard parameters listed under EPA’s I/M requirements rule, at 40 CFR 51.351, including certain emission control device inspections and pre-1981 test stringency rate.

³⁴ Delaware is newly extending applicability to include MDVs (up to 14,000 lbs GVWR), subject to OBD testing.

³⁵ Excluding exempted new vehicles, up to 7 model years old.

³⁶ EPA’s enhanced performance standard requirements at 40 CFR 51.351(g) require that the state’s program be shown to obtain the same or lower emission levels (relevant to the subject NAAQS) as the model program by January 1, 2002, to within ± 0.02 gpm, through their attainment deadline for the applicable NAAQS.

³⁷ For revisions to a SIP-approved I/M program, the performance standard modeling analysis year is the evaluation date is the date of implementation of the revised I/M program. See EPA’s *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* [EPA–420–B–22–034 October 2022], p. 10. For revisions to an I/M program currently approved into the SIP, the PSM analysis year would be the evaluation date used in the approved SIP or the date of implementation of the revised I/M program, whichever is later.

TABLE 1—LOW ENHANCED PERFORMANCE STANDARD COMPARISON FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY OZONE NONATTAINMENT AREA (KENT AND NEW CASTLE COUNTIES) ²⁹—Continued

I/M program element	EPA low enhanced performance standard	Delaware's low enhanced I/M program
Evaporative system function check.	None	Gas Cap Pressure Test, for 1975–1995 vehicles.
Waiver Rate (for cost-limited I/M repair expenditures).	3%	3%.
Motorist Compliance Rate ...	96%	See Delaware SIP Appendix A of the Delaware Plan for Implementation for program compliance rate.
Evaluation Date ^{36 37}	January 2002	January 2023.

Though Delaware is not required to demonstrate compliance with a performance standard in the Sussex County area, as I/M there was adopted as a SIP strengthening program (as described in section I. of this action), the State elected to demonstrate that the Sussex County program meets EPA's basic I/M performance standard in order

to rely upon the benefits from this program to meet CAA noninterference requirements under section 110(l). Additionally, the Sussex County program provides additional reductions to offset impacts to the Wilmington area program from the changes to that program. Table 2, in this document, shows the I/M program parameters of

the Sussex County program compared to those of EPA's basic I/M performance standard, to show the assumptions used to model the benefits of the Sussex County program and to demonstrate that the revised program does not backslide from that in the approved SIP.

TABLE 2—BASIC I/M PERFORMANCE STANDARD COMPARISON FOR SUSSEX COUNTY SIP STRENGTHENING PROGRAM ³⁸

I/M program element	EPA basic performance standard	Delaware's SIP-strengthening I/M program
Network Type	Centralized	Centralized.
Program Start Date	Existing programs—1983; Newly subject areas—1994	Sussex County—1983.
Test Frequency	Annual	Biennial.
Model Year Coverage	1968 and newer	1968 and newer (7 newest model years exempt).
Vehicle Type Coverage	LDGVs	LDVs and LDTs (up to 8,500 lbs GVWR); MDVs, up to 14,000 lbs GVWR. ³⁹
Exhaust Emission Test ⁴⁰ ...	Idle Test (1968–1995 model years) ⁴¹	Curb Idle test (1968–1995 model years).
Emission Standards	1981 and newer—1.2% CO; 1981 and newer—220 ppm HC.	1981 and newer—1.2% CO; 1981 and newer—220 ppm HC.
Emission Control Device	None	1981 and newer Catalytic converter.
Visual Inspection ⁴² .		
On-board Diagnostics II (OBDII) Inspection.	1996 and newer vehicles	1996 and newer LDGVs and LDGTs (up to 8,500 lbs GVWR); and 1997 and later LDDVs (light-duty diesel vehicles), up to 8,500 lbs GVWR; and 2008 and newer MDVs (gasoline or diesel), up to 14,000 lbs GVWR. ^{43 44}
Evaporative system function check.	None	Gas Cap Pressure Test, for 1975–1995 vehicles.
Waiver Rate (for repair expenditure limits for I/M repairs).	0%	3%.
Motorist Compliance Rate ...	100%	See Appendix A of the Delaware SIP Plan for Implementation for compliance rate.
Evaluation Date ^{45 46}	January 2002	January 2023.

To demonstrate the applicable performance standard has been met, the state must model the emissions benefits of its program against that of EPA's

model program, comparing the results to show that their program is at least as beneficial as the applicable performance standard. For an area subject to I/M

under the ozone NAAQS, this analysis (performed using the latest available version of EPA's Motor Vehicle Emissions Simulator Model (MOVES)

³⁸ See 40 CFR 51.352 Basic I/M Performance Standard.

³⁹ Delaware exempts all pre-1996 model year, diesel-powered vehicles from the I/M program.

⁴⁰ Except for OBDII equipped vehicles, which instead receive an OBDII check in lieu of idle testing. EPA's position on the use of OBD testing, in lieu of idle tailpipe testing, is detailed in EPA's Amendments to I/M Program Requirements Incorporating OBD Checks final rule (66 FR 18156; April 5, 2001).

⁴¹ See appendix B to 40 CFR part 51, subpart S.

⁴² EPA's MOVES model no longer models the impacts of all enhanced I/M performance standard

parameters listed under EPA's I/M requirements rule, at 40 CFR 51.351, including certain emission control device inspections and pre-1981 test stringency rate.

⁴³ Delaware is newly extending applicability to include MDVs (up to 14,000 lbs GVWR), subject to OBD testing.

⁴⁴ Excludes exempted new vehicles, up to 7 model years old.

⁴⁵ EPA's basic I/M performance standard at 40 CFR 51.352 requires that the state's program be shown to obtain the same or lower emission levels as the model program by 1997 for the ozone NAAQS.

⁴⁶ For revisions to a SIP-approved I/M program, the performance standard modeling analysis year is the evaluation date is the date of implementation of the revised I/M program. See EPA's "Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model" [EPA-420-B-22-034 October 2022], p. 10. For revisions to an I/M program currently approved into the SIP, the PSM analysis year would be the evaluation date used in the approved SIP or the date of implementation of the revised I/M program, whichever is later.

entails the comparison of the resultant levels, expressed as a comparison of average grams per mile (gpm), of the ozone precursors nitrogen oxides (NO_x) and volatile organic compounds (VOCs), from highway mobile sources in the I/M area, as derived from MOVES. For purposes of this comparison, the state uses the latest available meteorological and vehicle composition and usage data, keeping constant all other mobile source emission control program assumptions between the model program and state program scenarios.⁴⁷ For comparison

purposes, Delaware also modeled a hypothetical “no I/M” scenario to show the emissions for the same area with no benefits from an I/M program. Delaware used MOVES2014b as the emissions model to generate 2023 evaluation year emissions scenarios. Though EPA has since released newer versions of the MOVES model (*i.e.*, MOVES3 and MOVES4), Delaware commenced development of their MOVES SIP analyses prior to the release of MOVES 3 in 2020.⁴⁸ Table 3, in this document, shows the results of Delaware’s low enhanced I/M

performance standard analysis for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area. As the modeling depicted in Table 3 demonstrates, the NO_x and VOC emission levels meet EPA’s relevant I/M performance standard, as MOVES modeling for both Kent and New Castle Counties demonstrate that both county’s programs are within the regulatory allowance (40 CFR 51.351(g)(13)) of 0.02 gpm as compared to emission levels resulting from EPA’s Low Enhanced Performance Standard of 40 CFR 51.351.

TABLE 3—LOW ENHANCED PERFORMANCE STANDARD MODELING RESULTS FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY I/M PROGRAM FOR A 2023 EVALUATION YEAR (KENT AND NEW CASTLE COUNTIES)⁴⁹

County	I/M program design	NO _x (in grams per mile)	VOC (in grams per mile)
Kent	No I/M Program	0.5139	0.3171
	Low Enhanced Performance Standard	0.4871	0.2869
	Delaware 2023 Program	0.4794	0.2831
	Performance Standard Margin	0.0077	0.0038
New Castle	No I/M Program	0.4236	0.2557
	Low Enhanced Performance Standard	0.3988	0.2289
	Delaware 2023 Program	0.3950	0.2300
	Performance Standard Margin	0.0038	⁵⁰ –0.0011

As described in the Background section of this action, an I/M program is not CAA-required in Sussex County, Delaware—as the Seaford area meets neither the minimum MSA population threshold specified under CAA section 184, nor the minimum urbanized area population threshold for a nonattainment area under CAA section 182. However, Delaware elected to voluntarily implement an I/M program in Sussex County as a SIP strengthening measure and to provide additional ozone precursor emission reductions to benefit the Delaware portion of the Philadelphia-Wilmington-Atlantic City ozone nonattainment area. In order to quantify the benefits of this program, for the purpose of claiming benefits from the program to contribute to attainment of the Philadelphia-Wilmington-Atlantic City nonattainment area, Delaware elected to institute a program design similar to EPA’s basic I/M performance standard.⁵¹ EPA’s review of Delaware’s updates to the Sussex County SIP-

strengthening program finds that the revised program is substantially similar to CAA requirements for a basic I/M program.

2. Demonstrating Noninterference of the Revised SIP Under CAA Section 110(l) With Attainment, Reasonable Further Progress, or Any Other CAA Applicable Requirement

In the case where a state elects to revise its SIP-approved I/M program, in addition to meeting the applicable CAA section 182 program requirements and applicable performance standard compliance, the state must also demonstrate that the revisions to the prior, SIP-approved I/M program will not interfere with the area’s ability to attain or maintain any NAAQS, or with any other applicable CAA requirement. This type of demonstration is known as a CAA section 110(l) noninterference demonstration.

In order to offset any potential increase in emissions due to expansion

of new car I/M exemptions to seven model years (as a result of a State law change (HB 246)), DNREC elected to harmonize inspection requirements more closely between the low enhanced Regulation 1131 program in the Wilmington area and the Regulation 1126 SIP strengthening I/M program in Sussex County. This includes: (1) the addition of OBD II checks to Sussex County; (2) expansion of OBD testing in all counties, to include OBD II testing for model year 2008 and newer medium duty vehicles between 8500–14,000 lbs GVWR; (3) elimination of 2-speed idle tailpipe testing in the Wilmington area, while retaining curb idle tailpipe testing for pre-1996 LDGVs in all areas (including Sussex County); (4) extension of gas cap pressure check testing to pre-1996 I/M-subject vehicles; and (5) retention of visual inspection for catalytic converters in all counties.

See Table 4, in this document, for a comparison in the difference between emissions under the March 2023 SIP

⁴⁷ Requirements for conducting a performance standard analysis are established by 40 CFR part 51, subpart S, with guidance provided by EPA’s guidance document “Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model,” dated October 2022 [EPA-420-B-22-034].

⁴⁸ See “EPA Policy Guidance on the Use of MOVES 2014 for SIP Development, Transportation Conformity, and Other Purposes” (EPA-420-B-14-

008, July 2014), p. 6. Delaware’s SIP modeling was completed in 2019, to support regulatory adoption of Regulations 1126 and 1131. However, those rules were delayed during State adoption and not finalized until January 2023, delaying submission of the SIP until March 2023. This MOVES modeling analysis in support of these SIP revisions commenced prior to the subsequent release by EPA of MOVES3.

⁴⁹ Delaware’s 2023 I/M program amendments expand OBD II testing Statewide, including

expanding existing OBDII testing requirements in Kent and New Castle Counties on MDV’s to include MDV’s up to 14,000 lbs GVWR.

⁵⁰ Kent County, Delaware’s VOC emission factor for the State’s 2023 I/M Program falls within the 0.02 gpm margin of EPA’s enhanced model enhanced performance standard program, as granted under EPA’s enhanced I/M performance standard requirements at 40 CFR 51.351(g)(13).

⁵¹ See CAA section 182(b)(4) and 40 CFR 51.352.

revision I/M programs and the prior SIP-approved Delaware I/M program.

TABLE 4—CAA 110(l) NONINTERFERENCE DEMONSTRATION—DIFFERENCE BETWEEN DELAWARE'S BASELINE (PRIOR, APPROVED SIP PROGRAM) AND THE 2023 REVISED I/M PROGRAM (ALL PROGRAM AREAS) ⁵²

County	Program description	Difference from baseline SIP in carbon monoxide (CO) (tons per year)	Difference from baseline SIP in VOC (tons per year)	Difference from baseline SIP in NO _x (tons per year)
Kent	Baseline SIP Program .....	.....	.....	.....
	2023 Revised I/M Program	+17.1	+0.3	+0.7
New Castle	Baseline SIP Program .....	.....	.....	.....
	2023 Revised I/M Program	+184.0	+10.1	+7.8
Sussex	Baseline SIP Program .....	.....	.....	.....
	2023 Revised I/M Program	− 594.2	− 112.0	− 54.1
Net Change (State-wide).	2023 Revised I/M Program	− 393.1	− 101.6	− 45.6

Table 4, in this document, shows that there is a slight increase in annual emissions attributed with Delaware's 2023 SIP revision (due primarily to expansion of new car exemptions) in the Wilmington area counties, as compared to the prior SIP program. However, the small increase in emissions (due to revision of Regulation 1131) within the Philadelphia-Wilmington-Atlantic City nonattainment area is offset by an overall net decrease in emissions from the I/M program Statewide, due to program improvements made Statewide and in particular benefits (due to upgrade of the Regulation 1126 I/M program) in upwind Sussex County.

The Sussex County, SIP-strengthening program was never a CAA-required emission control measure, nor were the emissions benefits attributed to the Sussex County I/M program part of any reasonable further progress demonstration or attainment demonstration for any NAAQS, nor any redesignation/maintenance plan for any NAAQS. Therefore, the reductions attributed to the Sussex program are "surplus." The Regulation 1126 SIP-strengthening program is considered "permanent" and "enforceable," in that it is required by State regulation (without sunset) and has been approved as part of Delaware's SIP for several decades. While Delaware could elect to discontinue I/M in Sussex County in the future, its removal from the SIP would warrant a 110(l) demonstration showing that the removal of the program would not impact the ability of any area to attain the NAAQS or demonstrate RFP, nor interfere with any other applicable

CAA requirement. The emissions reductions from the Sussex County I/M program occur in a county adjacent to the Philadelphia-Wilmington-Atlantic City ozone nonattainment area, providing nearby and surplus emission reductions directly upwind from the Philadelphia-Wilmington-Atlantic City nonattainment area.

In showing that all ozone and fine particulate matter precursor pollutants (NO_x and VOC), as well as the pollutant CO, are decreased from the 2023 SIP revised program relative to the prior, SIP-approved program, Delaware has demonstrated that the 2023 SIP revision to amend the approved SIP will not interfere with attainment of any NAAQS, reasonable further progress, or any other applicable requirement.

C. EPA's Evaluation of Delaware's SIP Revisions

EPA has reviewed Delaware's changes to its enhanced I/M program that differ from the previous federally approved program and has determined that these changes meet the requirements of CAA sections 182 and 184, EPA's I/M Requirements Rule at 40 CFR part 51, subpart S, as well as all other EPA guidance relevant to I/M programs that are cited in this action. EPA finds that Delaware's revised program meets applicable I/M performance standards of 40 CFR part 51.351 and has been shown to comply with the NAAQS noninterference provisions of CAA section 110(l). Delaware's revisions to its SIP-strengthening 1126 program in Sussex County and the incorporation of the *Plan for Implementation* as

additional supporting materials for inclusion into the SIP are similarly approvable. EPA therefore proposes to find that that Delaware's SIP revisions are approvable into the SIP.

EPA will continue to evaluate the effectiveness of Delaware's enhanced I/M program for the Delaware portion of the Philadelphia-Wilmington-Atlantic City I/M program through the annual and biennial reports submitted by Delaware in accordance with 40 CFR 51.366, "Data analysis and reporting," and with the ongoing program evaluation requirements set forth at 40 CFR 51.353(c).

EPA's review of this material indicates that Delaware's requested SIP revisions submitted on March 13, 2023, to amend the SIP-approved I/M program for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area meets all applicable requirements for an enhanced I/M program under CAA section 182 and 184. The SIP strengthening program in Sussex County meets applicable requirements for a basic I/M program. The program enhancements made to both programs have been shown to meet the applicable EPA performance standards, as required by 40 CFR part 51. The improvements made have been shown to offset emission increases brought about by expansion of the new vehicle test exemption to seven years.

III. Proposed Action

Pursuant to the analysis above, EPA is proposing to approve the relevant revisions to the Delaware I/M rules at 7 DE Admin Code 1126 (for Sussex

⁵² The Baseline SIP program is the I/M program, as of 2017, including exemption of vehicles up to 5 years old from testing. The 2023 Revised I/M program includes the disbenefit of expanding the new car exemption from 5 to 7 model years old, but

offsets that emissions increase through the expansion of OBD testing to the Sussex County SIP strengthening program, the expansion of OBD checks in all counties to cover MDVs up to 14,000 lbs GVWR, the expansion of idle testing to LDVs

and LDTs up to 8,500 lbs Statewide (*i.e.*, including Sussex County), and a gas cap pressure check for all pre-1995 I/M-subject vehicles.

County) and 7 DE Admin. Code 1131 (for Kent and New Castle County), as submitted on March 13, 2023. For Regulation 1126, this involves incorporating by reference amendments to sections 1.0 through 9.0 and the removal of Technical Memorandum #1 and Technical Memorandum #2. For Regulation 1131, this entails incorporation of a State recodification of the regulation to reflect a State format change made in 2012, as well as incorporation of regulatory amendments made in 2012 and 2023. This results in a reformat of the prior SIP-approved Regulation 31, replacing sections 1 through 13 with the new format Regulation 1131, reflecting sections 1.0 to 9.0 as amended in January 2023, as well as removal of prior codified portions of Appendices 1, 3, 4, 5, 6, 7, 8, and 9.

EPA is also proposing to approve a SIP revision dated March 13, 2023, submitting for inclusion to the SIP Delaware's "Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131". This PFI details the means by which the Delaware SIP provides for the implementation, maintenance, and enforcement of the ozone NAAQS. Delaware inadvertently added this PFI language to their regulation in a State action dated May 15, 2021. Delaware mistakenly included what were intended as non-regulatory planning provisions to support the I/M regulation as part of a State amendment to Regulation 1131—Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI). In January 2023, Delaware acted to remove the PFI from Regulation 1131,⁵³ instead making it a standalone, non-regulatory document for inclusion in the SIP to support both Regulation 1131 and Regulation 1126. Delaware has requested that EPA add this PFI document for Regulations 1126 and 1131 as additional materials for inclusion in the Delaware SIP, rather than incorporating these materials into State regulation for incorporation by reference by EPA as part of the SIP.

EPA proposes to grant Delaware's request to approve the now non-regulatory PFI documents as additional supporting, non-regulatory State materials to the SIP.

Approval of these three March 13, 2023 proposed SIP revisions will enable the Department to formally address EPA's applicable CAA 182 and 184 I/M

requirements, as well as other SIP requirements under CAA section 110, and incorporate the same into Delaware's SIP document.

EPA is proposing to approve three Delaware SIP revisions for their I/M programs in the Delaware portion of the Philadelphia-Wilmington-Atlantic City area and the Sussex Area, as well as their accompanying PFI SIP revision, all of which were submitted on March 13, 2023. EPA is soliciting public comments on the proposed SIP revisions discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Delaware's revised Title 7, Regulation 1131 entitled "Motor Vehicle Emissions Inspection Program—Kent and New Castle Counties", as State-adopted on January 1, 2023—including updates to revisions made by the State on June 12, 2012, as described in section II.A. of the preamble. In accordance with requirements of 1 CFR 51.5, EPA is also proposing to incorporate by reference Delaware's revised Title 7, Regulation 1126, entitled "Motor Vehicle Emissions Inspection Program—Sussex County", as published as a final rule in the Delaware Register on January 1, 2023 (effective January 11, 2023).

EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

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

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

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

In addition, this proposed rule, to approve three March 13, 2023 Delaware SIP revisions related to the vehicle I/M program, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

⁵³ Regulation 1131—Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI) was repealed effective January 11, 2023.

commercial operations or programs and policies.”

The Delaware Department of Natural Resources and Environmental Control did not evaluate environmental justice considerations as part of its revised enhanced I/M program 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 proposing approval of Delaware’s revision of its enhanced I/M program SIP revision, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–18173 Filed 8–14–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–195, 11–10; FCC 24–72; FR ID 233874]

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on proposed changes to the availability data filing and validation processes.

DATES: Comments are due on or before September 16, 2024, and reply comments are due on or before October 15, 2024.

ADDRESSES: You may submit comments, identified by WC Docket No. 19–195

and WC Docket No. 11–10, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8 a.m. and 4 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Will Holloway, Broadband Data Task Force, at William.Holloway@fcc.gov or (202) 418–2334.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Fourth Further Notice of Proposed Rulemaking in WC Docket Nos. 19–195 and 11–10, released on July 12, 2024. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-takes-steps-update-broadband-data-collection-processes> or by using the Commission’s EDOCS web page at www.fcc.gov/edocs.

Providing Accountability Through Transparency Act Statement.

The Commission seeks comment on proposed changes to the Broadband Data Collection (BDC) availability data filing process that would limit publication of data on “grandfathered” services, collect terrestrial fixed wireless spectrum authorization information, and additional certifications and supporting data from satellite broadband providers. Additionally, the

Commission seeks comment on amendments and clarifications to several of its BDC data validation rules regarding data retention, sharing Fabric challenges with providers, the professional engineering certification requirement, audits and verification outcomes, restoring locations previously removed from the map, aligning reporting requirements for broadband availability and subscribership data, and adding a new rule section for Fabric challenges. Available at: <https://www.fcc.gov/proposed-rulemakings>.

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission’s rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Synopsis

I. Summary of the Fourth Further Notice of Proposed Rulemaking

A. Modifications to the FCC's Availability Data Collection Requirements

1. Limiting Publication of Data on "Grandfathered" Services

1. We seek comment on whether we should limit the publication of availability data to avoid the potential for releasing subscribership information, typically treated as confidential in other contexts, with respect to grandfathered services that providers are phasing out.

2. Background. The Broadband DATA Act mandates that the Commission collect data on the availability of "broadband internet access service" which, for purposes of the Act, "has the meaning given the term in § 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation." Under this rule, broadband internet access service is a "mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service."

3. In the Third Report and Order (86 FR 18124, April 7, 2021), the Commission clarified that all facilities-based providers of broadband internet access services are required to comply with the requirements of the BDC. Fixed broadband internet access service providers must report the maximum advertised download and upload speeds associated with the service available at a location. Accordingly, the BDC collects availability data from a wide array of service providers encompassing a broad range of technologies and service types. The data collection covers both new and novel services, as well as legacy services that providers are in the process of permanently discontinuing. In the latter case, a filer may provide facilities-based broadband internet access service to existing subscribers at particular locations, but no longer market or sell that service to potential or new customers in the area and would not continue offering the service to a location once the existing subscriber disconnects that service at the location. In such instances, the effect of the filing requirement is that the availability data submitted by the provider for this service could essentially be a list of current subscribers of the service. The Commission routinely treats

subscribership data submitted as part of the FCC's Form 477 as confidential.

4. Certain providers have expressed concern that publishing availability data for grandfathered services could reveal confidential subscribership information. For example, Verizon recently requested confidential treatment of its incumbent local exchange carriers' DSL service availability data submitted as part of its December 2023 BDC filing because the data reflect "only those locations where [Verizon] currently provide[s] service to an existing customer, thereby resulting in the reporting of confidential customer-identifiable location and service information of those customers." Verizon noted that "[a]lthough the Commission generally favors disclosure of service availability information, the nature of the DSL availability information [Verizon is] required to report will reveal the precise number of [its] subscribers in an area, plus the customer address and type of service provided to each DSL customer and cannot be masked by non-customer locations where the service is no longer offered." We seek comment on whether publication of availability data for grandfathered services should be limited.

5. Discussion. We propose to amend our rules to permit filers to indicate that the service offered at a location is a grandfathered service only. We further propose that in cases where a provider submits a request for confidential treatment of such data, and such a request is not denied, we would not publish such data as part of the location-specific availability information in the National Broadband Map (NBM). We also propose that information on the availability of these services would only be disclosed by the Commission on an aggregated, redacted or otherwise de-identified, differentiated or masked basis. The Commission would afford those data the protections from disclosure already established for subscription data gathered via FCC Form 477, and treated as confidential.

6. We believe there are multiple benefits to this approach. First, it would enable the Commission to collect and analyze more in-depth, useful information on the nature of fixed broadband services (whether they are grandfathered or not), thereby forming a more nuanced and comprehensive picture of broadband service availability. Second, it would better protect against potential disclosure of confidential customer information. Third, not showing on the NBM locations where a service has been discontinued and is available only to

legacy subscribers (but not to any new or potential subscribers in the future) could provide more helpful information to consumers about broadband availability. We seek comment on these proposals. Are there any alternative approaches we should consider that would appropriately protect data that could constitute subscribership information and provide accurate information on the services that are actually available at a particular location? Are there alternatives we should consider for the types of information and format the Commission discloses about grandfathered services, or the protections afforded to this data?

7. We seek comment on how to define a "grandfathered" service for purposes of reporting broadband availability and making data on such services potentially eligible for this differentiated treatment on the NBM. We propose to define a "grandfathered" service similar to the definition used in other areas of our rules: any broadband internet access service that is currently provided to an existing end user at a Broadband Serviceable Location, but that a facilities-based provider is discontinuing, has permanently ceased to advertise or market to new or potential subscribers, and would not make available to a new or potential subscriber at the Broadband Serviceable Location. We seek comment on this proposed definition. We note that this proposed definition would not encompass locations where the provider is willing to connect a new end user but the potential customer is "waitlisted" due to capacity constraints that exist on the as-of date of the biannual BDC submission; it would similarly not include locations where a provider is unable to conduct a standard broadband installation within 10 business days due to equipment unavailability, capacity constraints or other limitations. Under our proposal, service to locations in these circumstances would not be considered grandfathered. Would this proposed definition, if adopted, provide sufficient clarity to BDC filers to know whether or not a particular service would be considered a grandfathered service? Are there alternative definitions we should consider?

8. We also seek comment on whether we should adopt any requirements pertaining to the size of the area where the service is no longer advertised or marketed in order to qualify as a "grandfathered" service. Must the provider cease marketing and selling the service throughout its entire footprint before it qualifies as a grandfathered service? How should the Commission treat a service provider with a multi-

state footprint who ceases marketing or selling the service in one or more states, but continues to offer the service in the other state(s) within its footprint? Should such a provider be permitted to claim “grandfathered” status for the service in the state(s) or other remaining geographic area(s) where it no longer markets or sells the service (and would not make it available to new or potential subscribers)?

9. We seek comment on whether we should adopt a process for a provider to “undo” a prior claim of grandfathered status. If we were to adopt such a process, what evidence, if any, should we require the provider to submit in support of a request to reverse a prior claim of grandfathered service status?

10. What measures, if any, should we adopt to protect against potential gaming of the protections we propose for “grandfathered” services? For example, should we require a service provider to include with its request for confidential treatment an affidavit, declaration or other certification that it does not currently market or sell to new or potential subscribers, and will not market or sell to new or potential subscribers in the future, the service reported as a grandfathered service in the system? Should we require that any such certification or other attestation be executed by a corporate officer of the filer? Should we require the filer to submit evidence that it no longer markets or sells to new or potential subscribers the reported service, and, if so, what types of evidence would be acceptable? Are there other measures we could adopt to protect against possible gaming? Alternatively, should Commission staff instead rely upon existing tools, such as verifications, audits, and enforcement mechanisms, to investigate and validate claims of grandfathered services?

11. We also seek comment on whether we should collect information on other attributes related to potential limitations on the availability of a particular broadband service. For example, should we have providers indicate that a service is made available to existing subscribers in an area, but is not marketed or sold in the area temporarily due to capacity constraints on the “as-of” date of the biannual BDC submission (though it will be marketed or sold in the area once those capacity constraints were alleviated)? In addition, while all broadband service transmission technologies are theoretically capacity constrained, certain services—such as spectrum-based terrestrial fixed wireless and satellite services—can be more affected by capacity considerations than

traditional wireline services. In such cases, a provider may be able to connect service on a marginal basis to some, but not all, of the locations included in its availability data (if, theoretically, all the residents or businesses at such locations were to request service at the same time), or it may not be able to offer service to all of the locations at the reported maximum advertised speeds, due to network capacity constraints. Further, some providers have indicated that they offer certain broadband services only on a seasonal basis. Should we amend the BDC fixed availability reporting requirements so that the various circumstances or conditions mentioned above, as well as others, can be captured in the collected data? How should such circumstances, conditions, or factors be reported? What type of burden does distinguishing service attributes place upon facilities-based providers who file data in the BDC?

12. We additionally propose to allow filers to request confidential treatment pursuant to 47 CFR 0.459 for broadband availability data in the limited circumstance where the services are marked as grandfathered and for other analogous situations where the filed data would inherently disclose the coverage information of existing customers. We propose that all other filed broadband availability data submitted in the BDC would be available to the public. The Broadband DATA Act requires the Commission both to collect data from each provider reporting the areas to which it can and does make broadband services available and to allow for consumers and entities to challenge the accuracy of “any information submitted by a provider regarding the availability of broadband internet access services.” The Commission has previously made clear that information filed in the BDC “will be presumed to be non-confidential unless the Commission specifically directs that it be withheld” and has otherwise been skeptical of filer arguments about the confidentiality of broadband availability data generally. We continue to conclude that, in most circumstances, the public interest in disclosure of BDC availability data outweighs any commercial or competitive harm to the provider. Clarifying the circumstances under which we would consider confidentiality requests for availability data would provide additional certainty to filers and challengers of broadband availability data alike, while further streamlining the process by which the Commission processes and publishes

such data. To be clear, we do not propose to limit the circumstances under which filers may request confidential treatment of data other than broadband availability data that are submitted into the BDC, including subscription data or supporting data (including, *e.g.*, link budget parameters or coverage methodology information). We seek comment on this proposal. Are there other categories of broadband availability data for which we should continue to entertain requests for confidential treatment? How can we best balance the goals of the Broadband DATA Act and our responsibilities in administering the BDC program with competing concerns about the sensitivity of required data?

13. We propose requiring service providers to report attributes about the nature of service availability in their location- or area-specific availability data submissions. We propose revising our Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data to enable filers to report, and the BDC system to collect, data reflecting services with a grandfathered status or any other attributes. We seek comment on these proposals.

2. Collecting Terrestrial Fixed Wireless Spectrum Authorization Information

14. We next seek comment on changing our rules to require terrestrial fixed wireless providers to submit additional information that would allow the Commission to better verify terrestrial fixed wireless service availability data submitted in the BDC.

15. Background. The Broadband DATA Act required the Commission to provide two methods for terrestrial fixed wireless broadband internet access service providers to file their availability data: (1) propagation maps and model details that “satisfy standards that are similar to those applicable to providers of mobile broadband internet access service . . . , taking into account material differences between fixed wireless and mobile broadband internet access service” or (2) as a list of locations that constitute the service area of the provider. The Commission implemented these requirements in the Second Report and Order (85 FR 50886, August 18, 2020). When submitting their availability data, fixed providers must disclose the details of how they generated their coverage polygons or list of locations. The Second Report and Order adopted categories of parameters and details that fixed wireless providers submitting availability coverage polygons based on propagation maps and model details

must disclose to the FCC as part of their BDC submissions. Examples of these requirements include base station information (such as the frequency band(s) used to provide service being mapped, carrier aggregation information, the radio technologies used on each spectrum band, and site information such as the elevation above ground level for each base station), height and power values for receivers or other customer premises equipment, and terrain and clutter information. The Commission did not specify comparable disclosure requirements for supporting data that terrestrial fixed wireless providers that file location lists must submit as part of their biannual BDC submission.

16. In March 2022, prior to the opening of the initial BDC filing window, the Broadband Data Task Force released data specifications detailing the categories and format of data that broadband service providers must submit in the BDC system to satisfy their filing obligation. The data specifications originally included two technology codes to differentiate terrestrial fixed wireless services: technology code 70, used to report unlicensed terrestrial fixed wireless service, and technology code 71, used to report licensed terrestrial fixed wireless service. A third terrestrial fixed wireless technology code (72: Licensed-by-Rule Terrestrial Fixed Wireless) was added in January 2023. The codes are intended to characterize the last-mile fixed wireless technology used to deliver internet access services to end users.

17. The Commission has an affirmative obligation to verify providers' broadband availability data filed in the BDC. In verifying availability based on terrestrial fixed wireless service, we must also ensure that the reported availability is authorized based upon applicable FCC spectrum licenses or other forms of authorizations (as reported by technology category code), as a claim of terrestrial fixed wireless service availability would be invalid if the service provider's operations were unauthorized. There are three ways to be authorized to operate a terrestrial fixed wireless service in accordance with the FCC's rules: providers may possess a license; may be licensed-by-rule (LBR); or may operate via unlicensed spectrum in accordance with Part 15 of the Commission's rules.

18. Discussion. We seek comment on proposed rule changes that will allow the Commission to better verify the terrestrial fixed wireless service availability data submitted in the BDC. First, we propose that fixed wireless

filers reporting licensed service (*i.e.*, technology code 71—Licensed Terrestrial Fixed Wireless) in their biannual BDC filings be required to submit the following additional information: (1) all call signs and lease IDs (including the call sign(s) of the license(s) being leased) associated with the licenses held or leased by the filer that were (or could have been) used to provide broadband service as of the relevant BDC filing date (*i.e.*, June 30 or December 31); and (2) the FCC Registration Number (FRN) of the entity holding the license or lease as recorded in the FCC's Universal Licensing System (ULS). Collecting this information will provide the most direct way to verify the permissibility of these operations, as it will allow staff to compare the reported coverage with the geographic areas associated with spectrum licenses or leases, as well as any transmitter locations, in ULS. If a BDC coverage area is found to be incongruous with the geographic area associated with the provisioning authorization(s) as assessed via call sign data, this may prompt further review by staff, form a credible basis for a verification request, or potentially trigger a future audit. We propose updating the BDC data specifications to implement this requirement. We seek comment on this approach, as well as on potential alternatives to verify coverage of providers offering licensed terrestrial fixed wireless service.

19. We note that terrestrial fixed wireless services operating in the Citizens Broadband Radio Service (CBRS) may be authorized via either Priority Access Licenses or under General Authorized Access (LBR or GAA) rules, and therefore fall under either technology code 71 or 72, respectively, in BDC filings. CBRS operators licensed under the former have associated call signs in ULS, and—as described above—we propose and seek comment on requiring them to report in their biannual BDC filings a comprehensive list of the call signs they use to provide the fixed broadband services reported in the BDC. Service providers authorized using LBR/GAA (*i.e.*, technology code 72) do not receive call signs in ULS for that technology, but records of GAA registrations are maintained by automated frequency coordinators known as Spectrum Access Systems (SASs). Given that the Commission has an obligation to verify all reported broadband coverage, regardless of whether the service is offered using licensed or LBR spectrum, we propose requiring operators that claim LBR/GAA terrestrial fixed

wireless service availability in the BDC using GAA-authorized base stations to provide proof of authorization by a SAS for the relevant BDC filing date. We propose collecting such data in structured formats to ease with its processing and evaluation, and seek comment on the most efficient way to do so. We also seek comment on whether there are other ways to verify the reported coverage of providers using GAA or any other LBR service.

20. Finally, we note that providers offering broadband service using unlicensed terrestrial fixed wireless technology(ies) do not receive call signs in ULS and do not require authorization from a SAS to operate their base stations, though they may be subject to other regulatory requirements, such as static or automated frequency coordination. It therefore is not possible to compare the locations or geographic areas where they report service availability with call signs (as is possible for licensed services) or using SAS database records (as is possible for LBR services). In cases where filers are authorized on an unlicensed basis under part 15 of the FCC's rules, we propose requiring the provider to file the FCC ID(s) of all base station transmission equipment used, and seek comment on whether there are other methods for validating that the service is authorized under the Commission's part 15 rules. We seek comment on this proposal and any other ways, beyond those mentioned above, to verify coverage of terrestrial fixed wireless providers offering service using unlicensed fixed wireless technologies (*i.e.*, technology code 70).

3. Additional Certifications and Supporting Data From Satellite Providers

21. We also seek comment on requiring additional certifications and supporting data from satellite providers to improve the quality of data provided to the BDC and improve the Commission's data validation, verification, and audits of satellite availability data submitted in the BDC.

22. Background. The nature of satellite services presents unique challenges for ensuring the accuracy of data concerning satellite broadband service availability in the BDC. In 2019, the Commission sought comment on how it could “improve upon the existing [Form 477] satellite broadband data collection to reflect more accurately current satellite broadband service availability.” At that time, the Commission “recognized there are issues with the quality of the satellite broadband data that are currently

reported under the existing Form 477.” The Commission sought comment on how to improve the satellite broadband availability data reported in its new data collection, including whether it should collect additional information from satellite service providers, such as the number and location of satellite beams and the capacity used to provide service by individual satellites to consumers at various speeds. The Commission also sought comment on “[w]hat issues should be addressed for [non-geostationary orbit] satellite services in the new data collection as they begin to be offered.”

23. In the Second Report and Order, the Commission “continue[d] to seek comment on how we could improve upon the existing satellite broadband data collection,” including whether demand side data might assist the Commission in better ascertaining the availability of these services. The Commission determined in the Third Further Notice of Proposed Rulemaking (85 FR 50911, August 18, 2020) that, “[i]f concrete proposals are not provided to more reasonably represent satellite broadband deployment, we would rely on other mechanisms . . . including standards for availability reporting, crowdsourced data checks, certifications, audits, and enforcement, potentially as well as currently reported subscriber data, in assessing the accuracy of satellite provider claims of broadband deployment.” The Commission did not obtain concrete proposals in response to the Second Report and Order and, accordingly, in the Third Report and Order, it determined that it would rely upon verification measures to help ensure the accuracy of satellite broadband availability data. The Commission did, however, “remind satellite providers that the standards for availability reporting that apply to all fixed services require that satellite providers include only locations that they are currently serving or meet the broadband installation standard. Satellite providers cannot report an ability to serve an area or location without a reasonable basis for claiming that deployment, taking into account current and expected locations of spot beams, capacity constraints, and other relevant factors.”

24. To enable Commission staff to verify availability data as required by the Broadband DATA Act, Office of Economics and Analytics (OEA), and Space Bureau (SB) recently released updated verification data specifications that include common data fields for fixed broadband service providers, and include fields for satellite infrastructure data that satellite service providers use

to estimate their service and coverage. The Broadband Data Task Force notified service providers (including satellite providers) that they must maintain these supporting data for each reporting period, and that the Commission may collect these data in the context of the Commission’s statutory obligations to verify broadband service availability data.

25. Discussion. According to the BDC submissions as of June 30, 2023, satellite broadband service with speeds of at least 25 Mbps download and 3 Mbps upload is available to 164.7 million Broadband Serviceable Locations, or 99.95% of all Broadband Serviceable Locations in the United States. Satellite broadband service with speeds of at least 100/20 Mbps is available to 164.1 million Broadband Serviceable Locations, or 99.6% of all locations. In the context of recent reports under section 706 of the Communications Act, the Commission has found that both “FCC Form 477 deployment data and BDC service availability data for satellite broadband service may overstate the extent to which satellite broadband service is available.” Given this, and the relatively low subscription rate and capacity limitations for satellite services indicated by available FCC Form 477 data, the Commission declined to include in its analysis of fixed broadband service availability any data on satellite services.

26. We propose that satellite providers must include, as a supporting data file accompanying their biannual availability submissions, the infrastructure data set forth in sections 2.3.1, 2.3.2, and 2.3.4 of the BDC Infrastructure Data Specifications (including any subsequent modifications, amendments or successors to those sections). We seek comment on this proposal.

27. Section 2.3.1 of the BDC Infrastructure Data Specifications specifies the format for the submission of records of general operating parameters of a satellite system. The data gathered pursuant to this section of the specifications include the network type (geostationary satellite orbit (GSO), non-geostationary satellite orbit, or other), the total number of satellites in the active constellation, the number of orbital shells deployed in the active constellation, the overall system downlink capacity and the overall system uplink capacity. Section 2.3.2 specifies the content and format for the submission of more detailed information for each constellation or orbital shell of space stations deployed by the satellite broadband service

provider as of the applicable reporting period. The data gathered pursuant to this section include shell altitude, the orbital location (for GSO systems), inclination angle, orbital plane, number of satellites per orbital plane, shell orbital period, apogee, and perigee, among other data elements. Section 2.3.4 specifies the content and format for the submission of system capacity information for specific geographic regions of the country.

28. We propose to require satellite providers to submit all of the information requested in sections 2.3.1 and 2.3.2 of the BDC Infrastructure Data Specifications (as applicable, depending upon the satellite system type), as well as the capacity data in section 2.3.4 for each state or territory for which the provider claims to make service available as part of its BDC filing. We do not propose requiring satellite providers to submit system capacity information on a county-by-county basis.

Furthermore, we do not propose, at this time, that providers submit the detailed link budget parameters set forth in section 2.3.3 of the specification, but we seek comment on whether the Commission should collect link budget data from satellite providers as part of the availability data submission process, similar to data collected from mobile wireless service providers and terrestrial fixed wireless service providers who submit polygon coverage maps using propagation maps and model details. We seek comment on these proposals and any potential alternatives.

29. We propose to (1) update the BDC Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data to include these categories of data from the BDC Infrastructure Data Specifications, and (2) publish these categories of data received from satellite providers in the Data Download section of the NBM platform, so that interested stakeholders may access the data (similar to supporting data published for other providers and technologies). We further propose that OEA and SB may analyze these data and use them for purposes of verifications and audits of satellite providers, consistent with our processes and procedures for conducting verifications and audits.

30. We seek comment on whether this proposal would place additional burdens upon satellite providers by requiring them to submit this information on a biannual basis. We note that the information included in the satellite provider infrastructure portion of the data specifications is largely based upon categories of data that each provider is required to submit

as part of its FCC Form 312 (Application for Satellite Space and Earth Station Authorizations) and accompanying Schedule S (Technical and Operational Appendix). Are any additional burdens associated with this reporting outweighed by the benefits to the Commission, other federal agencies, state, local, and Tribal governments, researchers and academia, and the public from obtaining more detailed information on the assumptions and modeling parameters underlying satellite providers' coverage claims?

31. Because the data sought through the BDC Infrastructure Data Specifications are based upon information included in a satellite provider's publicly available FCC Form 312 and Schedule S, we tentatively conclude that, should the Commission adopt the requirement that satellite providers include these data with their biannual availability submissions, the data would be presumptively public. Similar to our treatment of most categories of terrestrial fixed wireless infrastructure data, "[w]e believe there is a strong public interest in having as much access to this information as possible in order to facilitate public review and input on its accuracy" We invite comment on whether some of these data raise commercial sensitivities and, if so, whether some categories of the data should be treated as presumptively non-public. Alternatively, should we treat all of these data as presumptively public, and permit individual requests for confidential treatment pursuant to the Commission's existing rules?

32. What other data could the Commission collect, or processes could the Commission adopt, to improve the accuracy of and insights into satellite providers' broadband availability data? What are the specific sources of such data, and who would be responsible for submitting those to the Commission? Are there additional standardized data specifications the Commission could or should release? What use restrictions or confidentiality concerns would apply to these data, if any? Commenters who advocate that the Commission adopt alternatives to our proposal to collect from satellite providers the existing information set forth in the pertinent sections of the BDC Infrastructure Data Specifications should provide detailed and specific information about their alternative proposals, how the Commission would administer them, and why any such alternative would yield better satellite availability data than gathering additional infrastructure information directly from satellite broadband service providers.

B. BDC Data Validation Processes

33. The Broadband DATA Act requires the Commission to verify the accuracy and reliability of data submitted in the BDC. We seek comment on several proposed changes to our rules to improve the Commission's validation, audit, and Fabric challenge processes, as well as facilitate provider certification of BDC submissions.

1. Data Retention Requirements

34. We seek comment on establishing a set data-retention period for documentation supporting providers' BDC submissions to ensure the Commission has access to necessary documentation for purposes of conducting audits, verifications, and other reviews.

35. Background. Broadband service providers are required to submit information on how they generated their availability data for each technology included in their biannual BDC filings. In particular, fixed service providers must include information on the methodology used to generate their availability data, along with an explanation of how the methodologies were implemented. Terrestrial fixed wireless providers who file their availability data as a coverage polygon are required to submit information about their propagation models, base stations, carriers, link budgets, and clutter categories. Similarly, mobile wireless service providers must include supporting data with their coverage maps, including propagation model details and link budget information.

36. In addition to their biannual submission, service providers must submit data and information to the Commission in response to challenges, verification inquiries, and audits. As discussed above, the Commission has published data specifications detailing the types of infrastructure data, by service type and technology, that must be submitted in response to verification inquiries and audits (and challenges, in instances where mobile wireless service providers are able to respond to mobile challenges with infrastructure data). In the context of most cognizable challenges to mobile broadband coverage data, service providers submit on-the-ground speed test data into the BDC system to rebut the challenge.

37. The Commission maintains these data in the BDC system and supplemental data storage infrastructure. All of the public (*i.e.*, non-confidential) data are made available for view and download from the NBM. However, the Commission has

not adopted a set data-retention period for how long service providers must preserve their availability, subscription, and supporting data or data used to respond to challenges, verification inquiries or audits.

38. Discussion. We propose that broadband service providers be required to retain the underlying data used to create their biannual submissions (including subscription data and supporting data) for at least three years from the applicable "as-of" date (*e.g.*, data used to create a biannual submission for the June 30, 2024, reporting period would need to be retained until June 30, 2027). In addition, we propose that providers be required to retain the data used to respond to challenges, verification inquiries, and audits for a period of three years from the date the provider receives the challenge, verification inquiry, or notification of Commission initiation of an audit. These requirements, if adopted, would go into effect following the effective date of final rules implementing the new data retention periods. We seek comment on these proposals.

39. The Commission requires entities to retain records for applicable data-retention periods in several of its programs. For example, entities that have equipment subject to the equipment authorization procedures must retain the records associated with the authorizations. For equipment that must be certified, "records shall be retained for a one year period after the marketing of the associated equipment has been permanently discontinued." The equipment authorization rules require entities to retain all other records for a two-year period. The rules specify what data must be collected and maintained. Each of the Commission's Universal Service Fund programs also include record retention requirements ranging from three to 10 years.

40. Just as with entities who participate in these other FCC programs, broadband service providers must know for how long they should retain their biannual submissions and the underlying data used to create them. We seek comment on a three-year data retention rule for these data. We believe that the needs of the BDC program support a three-year retention period, based upon the timeline from the relevant as-of date of a biannual availability filing to collection and publication of the data, followed by challenge and verification efforts by Commission staff and, finally, the downstream uses of the data in various funding programs. Do commenters agree? What are the benefits and

burdens of retaining the data for three years? Should we adopt a different retention period, such as five years or possibly longer? Commenters advocating for a longer data-retention period should explain the benefits of a longer retention period and why the benefits outweigh the burdens on providers associated with a longer data-retention period. We propose to adopt a uniform data-retention period for all of the availability, subscription, and supporting data. Are there reasons to adopt different data-retention requirements for certain types of data or portions of the data collection and, if so, what would these be? Are the burdens on smaller providers disproportionately large compared to larger providers? Does the benefit of having uniform retention rules outweigh any such difference in burden on smaller providers?

41. We also seek comment on whether a three-year retention period for data involving challenges, verification inquiries, and audits is sufficient. We propose to adopt the same data-retention period for challenge, verification, and audit response data as for underlying biannual submission data in order to avoid confusion and to provide administrative ease for filers. But should we adopt a longer (or shorter) retention period for these data? As in the case of availability data, we seek comment on whether we should adopt a uniform data-retention period for all types of challenge, verification, and audit response data or if different requirements should apply to certain portions of the data. For example, mobile wireless service providers that respond to challenges or verification inquiries with infrastructure data are required to submit cell-loading data in 15-minute intervals for a one-week period. Should we be concerned that this amount of cell-loading data would be so voluminous to store and maintain that requiring their retention for three years would be unduly burdensome? We also propose to adopt the same retention rules for all providers given that our need to verify and audit data and resolve challenges extends across all industry segments. But are there reasons why we should adopt different standards for some providers or for different technologies? Should the Commission adopt any additional requirements related to challenge, verification or audit response data?

2. Sharing Fabric Challenges With Providers

42. To facilitate the development of new versions of the Fabric, we seek comment on the processes and timing

for sharing Fabric challenges with providers.

43. Background. In September 2022, shortly after the close of the inaugural BDC filing window, the Broadband Data Task Force announced that Fabric licensees could begin submitting bulk Fabric challenges through the BDC system. The Broadband Data Task Force limited these initial Fabric challenge submissions to bulk submissions because the NBM interface was not yet publicly available. For the same reason, only entities who had access to location data through a Fabric license could submit bulk challenges given that the FCC had not yet published location data points on a publicly accessible version of the NBM. The Commission subsequently began accepting Fabric challenges from individual consumers and entities that had not executed a Fabric license agreement when the pre-production draft of the NBM was published. Using the NBM interface, consumers and other non-licensees were then able to submit data to challenge the information associated with Broadband Serviceable Locations (BSLs) reflected in the first version of the Fabric. The publication of the NBM also commenced the individual and bulk availability challenge processes.

44. The Commission accepts Fabric challenges on an ongoing basis throughout the year, and a new version of the Fabric is released in connection with a biannual BDC submission round for the collection of fixed availability data (either as of June 30 or December 31 of each year). Creating the Fabric is a complex process that involves analyzing many data sources, including aerial and satellite imagery, address databases, land and local tax records; reconciling determinations against Fabric challenge adjudications; and preparing data files for Fabric licensees sufficiently in advance of the opening of a biannual BDC submission round. Successful challenges received early in the process of creating the new Fabric version are incorporated in the next Fabric release; those received too late to be incorporated into the process will be evaluated for inclusion in the following version of the Fabric. The Commission and CostQuest Associates, the Fabric data vendor, have processed Fabric challenges in this manner for each iteration of the Fabric.

45. The Infrastructure Investment and Jobs Act of 2021 (IIJA) amended the Broadband DATA Act to require that “[t]he rules issued to establish the challenge process under subparagraph (A) shall include [] a process for the speedy resolution of challenges, which shall require that the Commission

resolve a challenge not later than 90 days after the date on which a final response by a provider to a challenge to the accuracy of a map or information described in subparagraph (A) is complete.” Subparagraph (A) of section 642(b)(5) directs the Commission to “establish a user-friendly challenge process . . . to challenge the accuracy of (i) the coverage maps; (ii) any information submitted by a provider regarding the availability of broadband internet access service; or (iii) the information included in the Fabric.” In establishing the challenge processes, the Commission must both “allow providers to respond to challenges submitted through the challenge process” and “develop an online mechanism, which . . . makes challenge data available in both geographic information system and non-geographic information system formats.”

46. Discussion. Based on our experience with multiple cycles of Fabric challenges, allowing providers to directly respond to Fabric challenges while the most current Fabric is still being developed, rather than waiting until the next Fabric release, would require extensive resources and could lead to delays processing the Fabric. We therefore propose to amend our rules to eliminate the requirement that the BDC system alert a provider of accepted Fabric challenges and that service providers be afforded an opportunity to directly respond to Fabric challenges. Fabric challenge results are made available to providers upon final adjudication, and providers then have an opportunity to challenge any of the results with which they may disagree. Interposing a separate, in-cycle Fabric challenge process would, in most instances, require that the Commission and CostQuest delay the processing of the Fabric. We believe that any limited benefit of creating an in-cycle process for providers to directly respond to Fabric challenges does not outweigh the significant costs in terms of delaying the production of a subsequent iteration of the Fabric.

47. As a practical matter, Fabric challenges do not dispute availability information submitted by providers but, rather, dispute information used by CostQuest to identify locations and the attributes of BSLs. Having now processed several rounds of Fabric challenges, data show that while some providers have submitted Fabric challenges that have resulted in updates to subsequent versions of the Fabric, it is unclear that providers (as a group) have better or more reliable geospatial data on BSL attributes than other groups (*e.g.*, state, local, or Tribal governments,

consumers). Additionally, while it may be relatively straightforward to identify Fabric challenges to locations where a provider has previously reported making broadband service available, the vast majority of challenges to date have been to add a new BSL, which, by definition, does not implicate previously reported availability data (at least as to fixed service providers who report availability using a list of (preexisting) BSLs). Since providers have not previously analyzed whether broadband is available at these proposed locations, and Commission staff could only guess as to which providers it should notify of such challenges, it is also impractical to have providers directly respond to Fabric challenges. For these reasons, the information the Commission collects through the Fabric challenge process, along with the methods used to create the Fabric dataset, do not effectively allow for a process for service providers to directly respond to these challenges. Rather, we believe that the best way for internet service providers to “respond” to Fabric challenges within their availability footprints would be to continue to submit follow-on challenges to challenged or new Fabric locations in a subsequent version of the Fabric. We seek comment on this proposal.

48. We believe that this proposed Fabric challenge process is consistent with the Congressional intent in the Broadband DATA Act that we “allow providers to respond to challenges submitted through the challenge process” In the first instance, we interpret this clause as primarily, if not exclusively, intended to apply to availability challenges filed against service providers. Nothing in our proposed changes would alter the ability of service providers to respond directly to challenges to their fixed (and mobile) availability data. Moreover, unlike with availability challenges, where it is the provider’s data that are being challenged and where the provider has particular interest and specific knowledge, with Fabric challenges, it is unclear the extent to which providers have more or better information than local consumers or governments or others filing challenges to the location information in the Fabric. Finally (and importantly), the FCC publishes data on in-progress Fabric challenges monthly, and on resolved Fabric challenges through the information it makes available when it publishes a new version of the Fabric. Providers are thereby able to “respond” to these pending or resolved Fabric challenges by filing subsequent, follow-

on challenges to such challenges. We seek comment on this interpretation of the Broadband DATA Act.

49. We seek comment on potential alternatives to this proposed process and specific proposals on how they might be implemented. For example, should we allow providers to view and directly respond to customized lists of non-Type-1 Fabric challenges to existing BSLs that fall within their service footprints? If so, then how could the Commission facilitate such a process without delaying the processing of Fabric challenges and the production schedule for subsequent iterations of the Fabric data? Should we also attempt to identify the internet service providers (ISP(s)) that may have an interest in Type-1 Fabric challenges to add new BSLs to the Fabric? If so, then what process should the Commission use to identify ISP(s) interested in these challenges? In particular, how would staff identify areas of interest for non-polygon availability data filers? Could staff create a buffer around the to-be-added location point, and provide notice to all service providers who report service at locations within a certain distance from the point? How could such a process be implemented without delaying the processing of Fabric challenges and the production schedule for subsequent iterations of the Fabric? Should the Commission delay processing of any challenges presented to ISPs for response? Doing so would mean setting aside such challenges for, e.g., 60 days, for providers to respond. That delay would effectively require that any challenges be incorporated into the next version of the Fabric. Alternatively, if the Commission does not delay processing of Fabric challenges for providers to respond, challenges might already be in the process of adjudication—or already adjudicated—before the ISP responds. In such cases, any ISP response would need to be treated as an additional challenge to the same location. Is there any advantage to having an ISP-specific process for a response instead of allowing ISPs to file additional challenges (an option that is already available to ISPs today)? Are there any additional measures we could implement to avoid delays in the event we were to allow for ISPs to directly respond to Fabric challenges? For example, the Commission already creates Fabric challenge adjudication files and change logs for Fabric licensees indicating changes made to the Fabric as a result of the challenge process (as well as updates made by the Commission and CostQuest). Should

(and, if so, then how could) the FCC and CostQuest prepare similar (but separate and distinct) data files to identify pending Fabric challenges for ISPs that they may want to respond to?

50. Finally, we propose to interpret section 60102(h)(2)(E)(i) of the IIA as inapplicable to Fabric challenges and revise our rules to make this clear. The statute requires the Commission to resolve challenges “not later than 90 days after the date on which a final response by a provider . . . is complete.” To the extent we amend our rules to provide that an ISP does not “respond” to an initial Fabric challenge (and instead the Commission would resolve such challenges as part of its publication of a subsequent version of the Fabric), the deadline required under the statute would not apply to Fabric challenges. Do commenters agree with our proposed interpretation of the IIA? We believe this approach to the Fabric challenge process would facilitate efficient resolution of challenges, consistent with the requirements of the IIA, while maintaining the Commission’s flexibility to assess data that may be submitted by providers through a subsequent challenge to a later iteration of the Fabric. We note that the majority of Fabric challenges are processed and resolved well within 90 days of submission, particularly those that can be resolved based on the data submitted by filers without any need for manual or secondary review of satellite imagery. Challenges that are deemed successful based on such processing need to be reconciled with and incorporated into the next version of the Fabric, and are therefore tied to the biannual cadence of Fabric releases (*i.e.*, a challenge is only fully accepted when incorporated into the next Fabric vintage). Moreover, the Broadband Data Task Force has historically announced target dates for submitting Fabric challenges that will be processed in time for inclusion in the next iteration of the Fabric. Given that challenges submitted by this date are adjudicated in advance of the creation of the next release of Fabric data, these challenges are usually resolved approximately 90 days from the date of their filing.

3. Professional Engineering Certification

51. We next seek comment on whether we should eliminate the requirement in our rules that parties submitting verified broadband data in the BDC provide a certification by a licensed professional engineer if not submitted by a corporate engineering officer. To address concerns about licensed professional engineer shortages, Wireline Competition Bureau

(WCB), OEA, and Wireless Telecommunications Bureau (WTB) have waived this requirement for several filing periods and instead relied on other measures to ensure we receive accurate coverage maps that are based on data that are consistent with professional engineering standards. Accordingly, we seek comment on whether this requirement should be eliminated and replaced with other measures.

52. Background. The Broadband DATA Act requires that broadband service providers “shall include in each [BDC] submission a certification from a corporate officer of the provider that the officer has examined the information contained in the submission and that, to the best of the officer’s actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct.” In the Third Report and Order, the Commission expanded this requirement so that, in addition to a certification from a corporate officer, service providers must also submit a certification by a qualified engineer, who must be either a certified professional engineer or a corporate engineering officer. The Commission noted that this engineering certification requirement also applies to government entities and third parties that submit verified broadband data. The Commission explained that the purpose of the engineering certification is to “ensur[e] the accuracy of coverage maps and that they be based on data that are consistent with professional engineering standards.”

53. WCB, OEA, and WTB have waived this requirement several times over the past several years due to a shortage of professional engineers. In May 2022, the Competitive Carriers Association (CCA) filed a Petition for Declaratory Ruling or Limited Waiver, asking the Commission to clarify that BDC filings may be certified by either an engineer licensed by the relevant state licensure board (*i.e.*, a Professional Engineer (PE)) or an “otherwise qualified engineer.” In its Petition, CCA noted that “[t]he RF [radio frequency] engineering community is characterized by a scarcity of licensed PEs” because “[s]tate professional licensing boards issue PE licenses based on the fulfillment of state-specific education, examination, and experience requirements [and] states have generally not required PE licensure for RF engineers.” CCA went on to assert that “[t]he experience and expertise developed by RF engineers through their work provides comprehensive skills relevant to broadband deployment

[and] . . . provides skills comparable to, and perhaps more relevant than, general licensure through the PE . . . exam process.”

54. WCB, OEA, and WTB subsequently issued the 2022 BDC PE Order in which they (1) clarified that when a fixed or mobile provider submits a certification from a corporate engineering officer, such corporate engineering officer does not need to be a certified PE; and (2) waived the requirement that a fixed or mobile provider submit a certification from a “certified professional engineer,” allowing instead the submission of a certification completed by an otherwise-qualified engineer. In issuing the waiver, WCB, OEA, and WTB found that “the lack of certified professional engineers specializing in RF engineering and broadband network design constitutes ‘special circumstances’ that warrant a deviation from the general rule that certified professional engineers must certify the accuracy of providers’ biannual BDC broadband data submissions.” The waiver specified that an “otherwise-qualified” engineer must meet certain minimum qualifications in lieu of state PE licensure in order to certify a BDC filing; specifically, the engineer must “possess either: (i) a bachelor’s or postgraduate degree in electrical engineering, electronic technology, or another similar technical discipline, and at least seven years of relevant experience in broadband network design and/or performance; or (ii) specialized training relevant to broadband network engineering and design, deployment, and/or performance, and at least ten years of relevant experience in broadband network engineering, design, and/or performance.” The waiver applied to all mobile and fixed broadband service providers for each of the first three BDC filing cycles (*i.e.*, data as of June 30, 2022, December 31, 2022, and June 30, 2023).

55. In August 2023, CCA and USTelecom—The Broadband Association jointly submitted a petition to extend the 2022 BDC PE Order. The Waiver Extension Petition reported that circumstances had not changed for the industry in the year since adoption of the 2022 BDC PE Order. It further asserted that the minimum qualifications adopted for “otherwise-qualified” engineers in the 2022 BDC PE Order required experience that “provides skills comparable to, and perhaps more relevant than, general PE licensure in the context of the BDC.” On November 30, 2023, WCB, OEA, and WTB granted the Waiver Extension Petition for another three filing cycles

(*i.e.*, data as of December 31, 2023, June 30, 2024, and December 31, 2024), subject to certain conditions.

56. Discussion. As noted above, since the inception of the BDC, we have granted multiple waivers of the certified PE requirement. We propose to permanently eliminate the requirement under § 1.7004(d) that an engineering certification, to the extent not submitted by a corporate engineering officer, must be submitted by a certified PE. In its place we propose to amend § 1.7004(d) to state that all providers must submit a certification to the accuracy of their submissions by a “qualified engineer,” and we propose to define “qualified engineer” consistent with the engineering qualifications that WCB, OEA, and WTB adopted in the 2022 BDC PE Order and the PE Waiver Extension Order. We seek comment on our proposal.

57. Specifically, we propose to allow for the engineering certification to be submitted by (i) a corporate officer possessing a Bachelor of Science (B.S.) in engineering degree and who has direct knowledge of and responsibility for the carrier’s network design and construction; (ii) an engineer possessing a bachelor’s or postgraduate degree in electrical engineering, electronic technology, or another similar technical discipline, and at least seven years of relevant experience in broadband network design and/or performance; or (iii) an employee with specialized training relevant to broadband network engineering and design, deployment, and/or performance, and at least 10 years of relevant experience in broadband network engineering, design, and/or performance.

58. We further propose to modify the rule to clarify that a certifying engineer does not necessarily need to be a full-time employee of the broadband service provider but instead could be an independent contractor or third-party consultant. We do, however, propose to maintain the remaining requirements in § 1.7004(d), including that the certifying engineer: (i) has direct knowledge of, or responsibility for, the generation of the provider’s BDC filing; and (ii) has examined the information contained in the BDC submission and that, to the best of the engineer’s actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider’s ordinary course of network design and engineering.

59. In light of the other mechanisms available to the Commission, such as system validations and the existing corporate officer certification, we do not believe that a certification by a certified

PE is necessary to ensure the submission of high-quality data as part of the BDC. Moreover, the Commission has other tools at its disposal to ensure the ongoing improvement in BDC data, including the challenge, verification, and audit processes. Given all of these other processes, we do not believe the certified professional engineer requirement—at least in its current form—is necessary. Rather, we believe that the potential costs and burdens of the certified PE requirement outweigh its potential benefits. We propose that, consistent with our actions in the PE Waiver Extension Order, all providers be required to retain their infrastructure data in support of their biannual submissions and produce those data upon request as part of the Commission's efforts to validate availability data. We seek comment on these proposals and conclusions.

60. Does the limited availability of certified PE resources since the launch of the BDC support modifying the current requirement? Do commenters believe that state licensure requirements will change in the near term such that certified PEs with RF or fixed broadband network deployment experience will become more available? We seek updated data on the availability of licensed PEs. Commenters who assert that certified PEs will soon become available should provide evidence in support of their claims.

61. Assuming that we eliminate the requirement that a certified PE complete the engineering certification, do commenters agree that the alternative qualifications adopted in the 2022 BDC PE Order and the PE Waiver Extension Order are sufficient to ensure reliable BDC data are submitted by service providers? If commenters believe we should adopt different qualifications, what should those qualifications be and why should we adopt these qualifications rather than the qualifications in the prior waiver orders?

4. Audit and Verification Determinations

62. We next seek comment on our rule and procedures governing determinations made as a result of audits and verifications, including the removal of locations or areas if an audit or verification determines the data are deficient or unverifiable.

63. Background. As discussed earlier, the Broadband DATA Act requires that the Commission conduct audits to ensure that providers are complying with their reporting requirements. The Act also requires the Commission to verify the accuracy and reliability of

availability data submissions in accordance with measures established by the Commission. In the final rule published elsewhere in this issue of the **Federal Register**, we delegate authority to OEA, in coordination with WTB, WCB, and SB to continue to perform audits and verifications using the tools currently available, including authority to establish methodologies and procedures for selecting service providers and locations or areas subject to verification or audit. At the conclusion of a verification or an audit, a provider must submit revised availability data to align with the conclusions of the verification or audit. In the case of mobile wireless coverage subject to a verification inquiry, we have also made clear that “we may treat any targeted [mobile wireless coverage] areas that . . . fail verification as a failure to file required data in a timely manner and that the Commission may make modifications to the data presented on the broadband map (*i.e.*, by removing some or all of the targeted area from the provider's coverage maps).” But we have not been as explicit in announcing that similar procedures and remedies would apply in response to determinations made as a result of verification of fixed availability data or in the case of audits (of both fixed and mobile data).

64. Discussion. We seek comment on formalized procedures to govern determinations made as a result of audits and verifications of information submitted by fixed and mobile broadband service providers in their biannual BDC submissions. Specifically, we seek comment on whether we should amend § 1.7009 of the Commission's rules to explicitly state that Commission staff may remove locations or areas from a provider's availability data should an audit or verification find that the data are deficient or unverifiable. While we seek comment on whether amendments to § 1.7009 would help to clarify for broadband service providers the potential ramifications stemming from a verification or audit, we emphasize that our doing so does not diminish our existing authority to remove locations or areas from a provider's claimed availability data on a case-by-case basis as a result of a verification or an audit.

65. Section 1.7009(d) requires that providers “file corrected data when they discover inaccuracy, omission, or significant reporting error in the original data that they submitted, whether through self-discovery, the crowdsourcing process, the challenge process, the Commission verification process, or otherwise.” We tentatively conclude

that it would be beneficial to clarify in our rule that, in the event a provider's response to a verification inquiry or an audit does not support its availability filing—whether due to an incomplete response or where the response demonstrates that service is not available—pursuant to § 1.7009(d)(1), the provider must correct its availability data within 30 days of OEA or WTB, WCB, or SB (as relevant), notifying the provider of this finding. Consistent with our statutory obligations, and our processes for mobile wireless coverage verifications, in the event of an adverse audit or verification finding that is not appealed, or, in the event of an appeal, by a Commission decision resolving the appeal adversely to the provider, we propose that the failure to correct data within the 30-day timeframe may result in OEA, in coordination with WTB, WCB, or SB (as relevant), amending or removing from the NBM the provider's availability data. For example, an adverse audit determination would give the provider 30 days to either appeal the decision or to submit corrected data regarding specified areas; in the event the provider does not appeal the adverse audit decision, and does not submit corrected data within 30 days, OEA may remove the targeted areas subject to the audit from the NBM. Alternatively, OEA may determine that the provider's data are so unreliable as to warrant removal of all of the provider's availability data (not just for the targeted areas) from the NBM. In either scenario, the BDC will notify the provider in writing of either the alternation or removal of the provider's data. We find that this procedure is consistent with our statutory obligation to publish verified data and the current Commission process. We additionally note that the Commission already has established rules to submit an application for review of action taken pursuant to delegated authority, and a petition for reconsideration in a non-rulemaking proceeding that providers may avail themselves of in the event of an unfavorable bureau-level determination. We seek comment on this proposal.

5. Data Requirements for Restoration of Locations Lost or Conceded to Challenges

66. We seek comment on the data requirements for restoring locations or areas where infrastructure data under the existing data specifications are not relevant to the underlying fixed challenge code, and also seek comment on using speed test data for restoration of mobile coverage areas.

67. Background. In the Declaratory Ruling in the final rule published

elsewhere in this issue of the **Federal Register**, we clarify that in instances where a provider's claimed availability at a location or area was previously removed from the NBM as a result of a challenge, verification or audit, the provider may submit evidence in a subsequent BDC filing window demonstrating that it can make service available at that location or area and that the circumstances surrounding the previous removal no longer exist. As discussed in further detail above, this process is consistent with providers' obligations to report accurate data about the broadband services that they make available on a biannual basis, and is necessary to advance the Commission's goal of publishing accurate and precise data about where internet services are, and are not, available across the United States.

68. **Fixed Availability Challenges.** As noted above, in the case of most types of fixed challenges, the Commission would evaluate infrastructure data, such as the information contained in the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes, to confirm that the provider makes the claimed service available and therefore to substantiate a location restoration. While infrastructure data is relevant to location restoration in most instances, there are specific fixed challenge reason codes where this type of data may not be as closely aligned with the reason for the challenge. For example, fixed service can be challenged based on a showing that the provider requested more than a standard installation fee to connect the location with service (*i.e.*, Challenge Category Code 3), or the provider failed to schedule a service installation within 10 business days (Challenge Category Code 1), or the provider did not install service at the agreed upon time (Challenge Category Code 2). In these instances, infrastructure data may not adequately demonstrate that the location presently warrants being restored to the NBM. This may be particularly so in the case of individual challenges, since they are more likely to capture unique attributes of a single location (such as a long driveway, a large hill, unique topography or building materials, etc.), as compared to bulk challenges that typically implicate several locations in a community and more often relate to a lack of infrastructure.

69. We propose to implement these requirements through revisions and updates to the data specification to account for the information a provider must submit when seeking to restore a location lost or conceded to fixed

Challenge Category Codes 1, 2, and 3 (or other cases where infrastructure data would not be informative of whether or not to restore the location). We seek comment on the types of data or evidence that should be considered to justify restoration of locations previously conceded or lost to fixed Challenge Category Codes 1, 2, and 3 or other cases where infrastructure data would not be informative of whether or not to restore the location. What type of information would sufficiently demonstrate that a provider can make service available with a standard installation fee, or within 10 business days? Should different types of evidence be provided for individual as compared to bulk challenges submitted under these Challenge Category Codes? What type of information supports a provider's ability to schedule installation within 10 business days of a request for service when it previously could not do so at a particular location? Should we allow locations which were removed under these circumstances to be restored after a certain amount of time has passed? If so, what is the appropriate amount of time that must pass, and should we seek any supporting information to restore those locations aside from the passage of time?

70. **Mobile Availability Challenges.** Similarly, the Commission will consider infrastructure data to confirm that a mobile provider makes the claimed service available and therefore to substantiate restoration of a Removed Area resulting from a successful mobile challenge (or verification inquiry or audit). In addition to infrastructure data, we seek comment on whether we should also allow mobile providers to restore an area by providing on-the-ground speed test data. Could speed test data sufficiently support restoration of a previously removed hexagon? Under what circumstances should we accept on-the-ground speed test data (either in lieu of, or in addition to, infrastructure data) when a mobile provider seeks to restore a Removed Area? In the event we were to allow for submission of speed test data, should we require mobile service providers to collect these data using the parameters adopted for submittal of mobile challenge rebuttal speed test data, or are there different parameters to the speed testing methodology that we should seek for this type of data to support restoration? For additional speed test data to support restoration, is it necessary that the tests are conducted after the challenge has been upheld, or could the tests be collected any time after the as-of date of

the relevant BDC data vintage? If commenters believe that tests should be conducted after the challenge has been resolved, should we require a certain amount of time to pass before we find such data compelling? We propose to implement these requirements through revisions and updates to the data specification for the information a mobile wireless service provider must submit when seeking to restore a previously Removed Area, should we allow for submission of speed test data. We seek comment on these proposals.

6. Aligning Reporting Requirements for Broadband Availability and Subscribership Data

71. **Background.** While broadband availability data are now gathered through the BDC, the Commission continues to collect counts of "broadband connections" in service—broadband subscribership—using the FCC Form 477. Facilities-based entities providing internet access service currently submit information for both the BDC and Form 477 within a common online filing application. The data about broadband availability collected pursuant to the Broadband DATA Act and BDC rules, as well as the data about broadband connections (*i.e.*, subscriptions) collected under the Form 477 rules, are separately validated as they are ingested by the BDC system, and then checked against each other to ensure consistency and accuracy after individual files are ingested and prior to entities certifying and submitting their biannual submissions.

72. The operational definition of "broadband" in the context of FCC Form 477 subscribership is slightly different than that used in the BDC for broadband availability. As noted above, the Broadband DATA Act defines "broadband internet access service" for purposes of the BDC as a "mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service." The existing Form 477 rules define a "broadband connection" as a "wired line, wireless channel, or satellite service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction."

73. Discussion. We propose to modify the definition of “broadband connection” used in Form 477 so that it aligns with the definition of “broadband internet access service” used in the BDC. Specifically, we propose to require facilities-based providers of broadband internet access service to submit in Form 477 counts of “broadband internet access service connections” in service, with that term defined as connections that provide mass-market broadband internet access as defined and described in 47 CFR 8.1(b). This change would put the Form 477 on the same definitional footing as the BDC, as well as Broadband Labeling. Taking this step would also be consistent with the Broadband DATA Act’s direction to the Commission to “harmonize reporting requirements and procedures regarding the deployment of broadband internet access service” for the FCC Form 477 with those adopted for the BDC. We believe our proposal will allow the Commission to streamline its rules, reduce confusion among filers, and impose consistency on the broadband data it collects in the BDC and FCC Form 477. We seek comment on this proposal.

74. We believe the definition of broadband internet access service is, on net, narrower than the definition of a broadband connection. Broadband connections are not limited to include only “mass-market retail” services. Such connections therefore include those providing types of internet access services that are not sold on a standardized basis. These non-mass market connections are currently in scope for reporting on FCC Form 477 but not in the BDC. Changing the Form 477 rules to focus solely on mass-market services would render custom internet access services out of scope for that collection, and providers specializing purely in such services would no longer be required to file. Within the Form 477, there is currently no way to determine the share of total reported broadband connections that are sold as non-mass market services, but our expectation is that it is small. In addition, such connections are arguably sold into a different market. Given that, we seek comment on whether no longer collecting data on such connections is worthwhile, particularly in light of the reduced filing burden to providers of such services and the benefits of data consistency.

75. An alternative to conforming the scope of the Form 477 to meet the BDC, is to instead change the Form 477 to capture mass market and non-mass market connections separately. That is, in addition to the current requirement to

separately report “consumer” and “total” broadband connections in service, the Commission could require filers to further parse consumer, and by extension, non-consumer, connections based on whether the connections are mass market or not. This would likely increase the burden on filers but would make it possible to compare the Form 477 data on mass-market broadband connections in service to the BDC availability data, as well as other broadband data collections, while leaving the scope of the Form 477 unchanged. We invite comment on this alternative approach.

7. New Rule Subsection for Fabric Challenge Process

76. Finally, we seek comment on changes to our rules to better distinguish between fixed availability and Fabric challenge processes. The current rules for Fabric challenges are nested within a section of the BDC rules titled “Fixed service challenge process” (47 CFR 1.7006(d)). This section largely addresses the rules for the submission and processing of fixed availability challenges. But the fixed availability and Fabric challenge processes are different, and many of the provisions in rule § 1.7006(d) are either inapplicable or not well suited to the Fabric challenge process. Further, the reference in the first sentence of the rule to “challenge[s] to the accuracy of the coverage maps at a particular location, any information submitted by a provider regarding the availability of broadband internet access service, or the Fabric” creates a potential misconception that all provisions of the rule apply equally to both fixed availability and Fabric challenges.

77. We propose amending § 1.7006 of the Commission’s rules to create a new subsection for the Fabric challenge process and to remove the Fabric challenge provisions in § 1.7006(d) from those pertinent to the fixed availability challenge process. We seek comment on our proposal to create a new subsection in rule § 1.7006 for Fabric challenges.

78. Promoting Digital Equity and Inclusion. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations, and invites comment on any benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how

our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission’s relevant legal authority.

79. *Paperwork Reduction Act (PRA)*. The *Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM)* may contain new and modified information collection requirements subject to the PRA, Public Law 104–13. The Office of Management and Budget, the general public, and other Federal agencies are invited to comment on new or modified information collection requirements contained in the *Fourth FNPRM*.

II. Ordering Clauses

80. Accordingly, *it is ordered*, pursuant to sections 1 through 4, 7, 201, 254, 301, 303, 309, 319, 332, 403, and 641 through 646 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 157, 201, 254, 301, 303, 309, 319, 332, 403, 641 through 646, the *Fourth Further Notice of Proposed Rulemaking IS ADOPTED*.

81. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Fourth Further Notice of Proposed Rulemaking* on or before 30 days following publication in the **Federal Register**, and reply comments on or before 60 days following publication in the **Federal Register**.

82. *It is further ordered* that the Office of the Secretary *shall send* a copy of the *Fourth Further Notice of Proposed Rulemaking*, including the *Final Regulatory Flexibility Analysis* and the *Initial Regulatory Flexibility Analysis*, to the Chief Counsel for Advocacy of the Small Business Administration.

III. Initial Regulatory Flexibility Analysis

83. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this *Initial Regulatory Flexibility Analysis (IRFA)* of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the *Fourth FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Fourth FNPRM*. The Commission will send a copy of the *Fourth FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Fourth FNPRM* and IRFA

(or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

84. The Commission continues its ongoing efforts to collect accurate and granular broadband deployment data so that we can bring broadband to those areas most in need of it. In the Fourth FNPRM, the Commission proposes targeted changes designed to either improve the processes for filers or to further ensure that we continue to receive high-quality data through our data collection efforts and seeks comment on additional steps we can take to obtain more reliable data on the availability and quality of service of broadband internet access. Specifically, we seek comment on proposed enhancements to the availability data filing process, as well as possible clarifications to several of our data-validation tools. This includes revising our definition of broadband availability to exclude legacy services, collecting terrestrial fixed wireless call sign data, obtaining supporting data from satellite service providers, data retention requirements, and audit rules and processes.

B. Legal Basis

85. The proposed action is authorized pursuant to sections 1–5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 641–646 of the Communications Act of 1934.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

86. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA.

Total Small Entities

87. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three

broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

88. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

89. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

Broadband Internet Access Service Providers

90. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband internet access service.

91. Wired Broadband Internet Access Service Providers (Wired ISPs). Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that

terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

92. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, in light of the general data on fixed technology service providers in the Commission’s 2022 Communications Marketplace Report, we believe that the majority of wireline internet access service providers can be considered small entities.

93. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as Voice over Internet Protocol (VoIP) service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

Wireline Providers

94. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of

voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

95. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

96. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of

these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

97. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

98. Competitive Local Exchange Carriers (CLECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard,

most of these providers can be considered small entities.

99. Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

100. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that 10 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

101. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired

Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Wireless Providers—Fixed and Mobile

102. The broadband internet access service provider category covered by the Fourth FNPRM may cover multiple wireless firms and categories of wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

103. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022

Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

104. Wireless Communications Services. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

105. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

106. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of

employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

107. 1670–1675 MHz Services. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

108. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a “small business” is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

109. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

110. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

111. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

112. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had

average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

113. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

114. Specialized Mobile Radio Licenses. Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.

115. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that

would qualify as small under the SBA's small business size standard.

Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

116. Lower 700 MHz Band Licenses. The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including frequency division duplex (FDD)- and time division duplex (TDD)-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

117. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders

claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

118. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

119. Upper 700 MHz Band Licenses. The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

120. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that,

together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

121. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

122. 700 MHz Guard Band Licensees. The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency bands. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

123. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling

principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

124. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

125. Air-Ground Radiotelephone Service. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

126. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

127. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The

Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

128. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

129. Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000–2020 MHz and 2180–2200 MHz (AWS-4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

130. According to Commission data as of December 2021, there were

approximately 4,472 active AWS licenses. The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

131. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

132. 3650–3700 MHz band. Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700 MHz band fall in the Wireless Telecommunications Carriers (except Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

133. The Commission has not developed a small business size standard applicable to 3650–3700 MHz

band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

134. Fixed Microwave Services. Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

135. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

136. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

137. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

138. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

139. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to

BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

140. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Satellite Service Providers

141. 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 \$38.5 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 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 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.

142. All Other Telecommunications. This industry 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. Providers of internet services (e.g., dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

Cable Service Providers

143. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

144. Cable and Other Subscription Programming. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

145. Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

146. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer

than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

All Other Telecommunications

147. Electric Power Generators, Transmitters, and Distributors. The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

148. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry

there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

149. Certain potential modifications proposed in the Fourth FNPRM, if adopted, would impose new reporting, recordkeeping, or other compliance requirements on some small entities while others would reduce the burden on such entities. Specifically, in the Fourth FNPRM, we propose enhancements to the availability data collection requirements that, if adopted, would amend our rules to continue to collect availability data on legacy services but to not include such services in the location-specific availability information published on the National Broadband Map. Once broadband internet access service has actually been discontinued, the filer would not be required to submit broadband availability data for the service upon the next subsequent BDC filing period following the grant of the discontinuance petition.

150. In addition, the Commission proposes that fixed wireless filers reporting licensed service in their biannual BDC filings also be required to provide call sign data. We also propose updates to the BDC reporting requirements, that if adopted, would improve the quality of satellite service provider availability data submitted as part of the biannual data submission process. Specifically, we propose that satellite service providers must include, as a supporting data file accompanied with their biannual availability submissions, the infrastructure data set forth in BDC Infrastructure Data Specification.

151. In addition, as a means of improving the accuracy and reliability of broadband internet access service data, the Commission proposes a number of methods to verify the information in the providers' filings, including adoption of data retention requirements and more specific audit procedures. Specifically, we propose that broadband service providers retain the underlying data used to create their availability filings (including supporting data) for three years from the applicable "as-of" date. Data used to rebut challenges or respond to verifications inquiries or audits would be retained for three years as well. In response to a BDC

audit request, providers would have 60 days to submit the applicable supporting documentation. The adoption of any of these verification processes could subject small entities and other providers to additional submission, recordkeeping, and compliance requirements.

152. In addition, we propose to eliminate the requirement under rule § 1.7004(d) that an engineering certification, to the extent not submitted by a corporate engineering officer, must be submitted by a licensed PE. Instead, we propose to amend rule § 1.7004(d) to require that providers submit certifications by a “qualified engineer,” as defined by the engineering qualifications the Broadband Data Task Force adopted in previous orders. This certifying engineer would not need to be a full time employee, but would be required to have direct knowledge and familiarity with the BDC filing. We believe that the potential costs and burdens of the licensed PE requirement outweigh its potential benefits, and thus propose to eliminate the requirement.

153. The issues raised for consideration and comment in the Fourth FNPRM may require small entities to hire attorneys, engineers, consultants, or other professionals. At this time, however, the Commission cannot quantify the cost of compliance with any potential rule changes and compliance obligations for small entities that may result from the Fourth FNPRM. We expect our requests for information on potential burdens on small entities associated with matters raised in the Fourth FNPRM will provide us with information to assist with our evaluation of the cost of compliance on small entities of any reporting, recordkeeping, or other compliance requirements we adopt.

D. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

154. The RFA requires an agency to describe any significant, specifically small business, alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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 or 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.

155. As an initial matter, several of the proposals in the Fourth FNPRM are unlikely to negatively impact small businesses. For example, we propose to eliminate the licensed professional engineering certification and instead propose to require certifications by a “qualified engineer,” as defined in previous BDC orders. This proposal, if adopted, will save some small entities from having to pay a professional engineer to certify their filings. The Fourth FNPRM additionally proposes to keep confidential certain legacy availability data to protect customers’ identity while still enabling the Commission to continue to analyze availability on “grandfathered” services.

156. To assist the Commission’s evaluation of the economic impact on small entities as a result of actions that may result from proposals and issues raised for consideration in the Fourth FNPRM, and to better explore options and alternatives, the Commission has sought comment from the public on how best to implement the requirements in the Broadband DATA Act. More specifically, the Commission seeks comment on what additional burdens are associated with implementing more specific audit provisions, and seeks to balance our statutory obligation to ensure accurate data with minimizing the burden on providers. In addition, we sought comment on whether the proposed three-year data retention policy places a burden on smaller providers disproportionately compared to larger ISPs, and, alternatively, whether we should consider a five-year retention period. We also sought comment on the burdens that would be placed on satellite service providers by requiring them to submit additional infrastructure information on a biannual basis, and any additional or alternative data that we could collect to improve the accuracy and granularity of satellite providers’ broadband availability data.

157. More generally, the proposals and questions set forth in the Fourth FNPRM were designed to enable the Commission to understand the benefits, impact, and potential burdens associated with the different approaches that the Commission can pursue to achieve its objective of improving accuracy and reliability of its data collections. Before reaching its final conclusions and taking action in this proceeding, the Commission expects to review the comments filed in response to the Fourth FNPRM and more fully consider the economic impact on small entities and how any impact can be minimized.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

158. None.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

■ 2. Amend § 1.7001 by:

■ a. Removing the heading from paragraph (a);

■ b. Removing and reserving paragraph (a)(1); and

■ c. Adding paragraphs (a)(21) and (g).

The additions read as follows:

§ 1.7001 Scope and content of filed reports.

(a) * * *

(21) *Grandfathered service.* A broadband internet access service that is currently provided to an existing end user at a broadband serviceable location, but that a facilities-based provider has permanently ceased to advertise or market to new or potential subscribers and would not make available to a new or potential subscriber at the broadband serviceable location.

* * * * *

(g) Facilities-based providers shall retain the underlying data used to create their biannual FCC Form 477 submissions (including supporting data) for at least three years after the applicable “as-of” reporting date (*i.e.*, June 30 or December 31).

■ 3. Amend § 1.7004 by:

■ a. Redesignating paragraphs (c)(3) through (7) as paragraphs (c)(5) through (9);

■ b. Adding new paragraphs (c)(3) and (4); and

■ c. Revising and republishing paragraph (d).

The additions and revision read as follows:

§ 1.7004 Scope, content, and frequency of Broadband Data Collection filings.

* * * * *

(c) * * *

(3) Fixed wireless broadband internet access service providers must disclose the following spectrum authorization information related to their broadband availability data:

(i) For broadband internet access services provided using licensed spectrum:

(A) All call signs and lease IDs (including the call sign(s) of the license(s) being leased) associated with the licenses held or leased by the filer and were (or could have been) used to provide broadband service as of the relevant Broadband Data Collection (BDC) filing date; and

(B) The FCC Registration Number of the entity holding the license or lease as recorded in the FCC's Universal Licensing System.

(ii) For broadband internet access services provided using licensed-by-rule spectrum:

(A) Proof of authorization by a Spectrum Access System pursuant to part 96 of this chapter as of the relevant BDC filing date.

(B) [Reserved]

(iii) For broadband internet access services provided using unlicensed operations pursuant to part 15 of this chapter:

(A) The FCC ID(s) of all base station transmission equipment used to provide the service as of the relevant BDC filing date.

(B) [Reserved]

(4) Satellite broadband internet access service providers must disclose the following information related to their broadband availability data:

(i) Information on the general operating parameters of the satellite system active as-of the relevant filing period, including network type, the total number of satellites in the active constellation, the number of orbital shells deployed in the active constellation, the overall system downlink capacity, and the overall system uplink capacity;

(ii) Information on each constellation or orbital shell of space stations deployed by the satellite system active as-of the relevant filing period, including shell altitude, orbital location (for GSO systems), inclination angle, orbital plane, number of satellites per orbital plane, shell orbital period, apogee, and perigee; and

(iii) For each state or territory for which the facilities-based provider of satellite broadband internet access

service claims coverage, system capacity information for each state or territory.

* * * * *

(d) Providers shall include in each Broadband Data Collection filing a certification signed by a corporate officer of the provider that the officer has examined the information contained in the submission and that, to the best of the officer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct. All providers also shall submit a certification of the accuracy of its submissions by a qualified engineer. The engineering certification shall state that the qualified engineer is employed by the provider and has direct knowledge of, or responsibility for, the generation of the provider's Broadband Data Collection filing. The qualified engineer shall also certify that he or she has examined the information contained in the submission and that, to the best of the engineer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider's ordinary course of network design and engineering. If a corporate officer is also an engineer and has the requisite knowledge required under the Broadband DATA Act, a provider may submit a single certification that fulfills both requirements. A "qualified engineer," for purposes of this certification, shall be:

(1) A corporate officer possessing a Bachelor of Science (B.S.) in engineering degree and who has direct knowledge of and responsibility for the carrier's network design and construction;

(2) An engineer possessing a bachelor's or postgraduate degree in electrical engineering, electronic technology, or another similar technical discipline, and at least seven years of relevant experience in broadband network design and/or performance; or

(3) An employee with specialized training relevant to broadband network engineering and design, deployment, and/or performance, and at least 10 years of relevant experience in broadband network engineering, design, and/or performance.

■ 4. Amend § 1.7005 by revising paragraph (a)(1) to read as follows:

§ 1.7005 Disclosure of data in the Fabric and Broadband Data Collection filings.

(a) * * *

(1) Withholding from public inspection all data required to be kept confidential pursuant to § 0.457 of this chapter, location-specific data on grandfathered services (though the

Office of Economics and Analytics may make publicly available aggregated information or data related to such services), and all personally identifiable information submitted in connection with the information contained in the Fabric, the dataset supporting the Fabric, and availability data submitted pursuant to § 1.7004; and

* * * * *

■ 5. Amend § 1.7006 by:

■ a. Revising the section heading and paragraph (d) introductory text;

■ b. Removing and reserving paragraphs (d)(1)(vii) and (d)(9); and

■ c. Adding paragraphs (g) and (h).

The revisions and addition read as follows:

§ 1.7006 Data retention and verification.

* * * * *

(d) *Fixed service challenge process.*

State, local, and Tribal governmental entities, consumers, and other entities or individuals may submit data in an online portal to challenge the accuracy of the coverage maps at a particular location and any information submitted by a provider regarding the availability of broadband internet access service.

* * * * *

(g) *Broadband serviceable location*

Fabric challenge process. State, local, and Tribal governmental entities, consumers, and other entities or individuals may submit data in an online portal to challenge the accuracy of the information in the Fabric.

(1) Fabric challengers must provide in their submissions:

(i) Name and contact information (e.g., address, phone number, email);

(ii) For a missing broadband-serviceable location, the geographic coordinates (latitude/longitude) of the location, along with an address for the location (if an address is available), a unit count, and the building type (selected from pre-established options on the portal);

(iii) For an existing broadband-serviceable location, category of dispute, selected from pre-established options on the portal;

(iv) Details and evidence about the challenged location; and

(v) A certification from an individual or an authorized officer or signatory of a challenger that the person examined the information contained in the challenge and that, to the best of the person's actual knowledge, information, and belief, all statements of fact contained in the challenge are true and correct.

(2) The Commission shall seek to resolve such challenges within 90 days of receiving the challenge filing in the online portal.

(3) Government entities or other entities may file challenges at multiple locations in a single challenge, but each challenge must contain all of the requirements set forth in paragraph (g)(1) of this section.

(4) Once a challenge containing all the required elements is submitted in the online portal, the location shall be identified on the coverage maps as “in dispute/pending resolution.” The Commission shall make public information about the location that is the subject of the challenge, including the street address and/or coordinates (latitude and longitude) and any relevant details concerning the basis for the challenge.

(h) *Data retention.* Facilities-based providers shall retain the underlying data used to create their biannual Broadband Data Collection submissions (including supporting data) for at least three years after the applicable “as-of” reporting date (*i.e.*, June 30 or December 31). In addition, facilities-based providers shall also retain any and all data related to responses to the data verification efforts set forth in paragraphs (a) through (g) of this section for at least three years from the date the provider receives notice of a challenge, verification inquiry, or initiation of an audit.

■ 6. Amend § 1.7009 by adding paragraph (e) to read as follows:

§ 1.7009 Enforcement.

* * * * *

(e) If, as a result of a verification inquiry or audit performed pursuant to § 1.7006, Commission staff request that a provider submit corrected availability data, and the provider fails to submit corrected data by the required date, then the Office of Economics and Analytics (OEA), in coordination with the Wireless Telecommunications Bureau, Wireline Competition Bureau, or Space Bureau (as appropriate), may remove locations or areas from the availability data published in the National Broadband Map pursuant to 47 U.S.C. 642(c). In such an instance, the BDC system will notify the provider in writing that some or all of its availability data have been altered or removed from the National Broadband Map. OEA will abstain from altering or removing locations or areas subject to an audit or verification for which the provider has filed an application for review or petition for reconsideration until such time as the Commission rules upon any such application or petition. During this period the locations or areas

may be indicated as “in dispute” on the National Broadband Map.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 217, and 252

[Docket DARS–2020–0034]

RIN 0750–AK81

Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate contractual requirements related to the proposed Cybersecurity Maturity Model Certification 2.0 program rule, Cybersecurity Maturity Model Certification Program. This proposed DFARS rule also partially implements a section of the National Defense Authorization Act for Fiscal Year 2020 that directed the Secretary of Defense to develop a consistent, comprehensive framework to enhance cybersecurity for the U.S. defense industrial base.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 15, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D041, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2019–D041. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2019–D041” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2019–D041 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately

two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571–296–7152.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement the contractual requirements related to the Cybersecurity Maturity Model Certification (CMMC) 2.0 program, published in the **Federal Register** as a proposed rule affecting 32 CFR part 170 on December 26, 2023, at 88 FR 89058. CMMC 2.0 provides a framework for assessing contractor implementation of cybersecurity requirements and enhancing the protection of unclassified information within the DoD supply chain. This proposed DFARS rule also partially implements section 1648 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), which directed the Secretary of Defense to develop a consistent, comprehensive framework to enhance cybersecurity for the U.S. defense industrial base no later than February 1, 2020.

On September 29, 2020, an interim rule under DFARS Case 2019–D041, Assessing Contractor Implementation of Cybersecurity Requirements, was published in the **Federal Register** at 85 FR 61505, effective November 30, 2020. On November 17, 2021, the notice, “Cybersecurity Maturity Model Certification (CMMC) 2.0 Updates and Way Forward” was published in the **Federal Register** at 86 FR 64100 to suspend the CMMC 1.0 pilot efforts. The purpose of suspending the CMMC 1.0 pilot efforts was to allow for development of CMMC 2.0. On December 26, 2023, DoD published in the **Federal Register** at 88 FR 89058 a proposed CMMC 2.0 program rule, Cybersecurity Maturity Model Certification Program, to propose the establishment of the CMMC 2.0 program requirements at 32 CFR part 170.

II. Discussion and Analysis

The proposed changes to the existing DFARS language are primarily to: (1) add references to the CMMC 2.0 program requirements proposed at 32 CFR part 170; (2) add definitions for controlled unclassified information (CUI) and DoD unique identifier (DoD UID) to the subpart; (3) establish a solicitation provision and prescription; and (4) revise the existing clause language and prescription.

DoD is implementing a phased rollout of CMMC. Over a three-year period CMMC will be phased in based on the

CMMC 2.0 program requirements identified at 32 CFR part 170. The clause at DFARS 252.204–7021, Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements, is prescribed for use in solicitations and contracts that require the contractor to have a specific CMMC level, including solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products and commercial services, excluding acquisitions exclusively for commercially available off-the-shelf (COTS) items. In order to implement the phased rollout of CMMC, inclusion of a CMMC requirement in a solicitation during this time period will be determined by the program office or requiring activity after consulting the CMMC 2.0 requirements at 32 CFR part 170. During the phase-in period, when there is a requirement in the contract for CMMC, CMMC certification requirements must be flowed down to subcontractors at all tiers, when the subcontractor will process, store, or transmit Federal contract information (FCI) or CUI, based on the sensitivity of the unclassified information flowed down to each of the subcontractors in accordance with the proposed CMMC 2.0 requirements to be established at 32 CFR part 170 (see the proposed rule published December 26, 2023, at 88 FR 89058).

After the phase-in period, CMMC will apply to all DoD solicitations and contracts, including those for the acquisition of commercial products or commercial services (except those exclusively for COTS items), valued at greater than the micro-purchase threshold that involve processing, storing, or transmitting FCI or CUI. When a CMMC level is included in the solicitation or contract, contracting officers will not make award, exercise an option, or extend the period of performance on a contract, if the offeror or contractor does not have the results of a current certification or self-assessment for the required CMMC level, and an affirmation of continuous compliance with the security requirements to be identified at 32 CFR part 170, in the Supplier Performance Risk System (SPRS) for all information systems that process, store, or transmit FCI or CUI during contract performance. Furthermore, CMMC certification requirements must be flowed down to subcontractors at all tiers when the subcontractor will process, store, or transmit FCI or CUI, based on the sensitivity of the unclassified information flowed down to each of the

subcontractors in accordance with the proposed CMMC 2.0 requirements to be established at 32 CFR part 170 (see 88 FR 89058).

A. Proposed Rule Changes

This proposed rule includes amendments to DFARS 204.7502, Policy. These amendments require at the time of award the results of a current CMMC certificate or CMMC self-assessment, at the level required, for all information systems that process, store, or transmit FCI or CUI during contract performance, when a CMMC level is included in the solicitation.

The proposed rule also adds a requirement at DFARS 204.7503, Procedures, for contracting officers to work with the program office or requiring activity to verify in SPRS, prior to awarding a contract, exercising an option, or when new DoD UIDs are provided, that: (1) the results of a current CMMC certificate or current CMMC self-assessment at the level required by the solicitation, or higher, are posted in SPRS for each DoD UID applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract; and (2) the apparently successful offeror has a current affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each DoD UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract.

The proposed rule also adds a definition at DFARS 204.7501 for use only in the subpart for the term CUI based on the 32 CFR 2002 definition of CUI. Definitions for current (as it relates to CMMC) and DoD UID are also added.

This proposed rule includes a new DFARS provision, 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements, to provide notice to offerors of the CMMC level required by the solicitation and of the CMMC certificate or self-assessment results that are required to have been posted in SPRS by the apparently successful offeror prior to award, unless electronically posted. Offerors post CMMC Level 1 and Level 2 self-assessments into SPRS. Level 2 certificate assessment results will be electronically transmitted to SPRS by the third-party assessment organization (see the proposed rule published at 88 FR 89058, in the proposed text at 32 CFR 170.17 for details on CMMC Level 2 certification assessment requirements). Level 3 certificate

assessment results will be electronically transmitted to SPRS by the DoD assessor (see the proposed rule published at 88 FR 89058, in the proposed text at 32 CFR 170.18 for details on CMMC Level 3 certification requirements).

Apparently successful offerors are also required to provide, at the contracting officer's request, the DoD UIDs issued by SPRS for the contractor information systems that will process, store, or transmit FCI or CUI during contract performance. SPRS will issue DoD UIDs to offerors in connection with their CMMC self-assessments and CMMC certificates. Apparently successful offerors will need to specify which DoD UIDs are applicable to the contractor information systems that will process, store, or transmit FCI or CUI during contract performance.

This proposed rule at DFARS 204.7504 adds the prescription for the new DFARS solicitation provision, 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements. DFARS 252.204–7YYY is prescribed for use in solicitations that include the clause at 252.204–7021. The provision includes language identifying the CMMC level required for the contract and notifies offerors that the apparently successful offeror will not be eligible for award of a contract, task order, or delivery order resulting from the solicitation in which the provision appears, if the apparently successful offeror does not have the results of a current CMMC certificate or self-assessment entered in SPRS (<https://piee.eb.mil>) at the CMMC level required by the provision and an affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract.

This proposed rule includes changes to the clause at DFARS 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirement, to:

- Add definitions at paragraph (a) for Cybersecurity Maturity Model Certification, current (as it relates to CMMC), and DoD UID, and remove the scope statement.
- Require the contractor to have and maintain the requisite CMMC level for the life of the contract.
- Require the contractor to submit to the contracting officer the DoD UID(s) issued by SPRS for contractor information systems that will process, store, or transmit FCI or CUI during performance of the contract.

- Require the contractor to complete and maintain on an annual basis, or when security changes occur, the affirmation of continuous compliance with the security requirements identified at 32 CFR part 170. The affirmation of continuous compliance is made by a senior company official (see definition of “senior company official” at 32 CFR 170.4 in the proposed rule published at 88 FR 89058) to affirm that its CMMC self-assessment of CMMC certification for each DoD UID applicable to the contractor information systems that process, store, or transmit FCI or CUI during contract performance remains current and the information system(s) covered by the CMMC self-assessment or CMMC certificate continue to be in compliance with the security requirements identified at 32 CFR 170.

- Require the contractor to notify the contracting officer of any changes in the contractor information systems that process, store, or transmit FCI or CUI during contract performance and to provide the corresponding DoD UIDs for those contractor information systems to the contracting officer. The contractor is required to provide the DoD UIDs to the contracting officer so the Government can review associated CMMC certificate or CMMC self-assessment results and contractor affirmations of continued compliance in SPRS for those additional contractor information systems.

- Require the contractor to ensure that its subcontractors also have the appropriate CMMC level prior to awarding a subcontract or other contractual instruments. This requirement is included in the clause at DFARS 252.204–7021, paragraph (d), which tells contractors when to flow the clause down to subcontractors.

- Require the contractor to include the requirements of the clause in subcontracts or other contractual instruments. The purpose of the clause is to ensure suppliers at all tiers are in compliance with the security requirements identified at 32 CFR part 170 when there is a requirement for CMMC in the contract, if applicable based on the information that is being flowed down. The CMMC program requirements related to the CMMC level required for suppliers is based on the information that is being flowed down, and those requirements are defined in the Title 32 CFR CMMC Program proposed rule.

The proposed rule also adds language to the clause at DFARS 252.204–7021 to incorporate a requirement for contractors to only transmit data on information systems that process, store, or transmit FCI or CUI during contract

performance that have a certification at the CMMC level required by the contract. In addition, the contractor will be required to notify the contracting officer if there are any lapses or changes in CMMC certification levels that affect the requirements for information security during contract performance. The clause will also include language identifying the CMMC level required by the contract.

This proposed rule also includes revisions to the clause prescription at DFARS 204.7504 to apply the clause at DFARS 252.204–7021 to solicitations and contracts, task orders, or delivery orders that require the contractor to have a specific CMMC level, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of COTS items.

DoD considered three alternatives for the timing of the requirement to achieve a CMMC 2.0 level certification in the development of this proposed rule, weighing the benefits and risks associated with requiring CMMC 2.0 level certification: (1) at time of proposal submission; (2) at time of award; or (3) after contract award. DoD ultimately adopted the second alternative to require certification at the time of award. The drawback of the first alternative (*i.e.*, at time of proposal submission) is the increased risk for offerors since they may not have sufficient time to achieve the required CMMC certification. The drawback of the third alternative (*i.e.*, after contract award) is the increased risk to DoD with respect to the schedule and uncertainty due to the possibility that the contractor may be unable to achieve the required CMMC level in a reasonable amount of time given their current cybersecurity posture. This potential delay would apply to the entire supply chain and prevent the appropriate flow of FCI and CUI to the contractor and subcontractors.

This proposed rule also includes the following conforming changes:

- Makes references to the CMMC 2.0 program requirements by incorporating the citation for 32 CFR part 170 throughout the text of the proposed rule.
- Amends the list in DFARS 212.301 of solicitation provisions and contract clauses that are applicable for the acquisition of commercial products and commercial services to include the new provision at DFARS 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements. The clause at DFARS 252.204–7021, Contractor Compliance with the

Cybersecurity Maturity Model Certification Level Requirements, is already included in this list from the prior interim rule under this DFARS Case 2019–D041.

- Amends DFARS 217.207, Exercise of Options, to advise contracting officers that when CMMC is required in the contract, an option may only be exercised after verifying in SPRS that the contractor has the required affirmation(s) of continuous compliance with the security requirements identified at 32 CFR part 170 and has posted the results of a current CMMC certificate or CMMC self-assessment at the level required by the contract, or higher. The text refers contracting officers to DFARS 204.7503(c) for complete details regarding these requirements.

B. Analysis of Public Comments in Response to the Interim Rule

This proposed rule follows the publication of an interim rule under this DFARS Case 2019–D041, which received over 750 public comments. Although this proposed rule does not finalize the interim rule, it responds to the public comments received and anticipates that these responses will facilitate the public’s understanding of this proposed rule. Only comments submitted in response to the interim rule as it relates to the contractual requirements are discussed below. The technical and programmatic comments on CMMC 1.0 are being handled in the CMMC program rule affecting 32 CFR part 170. In addition to technical and programmatic comments, the comments related to the CMMC cost analysis are also being addressed under the CMMC program rule affecting 32 CFR part 170. It should also be noted that any comments related to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 DoD Assessment methodology will be addressed under a separate DFARS Case 2022–D017, NIST SP 800–171 DoD Assessment Requirements. A discussion of the comments is provided as follows:

1. Small Business Impact

Comment: Several respondents requested more information on the impact to small entities from CMMC.

Response: As described in the regulatory flexibility analysis in section VI of this preamble, the phased roll-out of CMMC over three years is intended to mitigate the impact of CMMC on contractors including small entities and is only expected to apply to 1,104 small entities in year one. In addition, the provision and clause in this proposed

rule exempt contracts that are exclusively for COTS items.

2. Requirement for CMMC

Comment: Several respondents inquired about how contractors will know there is a requirement to have CMMC certification.

Response: As stated in this proposed rule, if there is a requirement for a specific CMMC level, the CMMC requirement will be identified in the DFARS solicitation provision 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements. In addition, the DFARS contract clause 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirements, will be included in the contract.

3. CMMC Application to Other Transaction Agreements (OTAs)

Comment: Many respondents asked whether CMMC will apply to OTAs.

Response: Applicability to OTAs is outside the scope of this DFARS rule, as the DFARS does not provide coverage of OTA requirements. If the program office or requiring activity identifies a need to include a CMMC requirement in an OTA, it will be included in the solicitation and resulting agreement.

4. Application to Foreign Suppliers for CMMC

Comment: Many respondents commented on whether CMMC will apply to foreign suppliers.

Response: If the program office or requiring activity identifies a need to include a CMMC requirement in a contract, it will be included in the solicitation and resulting contract unless the contract is exclusively for COTS items. The proposed rule does not exempt foreign suppliers from CMMC requirements.

5. CMMC and NIST SP 800–171 DoD Assessment Requirements

Comment: Many respondents questioned how CMMC and the NIST SP 800–171 requirements will interact and if one requirement will be used for the other.

Response: As described in the interim rule at DFARS 204.7501(c), the CMMC assessments will not duplicate efforts from any other comparable DoD assessment, except for rare circumstances when a reassessment may be necessary, for example, when there are indications of issues with cybersecurity and/or compliance with CMMC requirements.

6. CMMC Application to Broad Agency Announcements (BAAs)

Comment: Many respondents inquired whether CMMC will apply to BAAs.

Response: If the program office or requiring activity identifies a need to include a CMMC requirement in a contract, it will be included in the solicitation and resulting contract. The proposed rule prescribes the CMMC clause at 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirements, for use in solicitations and contracts, task orders, and delivery orders that require the contractor to have a specific CMMC level, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, except those solely for the acquisition of COTS items.

7. Duplication of DFARS Clause 252.204–7012 and DFARS Clause 252.204–7021

Comment: A respondent commented on whether DFARS clause 252.204–7012 and DFARS clause 252.204–7021 duplicate one another.

Response: These clauses are not duplicative as they have distinct purposes. DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, levies cybersecurity requirements on contractors, and DFARS clause 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirements, levies a requirement for an assessment of how well a contractor is meeting those cybersecurity requirements specified in 252.204–7012.

8. Uniform Definition of CUI

Comment: A respondent commented that there should be a uniform definition of CUI.

Response: This proposed rule adds a definition for use in subpart 204.75 for the term “controlled unclassified information.” The definition is based on the definition of CUI at 32 CFR 2002.

9. Uniformity and Consistency

Comment: Many respondents commented that the final rule should provide uniformity and consistency.

Response: This proposed rule does not conflict with other regulations.

10. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Comment: Many respondents commented that there should be clarification as to whether this rule

applies to contracts at or below the simplified acquisition threshold.

Response: As described in section III of this preamble, this proposed rule applies to contracts at or below the simplified acquisition threshold, but not to purchases at or below the micro-purchase threshold.

11. Expected Cost Impact and Benefits

Comment: Several respondents commented that the interim rule for 2019–D041 had a cost analysis that lacked a basis for the analysis.

Response: The Regulatory Impact Analysis associated with this proposed rule only includes a cost analysis of the contractual requirements associated with this proposed rule. The rule for the CMMC Program affecting 32 CFR part 170 contains the expected cost impact and benefits of technical requirements associated with CMMC. Any comments on the cost estimates of technical or programmatic requirements related to the CMMC Program should be directed to the proposed rule affecting 32 CFR part 170.

12. Applicability to COTS—Define Exclusively COTS

Comment: Many respondents commented that there needs to be a definition for “exclusively COTS”.

Response: As described in this preamble, this proposed rule does not apply to awards that are exclusively for COTS items. The term “commercially available off-the-shelf (COTS) item” is defined at FAR 2.101, so any awards that are exclusively for items falling within that FAR definition would be considered “exclusively COTS” awards.

13. Timing of CMMC Certification

Comment: Many respondents recommended that the CMMC certification timing be delayed until after award, or that it should be made more flexible.

Response: The CMMC policy identified in the CMMC 2.0 proposed rule affecting 32 CFR part 170 (published December 26, 2023, at 88 FR 89058) establishes that CMMC certification and CMMC self-assessments are required at the time of award.

14. Prime Contractor Validation of Subcontractor CMMC Level

Comment: Many respondents commented that there should be a way for prime contractors to validate subcontractor CMMC certificates and CMMC self-assessments.

Response: There is not currently a tool established that would allow sharing of subcontractor information

with prime contractors electronically. Prime contractors are expected to work with their suppliers to conduct verifications as they would under any other clause requirement that applies to subcontractors.

15. Cost Allowability

Comment: Many respondents commented that the DFARS rule should specify whether costs for CMMC are allowable costs.

Response: Cost allowability requirements are described at FAR 31.201–2, Determining allowability.

16. Clause Applicability Overly Broad

Comment: Many respondents commented that the clause applicability is overly broad.

Response: In this proposed DFARS rule, the applicability of the clause has been narrowed to apply only when there is a requirement in the solicitation for the contractor to have a specific CMMC level.

17. Application to Plain Old Telephone Service (POTS)

Comment: One respondent asked if handling CUI under a POTS contract would trigger the requirements of DFARS 252.204–7012.

Response: The requirements under 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, are triggered when the contractor processes, stores, or transmits CUI on a covered contractor information system (the contractor's internal information system). Common carrier telecommunications circuits or POTS would not normally be considered part of the covered contractor information system processing FCI or CUI. Data traversing common carrier systems should be separately encrypted per NIST SP 800–171 requirement 3.13.8. Contracts with common carriers to provide telecommunications services may include DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, but should not be interpreted to imply the common carrier telecommunications systems themselves have to meet the DFARS requirements.

18. Joint Ventures

Comment: Many respondents commented on how to handle CMMC certifications and CMMC self-assessments under joint ventures.

Response: Each individual entity that has a requirement for CMMC would be required to comply with the requirements related to the individual entity's information systems that

process, store, or transmit FCI or CUI during contract performance.

19. Training on Marking CUI

Comment: Many respondents commented that DoD should train personnel on marking CUI and recommended that agencies do a better job of marking CUI.

Response: This comment is outside of the scope of this rule.

20. Clarification of How CMMC Applies to Information Systems

Comment: Many respondents commented that clarification is needed regarding how CMMC is applied to information systems.

Response: As described in this proposed rule, if there is a requirement for CMMC, then it applies to all information systems that process, store, or transmit FCI or CUI in performance of the contract.

21. Fundamental Research

Comment: Many respondents commented that clarification is needed regarding whether CMMC applies to fundamental research.

Response: Fundamental research, as defined in National Security Decision Directive (NSDD) 189, is published and broadly shared within the scientific community and, as such, cannot be safeguarded as either FCI or CUI; however, if fundamental research has the potential to become CUI, it would be subject to the requirements of CMMC.

22. Clause Fill-In With CMMC Level

Comment: One respondent requested that the clause contain a fill-in with the CMMC level requirement.

Response: In this proposed rule, the CMMC level requirement will be included in the solicitation provision at 252.204–7YYY, Notice of Cybersecurity Model Certification Level Requirements and in the contract clause at 252.204–7021.

23. Application of CMMC to Non-COTS Item Contracts With No FCI or CUI Involved

Comment: Many respondents commented that it appears the CMMC clause would be included in non-COTS item contracts with no FCI or CUI involved at the prime contractor and subcontractor levels.

Response: The proposed rule prescribes the CMMC clause for use only in solicitations and contracts that require the contractor to have a specific CMMC level. Contracts that are exclusively for COTS items and purchases at or below the micro-purchase threshold will not have a

requirement for the contractor to have a specific CMMC level.

24. Application of CMMC Clause to Service Contracts and Non-Defense Contracts

Comment: One respondent commented on whether the CMMC clause will be included in services contracts and non-defense contracts.

Response: The proposed rule proposes to amend the DFARS, so this proposed rule only includes changes to the requirements for DoD. A services contract may have a requirement for CMMC.

25. Definition of “Contractor Information System Relevant to the Contract/Offer”

Comment: Many respondents requested clarification of the phrase, “contractor information system relevant to the contract/offer”.

Response: The proposed rule includes language that clarifies that contractor information systems relevant to the contract or offer are contractor information systems that process, store, or transmit FCI or CUI during performance of the contract.

26. Effective Date of CMMC Clause for Contracts and Applicability to Modifications

Comment: Many respondents requested clarification on the effective date of the CMMC clause and applicability to modifications.

Response: The proposed rule includes amendments to the DFARS that will not take effect until a final rule is issued. Therefore, the effective date of the clause would be the effective date specified in the final rule. The clause will only be included in solicitations issued on or after the effective date of the final rule and any resulting contracts, unless the contracting officer makes a decision to include the clause in a solicitation issued prior to the effective date of the final rule, provided that any resulting contracts are awarded on or after the effective date of the final rule. Contracting officers have the discretion to bilaterally incorporate the clause in contracts in effect prior to the effective date of the clause, with appropriate consideration. See FAR 1.108(d).

27. Determining CMMC Level for Subcontracts

Comment: Many respondents commented that there should be clarification regarding how to determine the required CMMC level for subcontracts.

Response: In determining a CMMC level appropriate for the information being flowed down to subcontractors, see the proposed rule affecting 32 CFR part 170 published in the **Federal Register** on December 26, 2023, at 88 FR 89058.

28. Proliferation of Component-Unique Security Requirements

Comment: Many respondents commented that it appeared there was a proliferation of component-unique security requirements.

Response: While the comment is noted, the comment is outside of the scope of this proposed rule.

29. Reflecting CMMC Levels in SAM.gov for Prime Contractor Verification of Subcontractors

Comment: One respondent recommended reflecting CMMC levels in SAM.gov for prime contractor verification of the subcontractors.

Response: The CMMC Program proposed rule affecting 32 CFR part 170 has identified that SPRS is the repository for CMMC certificates and self-assessment information at present. Contractors will only be able to access their own CMMC certificate and self-assessment information.

30. Training Contracting Officers

Comment: Many respondents commented that it would be helpful to train contracting officers on how to appropriately identify contracts for inclusion of the DFARS clause at 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirements.

Response: As with any clause, contracting officers will follow the prescription language in determining when to include a contract clause.

31. Vendor Description of CMMC Queue in Response to Proposals

Comment: One respondent commented recommending that an offeror should be able to share where they are in the queue for a CMMC assessment and be allowed to have a late submission of their CMMC certification.

Response: The CMMC Program policy, in the proposed rule affecting 32 CFR part 170, is to require a CMMC certification or CMMC self-assessment at the time of award if there is a requirement for CMMC under the contract.

32. Define “Certification”

Comment: A respondent commented that the term “certification” should be defined.

Response: The term “certification” referenced in this proposed rule relates to the Cybersecurity Maturity Model Certification.

33. Defense Industrial Base Cybersecurity Assessment Center (DIBCAC) Assessment Reciprocity

Comment: Several respondents asked for clarification on reciprocity between CMMC certification and Defense Contract Management Agency DIBCAC assessments.

Response: As described in the interim rule at DFARS 204.7501(c), the CMMC assessments will not duplicate efforts from any other comparable DoD assessment, except for rare circumstances when a reassessment may be necessary, for example, when there are indications of issues with cybersecurity and/or compliance with CMMC requirements.

34. Clearance Procedures for Interim Rule

Comment: A respondent asked what clearance procedures were bypassed to allow for the emergency processing of the previously published interim rule.

Response: Clearance procedures were not bypassed in the emergency processing of the previously published interim rule under this DFARS Case 2019–D041. As described in section IX of the preamble for the interim rule, a determination was made pursuant to 41 U.S.C. 1707(d) and FAR 1.501–3(b) to issue the interim rule.

35. Recommend Opening a DFARS Procedures, Guidance, and Information (PGI) Case

Comment: One respondent recommended that a PGI case should be opened to provide procedures, guidance, and information to the workforce related to CMMC.

Response: At present, the requirements in the proposed rule are simply for contracting officers to include the provision and clause as prescribed. Any additional guidance would be for the program office and requiring activity community. Such guidance would not be added to the DFARS PGI, which speaks to contracting officers.

36. Existence of the Clause as an Indication of the Presence of CUI

Comment: Several respondents asked for clarification on whether the presence of the clause at 252.204–7021 means that CUI will be used in performance of the contract.

Response: CMMC also applies to FCI, so the existence of the clause at 252.204–7021, Contractor Compliance

with the Cybersecurity Maturity Model Certification Level Requirements, does not automatically mean that there is CUI that will be processed, stored, or transmitted in the performance of the contract.

37. Application of the Clause to Government Furnished Equipment (GFE)

Comment: One respondent requested clarification on whether the clause will apply to GFE or GFE in a test environment.

Response: If the program office or requiring activity includes a requirement in the solicitation and resulting contract for the contractor to have a specific CMMC level, then the clause would apply.

38. Other Contractual Instruments

Comment: A respondent commented that there should be a definition in the DFARS of “other contractual instruments”.

Response: “Other contractual instruments” are agreements with vendors or suppliers that are not considered subcontracts. The term has been used in the DFARS for years and is well understood.

39. Source Selections

Comment: A respondent requested information on how CMMC applies to source selections.

Response: Proposed changes to DFARS 204.7503 require that contracting officers shall not award a contract, task order, or delivery order to an offeror that does not have a current CMMC certificate or self-assessment at the level required by the solicitation. If CMMC is included in a solicitation, it is also included as a contract requirement.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including COTS Items), and for Commercial Services

This proposed rule amends the clause at DFARS 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirements, as well as the prescription at DFARS 204.7504(a). The clause is prescribed for use in solicitations and contracts, task orders, or delivery orders, that require the contractor to have a specific CMMC level, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of COTS items. This proposed rule includes a new

provision, DFARS 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements. The provision is prescribed at DFARS 204.7504(b) for use in solicitations that include the clause at DFARS 252.204–7021.

DoD intends to apply the provision and clause to contracts and subcontracts valued at or below the SAT but greater than the micro-purchase threshold, for the acquisition of commercial products excluding COTS items, and for the acquisition of commercial services.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does intend to make that determination. Therefore, this proposed rule will apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862, or that strategic materials critical to national security be

bought from American sources pursuant to 10 U.S.C. 4863; or

- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

The statute implemented in this proposed rule does not impose criminal or civil penalties, does not require purchase pursuant to 10 U.S.C. 4862 or 4863, and does not refer to 10 U.S.C. 3452. Therefore, section 1648 of the NDAA for FY 2020 will not apply to the acquisition of commercial services or commercial products including COTS items unless a written determination is made. Due to delegations of authority, the Principal Director, DPCAP is the appropriate authority to make this determination. DoD intends to make that determination to apply this statute to the acquisition of commercial products excluding COTS items and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products excluding COTS items and to the acquisition of commercial services.

C. Determinations

Given that the requirements of section 1648 of the NDAA for FY 2020 were enacted to promote protection of FCI and CUI that will be processed, stored, or transmitted on contractor information systems, and since FCI and CUI may be processed, stored, or transmitted on contractor information systems in the performance of contracts or orders valued below the simplified acquisition threshold and when the Federal Government is procuring commercial products and commercial services, it is in the best interest of the Federal Government to apply the statute to contracts for the acquisition of commercial services and commercial products, excluding COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial services and commercial products, excluding COTS items, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

A. Background

DoD is proposing to amend the DFARS to implement the contractual requirements related to the DoD policy for CMMC 2.0 (see the proposed rule affecting 32 CFR 170, published in the **Federal Register** December 26, 2023, at 88 FR 89058). CMMC 2.0 self-assessments and certificates assess a

contractor's compliance with certain information system security requirements. Pursuant to the DoD policy in the CMMC 2.0 proposed rule, the CMMC level requirements apply to every contractor information system that will process, store, or transmit Federal contract information (FCI) or controlled unclassified information (CUI).

DoD is proposing to amend the DFARS to include the following solicitation and contractual requirements related to the CMMC 2.0 policy:

- Offeror and contractor requirement to post the results of a CMMC 2.0 Level 1 or Level 2 self-assessment to the Supplier Performance Risk System (SPRS) prior to award, exercise of an option, or extension of a period of performance, if not already posted.
- Contractor requirement to maintain the required CMMC self-assessment or certificate level for the life of the contract.
- Contractor requirement to complete a contractor senior company official affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each DoD unique identifier (UID) applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract on an annual basis, or when CMMC 2.0 compliance status changes occur.
- Apparently successful offeror and contractor requirement to identify the contractor information systems that will be used to process, store, or transmit FCI or CUI in performance of the contract prior to award, exercise of an option, or extension of any period of performance, by providing to the Government the DoD UIDs generated by SPRS.

The costs associated with the technical completion of the CMMC 2.0 certifications and self-assessments are included in the CMMC 2.0 proposed rule affecting title 32 CFR.

B. Summary of Impact

This proposed DFARS rule will impact certain contracts during a phased-in, three-year implementation period. Afterwards, the requirements will apply to all contracts for which the contractor will process, store, or transmit FCI or CUI on contractor information systems during the performance of the contract, except for contracts solely for the acquisition of commercially available off-the-shelf (COTS) items.

For the first three years after the effective date of the final rule, the information collection requirements

will only impact an offeror or contractor when the solicitation or contract requires an offeror or contractor to have a specific CMMC level, based on a phased rollout plan, including solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of COTS items.

By the fourth year, the information collection requirements in the solicitation provision and contract clause will impact solicitations and contracts, task orders, or delivery orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when there will be a requirement under the contract to process, store, or transmit FCI or CUI, except for solicitations and contracts solely for the acquisition of COTS items.

Since DoD does not track awards that may include FCI or CUI, DoD assumes the number of impacted awardees in Year 4 and beyond will be the average number of entities in the Electronic Data Access (EDA) system from fiscal year (FY) 2021 through FY 2023 with awards containing the clause at DFARS 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, or 29,543 entities, of which 20,395 (69 percent) are small businesses. DoD also assumes that offerors or contractors with a requirement for CMMC in contracts will have on average 5 contractor information systems that will be used to process, store, or transmit FCI or CUI in performance of the contract.

For each of the information systems that will process, store, or transmit FCI

or CUI, DoD assumes it will take offerors and contractors—

- An estimated 5 minutes to post the results of the CMMC self-assessments in SPRS;
- An estimated 5 minutes to complete the required affirmation in SPRS; and
- An estimated 5 minutes to retrieve DoD UIDs in SPRS for the information systems that will be used in performance of the contract and to submit the DoD UIDs to the Government.

For the Government, DoD assumes it will take—

- An estimated 5 minutes to validate the existence of the correct level and currency of a CMMC certification or CMMC self-assessment results associated with offeror DoD UIDs in SPRS for the apparently successful offeror prior to award and for the contractor prior to exercising an option or extending any period of performance;
- An estimated 5 minutes to validate the existence of an affirmation that is current for each of the contractor information systems that will process, store, or transmit FCI or CUI; and
- An estimated 5 minutes to validate the existence of the correct level and currency of a CMMC certification or CMMC self-assessment and affirmation associated with contractor DoD UIDs in SPRS, when there are changes in the information systems during contract performance.

The primary cost impact of this proposed rule is that apparently successful offerors for contracts that include a CMMC requirement will now be required to conduct the cost activities described below in accordance with the provision at DFARS 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirement, and the clause at DFARS 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

The benefits of this proposed rule include verification of a defense industrial base (DIB) contractor’s implementation of system security requirements. The clause at DFARS 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, does not provide for the DoD verification of a DIB contractor’s implementation of the security requirements specified in National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 prior to contract award. CMMC adds the element of verification of a DIB contractor’s cybersecurity through the use of accredited third-party assessors. This proposed rule provides increased assurance to DoD that a DIB contractor can adequately protect sensitive unclassified information such as CUI at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Another benefit of this proposed rule is that it supports the protection of intellectual property and sensitive information from malicious activity that has a significant impact on the U.S. economy and national security. While there is not enough information to be able to estimate the benefits of this rule at this time, DoD assumes there will be a benefit from reducing the threat of malicious cyber activity. The Council of Economic Advisors estimates that malicious cyber activity cost the U.S. economy between \$57 billion and \$109 billion in 2016. Over a ten-year period, that burden would equate to an estimated \$512 billion to \$979 billion in costs at a 2 percent discount rate.

The following is a summary of the estimated public and Government costs calculated over a 10-year period at a 2 percent discount rate:

Summary	Public	Government	Total
Present Value	\$40,687,957	\$25,237,882	\$65,925,839
Annualized Costs	4,529,649	2,809,646	7,339,295

Public comments are solicited on this analysis of the estimated burden of the proposed rule.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to respond to the threat to the U.S. economy and national security posed by

ongoing malicious cyber activities designed to steal hundreds of billions of dollars of U.S. intellectual property. This proposed rule includes the following requirements for apparently successful offerors responding to a solicitation, and contractors awarded contracts, containing a requirement for CMMC: (1) post in SPRS the results of a current CMMC certificate or current CMMC self-assessment at the level required by the solicitation, or higher, for each DoD UID applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract and maintain the CMMC level for the life of the contract; (2) provide the DoD UID(s) applicable to each of those contractor information systems to the contracting officer and provide updates, if applicable; and (3) have a current affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each DoD UID applicable to each of those contractor information systems. These requirements apply to apparently successful offerors with a CMMC requirement in solicitations prior to award and to contractors with a CMMC requirement in contracts prior to exercising an option.

The proposed rule has two objectives. One objective is to provide DoD with assurances that a defense industrial base contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information shared with its subcontractors in a multi-tier supply

chain. Another objective is to partially implement section 1648 of the NDAA for FY 2020. The legal basis for the rule is 41 U.S.C. 1303 and section 1648 of the NDAA for FY 2020.

Given the enterprise-wide implementation of CMMC, DoD developed a three-year phased rollout strategy. The rollout is intended to minimize both the financial impacts to the industrial base, especially small entities, and disruption to the existing DoD supply chain. Upon completion of the phased implementation, this rule will impact all small entities awarded contracts with DoD, except those providing only COTS items and those that do not handle FCI or CUI. The estimated number of small entities to which the rule will apply in year one is 1,104.

By the fourth year, all entities receiving DoD contracts and orders that have contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract or order, other than contracts or orders exclusively for COTS items, will be required to have, at minimum, a CMMC Level 1 self-assessment or the CMMC Level identified in the solicitation and resulting contract, as appropriate for the type of information being handled under the contract. As described previously, it should be noted that this requirement does not apply to awards that do not involve the handling or transmission of FCI or CUI. By year four, the total estimated number of small entities to which the rule will apply will be 60,783.

During the first three years of the phased rollout, the CMMC requirement will be included only in certain contracts for which the CMMC Program Office directs DoD component program offices to include a CMMC requirement. After three years, DoD component program offices will be required to include a requirement for CMMC in solicitations and contracts that will require the contractor to process, store, or transmit FCI or CUI on contractor information systems during contract performance. Not every contractor will be awarded a contract in Year 4, so it will take several years for every contractor in the defense industrial base to be awarded a contract containing a requirement for CMMC. DoD does not track how many years it takes for every contractor to be awarded a DoD contract, so DoD assumes this will occur over a period of several years.

Based on data from the Electronic Data Access system for FY 2021 through FY 2023, the number of unique entities with contracts containing the clause at DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, is 29,543, of which 20,395 (69 percent) are small entities. Therefore, DoD estimates that in Year 4 and beyond, approximately 20,395 small entities will be impacted per year. DoD anticipates that the following mix of self-assessments and certificates will occur starting in Year 4; however, it is likely to change based on component program office discretion regarding whether a CMMC self-assessment or certificate is required and, if so, at what level:

CMMC Level	Percentages	Small entities	Large entities	Total entities
Level 1 Self-assessment	63	12,849	5,763	18,612
Level 2 Self-assessment	2	408	183	591
Level 2 Certificate	35	7,138	3,202	10,340
Total Entities	100	20,395	9,148	29,543

This proposed rule includes new reporting, recordkeeping, or other compliance requirements for small entities. The following is a summary of the projected reporting and other compliance requirements associated with the proposed rule: (1) a requirement for apparently successful offerors to post results of current CMMC Level 1 and Level 2 self-assessments to SPRS for each DoD UID applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract, if applicable; (2) a requirement for

apparently successful offerors and contractors to provide DoD UIDs for each of those contractor information systems, if applicable, prior to award and when any changes to DoD UIDs occur; and (3) a requirement for a senior company official to complete and maintain on an annual basis, or when CMMC compliance status changes occur, the affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each DoD UID applicable to each of those contractor information systems.

These reporting requirements would apply to any small entities that are the apparently successful offeror for a contract for which there is a requirement for a specific CMMC level. The requirement to post the self-assessment will only apply to small entities that have a requirement for a CMMC Level 1 or Level 2 self-assessment. The requirement to provide DoD UIDs and the requirement for the senior official to complete the affirmation in SPRS will apply to all small entities that are apparently successful offerors for a solicitation or

contractors awarded a contract for which there is a requirement for CMMC.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules. This proposed DFARS rule implements the contractual requirements related to the CMMC 2.0 program, which was published as a separate proposed rule affecting 32 CFR part 170 on December 26, 2023, at 88 FR 89058.

There are no known alternatives that would accomplish the stated objectives of the applicable statute. This proposed rule uses a phased rollout approach to implementation and applies the CMMC requirements only to apparently successful offerors for solicitations and contractors awarded a contract containing a CMMC requirement. This proposed rule exempts contracts and orders exclusively for the acquisition of COTS items to minimize any significant economic impact of the proposed rule on small entities. Because of the across-the-board risks of not implementing cybersecurity requirements, DoD was unable to identify any additional alternatives that would reduce the burden on small entities and still meet the objectives of the proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D041), in correspondence.

VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning 2019–D041, Assessing Contractor Implementation of Cybersecurity Requirements, to the Office of Management and Budget.

A. Estimate of Public Burden

Public reporting burden for this collection of information is estimated to average 5 minutes (0.8333) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 1,493.

Total annual responses: 30,990.

Total annual burden hours: 2,582.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov> or by email to osd.dfars@mail.mil. Comments can be received up to 60 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of this information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

To obtain a copy of the supporting statement and associated collection instruments, please email osd.dfars@mail.mil. Include DFARS Case 2019–D041 in the subject line of the message.

List of Subjects in 48 CFR Parts 204, 212, 217, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 204, 212, 217, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, 217, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Revise subpart 204.75 to read as follows:

Subpart 204.75—Cybersecurity Maturity Model Certification

Sec.

204.7500 Scope of subpart.

204.7501 Definitions.

204.7502 Policy.

204.7503 Procedures.

204.7504 Solicitation provision and contract clause.

Subpart 204.75—Cybersecurity Maturity Model Certification

204.7500 Scope of subpart.

(a) This subpart prescribes policies and procedures for including the Cybersecurity Maturity Model Certification (CMMC) level requirements in DoD contracts. CMMC is a framework (see 32 CFR part 170) for assessing a contractor's compliance with applicable information security requirements (see <https://DoDcio.defense.gov/CMMC/>).

(b) This subpart does not abrogate any other requirements regarding contractor physical, personnel, information, technical, or general administrative security operations governing the protection of unclassified information, nor does it affect requirements of the National Industrial Security Program.

204.7501 Definitions.

As used in this subpart—

Controlled unclassified information means information the Government creates or possesses, or an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls (32 CFR 2002.4(h)).

Current means, with regard to Cybersecurity Maturity Model Certification—

(1) Not older than 1 year for Level 1 self-assessments, with no changes in CMMC compliance since the date of the assessment;

(2) Not older than 3 years for Level 2 certificates and self-assessments, with no changes in CMMC compliance since the date of the assessment;

(3) Not older than 3 years for Level 3 certificates, with no changes in CMMC compliance since the date of the assessment; and

(4) Not older than 1 year for affirmations of continuous compliance with the security requirements identified at 32 CFR part 170, with no changes in CMMC compliance since the date of the affirmation.

DoD unique identifier means an alpha-numeric string of ten characters assigned within the Supplier Performance Risk System to each contractor assessment with the first two characters indicating the confidence level of the assessment.

204.7502 Policy.

(a) The CMMC certificate or CMMC self-assessment level specified in the contract is required for all information systems, used in the performance of the contract, that will process, store, or

transmit Federal contract information (FCI) or controlled unclassified information (CUI).

(b) Contractors are required to achieve, at time of award, a CMMC certificate or CMMC self-assessment at the level specified in the solicitation, or higher. Contractors are required to maintain a current CMMC certificate or CMMC self-assessment at the specified level, if required by the contract, task order, or delivery order, throughout the life of the contract, task order, or delivery order.

(c) The CMMC assessments shall not duplicate efforts from any other comparable DoD assessment, except for rare circumstances when a re-assessment may be necessary, for example, when there are indications of issues with cybersecurity and/or compliance with CMMC requirements.

204.7503 Procedures.

(a) The contracting officer shall include the CMMC level required by the program office or requiring activity in the solicitation and contract.

(b)(1) Contracting officers shall not award a contract, task order, or delivery order to an offeror that does not have—

(i) The results of a current CMMC certificate or current CMMC self-assessment at the level required by the solicitation, or higher, for each DoD unique identifier (DoD UID) applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract posted in the Supplier Performance Risk System (SPRS) (see 32 CFR 170.15 through 170.18); and

(ii) A current affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each DoD UID applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract.

(2) Contracting officers shall require the apparently successful offeror to provide the DoD UID(s) applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract. The contracting officer shall ensure the program office or requiring activity reviews the information described in paragraphs (b)(1)(i) and (ii) of this section.

(c)(1) Contracting officers shall not exercise an option period or extend the period of performance on a contract, task order, or delivery order, unless the contractor has—

(i) A current CMMC certificate or CMMC self-assessment at the level required by the contract, task order, or delivery order, or higher, for each DoD UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract; and

(ii) A current affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each DoD UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract (see 252.204–7021, paragraph (b)(5)).

(2) The contracting officer shall ensure the program office or requiring activity reviews the information described in paragraphs (c)(1)(i) and (ii).

(d) If the contractor provides new DoD UIDs during performance of the contract, the contracting officer shall ensure the program office or requiring activity verifies in SPRS that the contractor—

(1) Has a current affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 for each DoD UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI (see 252.204–7021, paragraph (b)(5)); and

(2) Has a current CMMC certificate or CMMC self-assessment at the required level, or higher, for each information system identified that will process, store, or transmit FCI or CUI during contract performance using the DoD UIDs assigned by SPRS.

204.7504 Solicitation provision and contract clause.

(a) Use the clause at 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirements, in solicitations and contracts, task orders, or delivery orders that require the contractor to have a CMMC certificate or CMMC self-assessment at a specific level, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts or orders solely for the acquisition of commercially available off-the-shelf items.

(b) Use the provision at 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements, in solicitations that include the clause at 252.204–7021.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 3. Amend section 212.301—

■ a. In paragraph (f)(ii)(L) by removing “204.7503(a) and (b)” and adding “204.7504(a)” in its place; and

■ b. By adding paragraph (f)(ii)(P) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(ii) * * *

(P) Use the provision at 252.204–7YYY, Notice of Cybersecurity Maturity Model Certification Level Requirements, as prescribed in 204.7504(b).

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

■ 4. Amend section 217.207—

■ a. In paragraph (c) introductory text by removing “after:” and adding “after—” in its place;

■ b. In paragraph (c)(1) by removing the period at the end of the paragraph and adding “; and” in its place;

■ c. By revising paragraph (c)(2) introductory text;

■ d. In paragraph (c)(2)(i) by removing the period at the end of the paragraph and adding “; and” in its place; and

■ e. By revising paragraph (c)(2)(ii).

The revisions read as follows:

217.207 Exercise of options.

(c) * * *

(2) Ensuring the program office or requiring activity verifies in the Supplier Performance Risk System (<https://piee.eb.mil>) that—

* * * * *

(ii) If there is a requirement for the contractor to have a Cybersecurity Maturity Model Certification (CMMC) certificate or CMMC self-assessment at a specific level, the contractor has the required affirmation(s) of continuous compliance with the security requirements identified at 32 CFR part 170 and has posted the results of a current (see 204.7501) CMMC certificate or CMMC self-assessment at the level required by the contract, or higher. See 204.7503(c).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Revise section 252.204–7021 to read as follows:

252.204–7021 Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements.

As prescribed in 204.7504(a), insert the following clause:

Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements (Date)

(a) *Definitions.* As used in this clause—
Controlled unclassified information means information the Government creates or possesses, or an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls (32 CFR part 2002.4(h)).

Current means, with regard to Cybersecurity Maturity Model Certification (CMMC)—

(1) Not older than 1 year for Level 1 self-assessments, with no changes in CMMC compliance since the date of the assessment;

(2) Not older than 3 years for Level 2 certificates and self-assessments, with no changes in CMMC compliance since the date of the assessment;

(3) Not older than 3 years for Level 3 certificates, with no changes in CMMC compliance since the date of the assessment; and

(4) Not older than 1 year for affirmations of continuous compliance with the security requirements identified at 32 CFR part 170, with no changes in CMMC compliance since the date of the affirmation.

Cybersecurity Maturity Model Certification means a framework for assessing a contractor's compliance with applicable information security requirements (see 32 CFR part 170).

DoD unique identifier means an alphanumeric string of ten characters assigned within the Supplier Performance Risk System to each contractor assessment, with the first two characters indicating the confidence level of the assessment.

(b) *Requirements.* The Contractor shall—
 (1)(i) Have a current CMMC certificate or current CMMC self-assessment at the following CMMC level, or higher: _____
 [Contracting Officer to fill in the required CMMC level]; and

(ii) Consult 32 CFR part 170 related to flowing down information in order to establish the correct CMMC level requirements for subcontracts and other contractual instruments;

(2) Maintain the CMMC level required by this contract for the duration of the contract for all information systems, used in performance of the contract, that process, store, or transmit Federal contract information (FCI) or controlled unclassified information (CUI);

(3) Only process, store, or transmit data on information systems that have a CMMC certificate or CMMC self-assessment at the CMMC level required by the contract, or higher;

(4) Notify the Contracting Officer within 72 hours when there are any lapses in information security or changes in the status of CMMC certificate or CMMC self-assessment levels during performance of the contract;

(5) Complete and maintain on an annual basis, or when changes occur in CMMC compliance status (see 32 CFR part 170), an affirmation of continuous compliance with the security requirements associated with the CMMC level required in paragraph (b)(1) of this clause in the Supplier Performance Risk System (SPRS) (<https://piee.eb.mil>) for each DoD unique identifier (DoD UID) applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract; and

(6) Ensure all subcontractors and suppliers complete and maintain on an annual basis, or when changes occur in CMMC compliance status (see 32 CFR part 170), an affirmation of continuous compliance with the security requirements associated with the CMMC level required for the subcontract or other contractual instrument for each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract.

(c) *Reporting.* The Contractor shall—

(1) Submit to the Contracting Officer the DoD UID(s) issued by SPRS for contractor information systems that will process, store, or transmit FCI or CUI during performance of the contract;

(2) Enter into SPRS the results of self-assessment(s) for each DoD UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract; and

(3) Report to the Contracting Officer any changes to the list of DoD UIDs applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract.

(d) *Subcontracts.* The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (d), and exclude paragraphs (b)(5) and (c), in subcontracts and other contractual instruments, including those for the acquisition of commercial products and commercial services, excluding commercially available off-the-shelf items, when there is a requirement under the subcontract or similar contractual instrument for a CMMC level; and

(2) Prior to awarding a subcontract or other contractual instrument, ensure that the subcontractor has a current CMMC certificate or current CMMC self-assessment at the CMMC level that is appropriate for the information that is being flowed down to the subcontractor.

(End of clause)

■ 6. Add section 252.204–7YYY to read as follows:

252.204–7YYY Notice of Cybersecurity Maturity Model Certification Level Requirements.

As prescribed in 204.7504(b) use the following provision:

Notice of Cybersecurity Maturity Model Certification Level Requirements (Date)

(a) *Definitions.* As used in this provision, *controlled unclassified information*, *current*, *Cybersecurity Maturity Model Certification*,

and *DoD unique identifier* have the meaning given in the Defense Federal Acquisition Regulation Supplement 252.204–7021, Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements, clause of this solicitation.

(b)(1) *Cybersecurity Maturity Model Certification (CMMC) level.* The CMMC certificate or CMMC self-assessment level required by this solicitation is: _____
 [Contracting Officer insert: CMMC Level 1 self-assessment; CMMC Level 2 certificate or CMMC self-assessment; or CMMC Level 3 certificate]. This CMMC certificate or CMMC self-assessment level, or higher, is required prior to award for each contractor information system that will process, store, or transmit Federal contract information (FCI) or controlled unclassified information (CUI) during performance of the contract.

(2) The apparently successful offeror will not be eligible for award of a contract, task order, or delivery order resulting from this solicitation if the apparently successful offeror does not have the results of a current CMMC certificate or self-assessment entered in the Supplier Performance Risk System (SPRS) (<https://piee.eb.mil>) at the CMMC level required by paragraph (b)(1) of this provision and an affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of a contract resulting from this solicitation.

(c) *DoD unique identifiers.* At the request of the Contracting Officer, the apparently successful offeror shall provide the DoD unique identifier(s) issued by SPRS for each contractor information system that will process, store, or transmit FCI or CUI during performance of a contract, task order, or delivery order resulting from this solicitation. The DoD unique identifier(s) are provided in SPRS after the Offeror enters the results of self-assessment(s) for each such information system.

(End of provision)

[FR Doc. 2024–18110 Filed 8–14–24; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209 and 252

[Docket DARS–2024–0025]

RIN 0750–AM20

Defense Federal Acquisition Regulation Supplement: Limitation on Certain Institutes of Higher Education (DFARS Case 2024–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2024, which amend a section of the National Defense Authorization Act for Fiscal Year 2021 that provides for the limitation of funds, authorized to be appropriated or otherwise made available for any fiscal year for DoD, to be provided to an institution of higher education that hosts a Confucius Institute.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 15, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2024–D023, using either of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2024–D023. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2024–D023” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2024–D023 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement sections 1044 and 1045 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31), which amend section 1062 of the NDAA for FY 2021 (Pub. L. 116–283). DoD published an interim rule in the **Federal Register** at 88 FR 67607 on September 29, 2023, under DFARS Case 2021–D023 to implement section 1062 of the NDAA for FY 2021. Section 1062 provides that none of the funds authorized to be appropriated or otherwise made available for any fiscal year for DoD may be provided to an institution of higher education that hosts a Confucius Institute, defined as a cultural institute directly or indirectly funded by the government of the People’s Republic of China. In addition, section 1062 provided the authority to

waive the funds limitation. There were no public comments submitted in response to the interim rule.

Section 1044 of the NDAA for FY 2024 amends section 1062(d) of the NDAA for FY 2021 by revising the definition of “Confucius Institute” as any program that receives funding or support from the Chinese International Education Foundation, the Center for Language Exchange Cooperation of the Ministry of Education of the People’s Republic of China, or any cultural institute funded by the government of the People’s Republic of China.

Section 1045 of the NDAA for FY 2024 amends section 1062(b) of the NDAA for FY 2021 to add a termination date of October 1, 2026, for the authority to issue a waiver.

II. Discussion and Analysis

No respondents submitted public comments in response to the interim rule published at 88 FR 67607 on September 29, 2023.

A. New Definition

This proposed rule under DFARS Case 2024–D023 includes revisions to the definition of “Confucius Institute” at DFARS 209.170–1. “Confucius Institute” means any program that receives funding or support from the Chinese International Education Foundation, the Center for Language Exchange Cooperation of the Ministry of Education of the People’s Republic of China, or any cultural institute funded by the government of the People’s Republic of China.

B. Waiver of Funds Limitation

This proposed rule at DFARS 209.170–3 adds a termination date of October 1, 2026, for the authority to issue a waiver. Currently, the funds limitation with respect to an institution of higher education can be waived by the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). DFARS 209.170–3 addresses the OUSD(R&E), Confucius Institute Waiver Program procedures.

C. Solicitation Provision

The solicitation provision at DFARS 252.209–7011, Representation for Restriction on the Use of Certain Institutions of Higher Education, is proposed to be amended to include conforming changes.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and Commercial Services

This rule proposes to amend the solicitation provision at DFARS 252.209–7011, Representation for Restriction on the Use of Certain Institutions of Higher Education. The provision at DFARS 252.209–7011 is prescribed at DFARS 209.170–4 for use in solicitations for acquisitions to an institution of higher education, including solicitations using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services. DoD does intend to apply the proposed rule to contracts at or below the SAT, to contracts for the acquisition of commercial products including COTS items, and for the acquisition of commercial services.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does intend to make that determination. Therefore, this proposed rule will apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products, including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in

the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862 or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863; or
- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

Sections 1044 and 1045 of the NDAA for FY 2024 do not impose criminal or civil penalties, do not require purchase pursuant to 10 U.S.C. 4862 or 4863, and do not refer to 10 U.S.C. 3452. Therefore, sections 1044 and 1045 will not apply to the acquisition of commercial services or commercial products including COTS items unless a written determination is made. Due to delegations of authority, the Principal Director, DPCAP is the appropriate authority to make this determination.

DoD intends to make that determination to apply this statute to the acquisition of commercial products including COTS items and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products including COTS items and to the acquisition of commercial services.

C. Determinations

To ensure compliance with the limitation on the use of funds, the proposed rule must apply to all contracts with institutions of higher education. An exception for acquisitions at or below the SAT, for the acquisition of commercial products including COTS items, or for the acquisition of commercial services would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law and the associated statutory funds limitation.

IV. Expected Impact of the Rule

Although section 1044 of the NDAA for FY 2024 broadened the definition of Confucius Institute, DoD expects there will be no change to the number of offerors impacted by the representation requirement. Research and data analysis by DoD subject matter experts has not revealed any activity that would constitute a Confucius Institute as defined in section 1044. However,

DoD's process of outreach to institutions is ongoing, in an effort to identify any institutes meeting the new definition being hosted by any U.S. institution of higher education. If it is determined an institution of higher education is hosting an institute meeting the new definition of Confucius Institute, and if the institute intends to continue operating, the prohibition will be applied accordingly. Consequently, the minimis associated burden exists since the proposed rule still only requires the prospective offeror, when submitting an offer in response to a solicitation, to represent compliance with the requirements of section 1062 of the NDAA for FY 2021 as amended by sections 1044 and 1045 of the NDAA for FY 2024. Data from the Federal Procurement Data System indicate that less than 10 unique entities awarded DoD contracts in fiscal years 2021 through 2023 met the definition of an institution of higher education; none of those entities hosted a Confucius Institute as newly defined.

This proposed rule also includes the addition of the termination date for the authority to waive the funds limitation. As provided in section 1045 of the NDAA for FY 2024, the waiver authority will end on October 1, 2026, and any waivers issued prior to that date will no longer be effective as of October 1, 2026. To date, DoD has not issued any waivers to the funds limitation, and DoD does not anticipate issuing any waivers on or before October 1, 2026.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the funds limitation affects a very limited number of offerors and,

therefore, has a limited impact. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of Confucius Institute and to implement an end date for the associated waiver authority. The DFARS currently requires that none of the funds authorized to be appropriated or otherwise made available for any fiscal year for DoD may be provided to an institution of higher education that hosts a Confucius Institute. Currently, this prohibition may be waived.

The objective of the rule is to implement sections 1044 and 1045 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31), which is the legal basis for the rule. Section 1044 amends section 1062(d) of the NDAA for FY 2021 by revising the definition of “Confucius Institute” to mean any program that receives funding or support from the Chinese International Education Foundation or the Center for Language Exchange Cooperation of the Ministry of Education of the People's Republic of China, or any cultural institute funded by the Government of the People's Republic of China. Section 1045 of the NDAA for FY 2024 amends section 1062(b) of the NDAA for FY 2021 to add a termination date of October 1, 2026, for the authority to issue a waiver.

To assess the potential impact, the Federal Procurement Data System (FPDS) was queried for FY 2021, FY 2022, and FY 2023 for DoD contracts and purchase orders, including those for commercial products and commercial services, awarded to institutions of higher education that meet the definition in 20 U.S.C. 1002. The FPDS data reflect a total of 104 contract awards to 9 unique entities over the entire three fiscal years. All awards were made to other than small entities. Entities in FPDS categorized as higher-level institutions of education are designated only as other than small entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities, unless they are associated with an institution of higher education that hosts a Confucius Institute.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

DoD invites comments from small business concerns and other interested

parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2024–D023), in correspondence.

VII. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 209 and 252 as follows:

- 1. The authority citation for part 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

- 2. Amend section 209.170–1 by revising the definition of “Confucius Institute” to read as follows:

209.170–1 Definitions.

* * * * *

Confucius Institute means—

- (1) Any program that receives funding or support from—

- (i) The Chinese International Education Foundation; or

- (ii) The Center for Language Exchange Cooperation of the Ministry of Education of the People’s Republic of China; or

- (2) Any cultural institute directly or indirectly funded by the government of the People’s Republic of China.

* * * * *

- 3. Revise section 209.170–3 to read as follows:

209.170–3 Waiver of restriction.

The restriction in 209.170–2 can be waived by the Office of the Under Secretary of Defense (Research and Engineering), without power of delegation, in accordance with the Confucius Institute Waiver Program guidance. The waiver authority terminates on October 1, 2026. Any waiver issued shall not apply on or after that date. See PGI 209.170–3.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 252.209–7011—

- a. By revising the provision date;
 - b. In paragraph (a) by revising the definition of “Confucius Institute”; and
 - c. By revising paragraph (b).

The revisions read as follows:

252.209–7011 Representation for Restriction on the Use of Certain Institutions of Higher Education.

* * * * *

Representation for Restriction on the Use of Certain Institutions of Higher Education (Date)

(a) * * *

Confucius Institute means—

- (1) Any program that receives funding or support from—

- (i) The Chinese International Education Foundation; or

- (ii) The Center for Language Exchange Cooperation of the Ministry of Education of the People’s Republic of China; or

- (2) Any cultural institute directly or indirectly funded by the government of the People’s Republic of China.

* * * * *

(b) *Restriction.* As required by section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), DoD may not award a contract with any institution of higher education that hosts a Confucius Institute. Section 1062 prohibits DoD from providing funding to any U.S. institution of higher education hosting a Confucius Institute unless that institution receives a waiver from the Department of Defense Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). The waiver authority terminates on October 1, 2026. Any waiver issued shall not apply on or after that date. See the OUSD(R&E) Confucius Institute Waiver Program Guidance to U.S. Institutions of Higher Education at <https://rt.cto.mil/wp-content/uploads/Confucius-Institute-Waiver-Program-Guidance-28Mar2023.pdf>.

* * * * *

[FR Doc. 2024–18111 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P

Notices

Federal Register
Vol. 89, No. 158
Thursday, August 15, 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

Submission for OMB Review;
Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by September 16, 2024. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: List Sampling Frame Surveys.
OMB Control Number: 0535–0140.

Summary of Collection: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The List Sampling Frame Surveys are used to develop and maintain a complete list of possible farm and ranch operations. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. Data from these agricultural surveys are used by government agencies and educational institutions in planning, farm policy analysis, and program administration. More importantly, farmers and ranchers use NASS data to help make informed business decisions on what commodities to produce and when is the optimal time to market their products. NASS data is useful to farmers in comparing their farming practices with the economic and environmental data published by NASS.

Need and Use of the Information: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. The List Sampling Frame Surveys are used to develop and maintain a complete list of possible farm operations. Data from List Sampling Frame Surveys are used to provide control data for new records on the list sampling frame. This information is utilized to define the size of operation, define sample populations, and establish eligibility for the Census of Agriculture. New names and addresses of potential farms are obtained on a regular basis from growers association, other government agencies and various outside sources. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for

agricultural operation surveys and the Census of Agriculture. This information is used to develop efficient sample designs, which allows NASS the ability to draw reduced sample sizes from the originally large universe populations.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 481,677.

Frequency of Responses: Reporting; Annually.

Total Burden Hours: 101,405.

Levi S. Harrell,

Departmental Information Collection
Clearance Officer.

[FR Doc. 2024–18308 Filed 8–14–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2024]

Foreign-Trade Zone (FTZ) 121,
Notification of Proposed Production
Activity; Curia New York, Inc.;
(Pharmaceutical APIs); Rensselaer,
New York

Curia Global, Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its subsidiary Curia New York, Inc. and its facility in Rensselaer, New York, within Subzone 121A. The notification conforming to the requirements of the Board’s regulations (15 CFR 400.22) was received on August 8, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board’s website—accessible via www.trade.gov/ftz. The proposed finished product and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board’s website.

The proposed finished product is 2,5-dichloro-N-[2-(dimethylphosphoryl)phenyl]pyrimidin-4-amine (duty rate is 6.5%).

The proposed foreign-status materials/components include 2-(Dimethylphosphinyl)benzeneamine, N,N-Diisopropylethylamine, and 2,4,5-trichloropyrimidine (duty rate ranges from 3.7% to 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is September 24, 2024.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: August 9, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024-18283 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-052]

Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission; 2021-2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and/or exporters of certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China) during the period of review (POR) September 26, 2021, through December 31, 2022. Commerce also preliminarily finds that 18 companies had no subject shipments of hardwood plywood and that these companies will be eligible to participate in the certification program previously established with respect to the countervailing duty (CVD) order on certain hardwood plywood products from China. Finally, we are also

rescinding this review with respect to nine companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2923.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce published in the **Federal Register** the CVD order on hardwood plywood from China.¹ On January 3, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* covering entries of hardwood plywood from China from January 1, 2022, through December 31, 2022.² On March 14, 2023, based on timely requests for an administrative review, Commerce initiated the administrative review with respect to 32 companies.³

On July 20, 2023, we published in the **Federal Register** the *Circumvention Final Determination*, in which we: (1) determined that certain hardwood plywood exported from Socialist Republic of Vietnam (Vietnam) and entered into the United States was circumventing the *Order* and therefore is now covered by the *Order*; and (2) established a certification program to

¹ See *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018) (*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 45 (January 3, 2023).

³ We note that Commerce listed 40 company names in the initiation notice. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 15642 (March 14, 2023) (*Initiation Notice*); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 21609 (April 11, 2023) (containing a correction to add an additional company name). However, in the *Circumvention Final Determination*, we found that a number of companies were duplicated via minor name variations. See *Certain Hardwood Plywood Products from the People's Republic of China: Final Scope Determination and Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 88 FR 46740 (July 20, 2023) (*Circumvention Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at 76; and Memorandum, "Notice of Intent to Rescind Review, In Part," dated July 3, 2024 (Intent to Rescind Memorandum). For further discussion, see Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Certain Hardwood Plywood Products from the People's Republic of China; 2021-2022," dated concurrently with this notice (Preliminary Decision Memorandum).

allow eligible producers and exporters of hardwood plywood exported from Vietnam to certify that entries of hardwood plywood exported from Vietnam are not subject to the *Order*.⁴ We also indicated that we would: (1) expand the POR for this administrative review to begin on September 26, 2021, in order to capture the first entry suspended as a result of the circumvention determination; and (2) allow interested parties to request reviews of unliquidated/suspended entries of merchandise from Vietnam that entered from September 26, 2021, through December 31, 2021.⁵

On August 11, 2023, Commerce notified parties that we received no additional requests for administrative reviews as a result of Commerce's decision to expand the POR,⁶ and on August 28, 2023, Commerce released entry data from U.S. Customs and Border Protection (CBP) to interested parties for comment.⁷ Subsequently, we notified parties of our intent to rescind this administrative review with respect to certain companies subject to this review.⁸

On January 31, 2024, Commerce deferred the deadline for completing the preliminary results of this review until July 30, 2024.⁹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.¹⁰ The deadline for the preliminary results is now August 6, 2024. For details regarding the events that occurred subsequent to the initiation of the review, see the Preliminary Decision Memorandum.

Scope of the Order

The merchandise covered by the scope of this *Order* is hardwood plywood from China. A complete description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of

⁴ See *Circumvention Final Determination*.

⁵ See *Circumvention Final Determination* IDM at Comment 13.

⁶ See Memorandum "Companies Under Review for the Expanded POR," dated August 11, 2023.

⁷ See Memorandum, "CBP Data Release," dated August 28, 2023.

⁸ See Intent to Rescind Memorandum at Attachment I.

⁹ See Memorandum, "Deferral of the Preliminary Results of Antidumping and Countervailing Duty Administrative Reviews; 2022," dated January 31, 2024.

¹⁰ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

subject merchandise during the POR subject to the CVD order for which liquidation is suspended, Commerce may rescind an administrative review, in whole or only with respect to a particular exporter or producer.¹¹ At the end of the administrative review, any suspended entries are liquidated at the assessment rate computed for the review period.¹² Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate. On July 3, 2024, Commerce notified all interested parties of its intent to rescind this review with respect to certain companies because those companies had no reviewable, suspended entries of subject merchandise and invited parties to comment.¹³ We received no comments on our intent to rescind the review with respect to these companies. Accordingly, in the absence of suspended entries of subject merchandise during the POR for three companies¹⁴ for which this review was initiated, we are hereby rescinding this administrative review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(3).

In addition, pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. All parties timely withdrew their review requests for: (1) Fulin Wood Import Export Company Limited; (2) Greatwood Joint Stock Company; (3) Greentech Investment Co., Ltd.; (4) Long Dat Import and Export Production Company; (5) Star Light Multimedia Co., Ltd.; and (6) VietBac Plywood LLC. Because the review requests were timely withdrawn, and no other party requested a review of these companies, we are rescinding the review with respect to these six companies (*see* Appendix II for a list of all companies for which Commerce is rescinding this review).

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. *See* Appendix III for a complete list of topics discussed in the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Determination of No Shipments

In this administrative review, we issued questionnaires to all companies under review to gather information on the quantity and value (Q&V) of their shipments of hardwood plywood to the United States.¹⁵ We received responses to these questionnaires from 21 companies, all of which reported that their suspended entries consisted exclusively of non-subject merchandise. We issued additional questionnaires to these companies and received complete responses from only 15 of them. We have analyzed the information in these responses and preliminarily find that these 15 companies have provided information to support their claims that the hardwood plywood they exported to the United States was not assembled using any of the Chinese hardwood plywood input scenarios subject to this *Order*.¹⁶ We are also preliminarily accepting the claims of three additional companies from which Commerce is awaiting additional information, pending the receipt of the requested information.¹⁷

We also preliminarily find it appropriate to permit the 15 companies referenced above, as well as Thang Long, to participate in the certification program at the conclusion of this administrative review. The other two companies are currently eligible to participate in this certification program, and we preliminarily find no basis to alter their status.¹⁸

Use of Adverse Facts Available

Groll Ply and Cabinetry Co., Ltd. (Groll Ply), Hoang Lam Plywood Joint Stock Co. (Hoang Lam), Plywood Sunshine Co., Ltd. (Plywood Sunshine), Quang Phat Wood Joint Stock Company (Quang Phat), and Quoc Thai Forestry Import Export Limited Company (Quoc Thai) had entries of plywood during the POR that they claimed were of non-subject merchandise. We required these companies to provide information related to these entries, but they did not respond to these requests for information, and therefore, we are preliminary finding that Groll Ply, Hoang Lam, Plywood Sunshine, Quang Phat, and Quoc Thai failed to support their claims that their entries of plywood during the POR were not of subject merchandise.

Pursuant to sections 776(a) and (b) of the Act, Commerce has assigned Groll Ply, Hoang Lam, Plywood Sunshine, Quang Phat, and Quoc Thai a subsidy rate of 100.11 percent based on facts available with adverse inferences (AFA). These five companies ceased participating in this review and did not provide information requested by Commerce; accordingly, we find that necessary information is not available on the record, they failed to provide the requested information in the form and manner requested, and significantly impeded the proceeding, pursuant to section 776(a) of the Act. Additionally, we find that Groll Ply, Hoang Lam, Plywood Sunshine, Quang Phat, and Quoc Thai had necessary information in their possession and elected not to submit the information and, thus, that the five companies did not act to the best of their abilities in responding to Commerce's information request by the applicable deadline, pursuant to section 776(b) of the Act. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Commerce preliminarily determines that the following net countervailable subsidy rates exist for the period of

¹¹ *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review*; 2015, 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review*; 2017, 84 FR 14650 (April 11, 2019).

¹² *See* 19 CFR 351.212(b)(2).

¹³ *See* Intent to Rescind Memorandum.

¹⁴ The companies are: (1) BAC Son Woods Processing Joint Stock Company; (2) Huong Son Wood Group Co., Ltd.; and (3) Long Phat Construction Investment and Trade Joint Stock Company.

¹⁵ *See* Commerce's Letter, "Quantity and Value Questionnaire," dated November 20, 2023; *see also* Memorandum, "Clarification of Companies Required to Submit Responses to Q&V Questionnaire," dated November 28, 2023; and Commerce's Letters, "Request for Entry Information," dated February 5, 2024 (collectively, Q&V Questionnaire).

¹⁶ *See Circumvention Final Determination*, 88 FR at 46742.

¹⁷ The responses to the questionnaires issued to the following companies are currently due on or after the date of these preliminary results: An An Plywood Joint Stock Company, Greatwood Hung Yen Joint Stock Company, and Thang Long Wood Panel Company (Thang Long).

¹⁸ *See* Appendix I for a complete list of companies subject to this review that are preliminarily eligible to certify their entries of hardwood plywood exported from Vietnam.

September 26, 2021, through December 31, 2022:

Company	Subsidy rate (percent <i>ad valorem</i>)
Groll Ply and Cabinetry Co., Ltd	* 100.11
Plywood Sunshine Co., Ltd ..	* 100.11
Quoc Thai Forestry Import Export Limited Company ..	* 100.11
Hoang Lam Plywood Joint Stock Co	* 100.11
Quang Phat Wood Joint Stock Company	* 100.11

* This rate is based on AFA.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in 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 the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce is applying AFA to the above companies, there are no additional calculations to disclose.

Certification Eligibility

Due to their failure to provide necessary information for determining certification eligibility, we preliminarily determine that Groll Ply, Hoang Lam, Plywood Sunshine, Quang Phat, and Quoc Thai remain barred from participating in the certification program in this proceeding.

Verification

From July 1, through July 10, 2024, we conducted verification of the questionnaire responses of five exporters/producers under review, Arrow Forest International Co., Ltd., Hai Hien Bamboo Wood Joint Stock Company, Lechenwood Viet Nam Company Limited, Long Luu Plywood Production Co., Ltd., and TL Trung Viet Company Limited. We intend to verify the information submitted by the remaining exporters listed in Appendix I after the preliminary results.

Public Comment

In accordance with 19 CFR 351.309(c), 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. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case

briefs.¹⁹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

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.²⁰ 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 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).²¹

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.

Assessment Rates

Upon issuance of the final results of this review, Commerce shall determine, and CBP shall assess, countervailing

duties on all appropriate entries covered by this review. For all entries of merchandise exported by the companies listed in Appendix I, we intend to instruct CBP to liquidate the entries without regard to countervailing duties if these preliminary results are unchanged for the final results. For entries of merchandise exported by Groll Ply, Hoang Lam, Plywood Sunshine, Quang Phat, and Quoc Thai, we will instruct CBP to liquidate their entries at the assigned rate of 100.11 percent. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For the companies (*see* Appendix II) for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 26, 2021, through December 31, 2022, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP for these companies no earlier than 35 days after the date of publication of the preliminary results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce intends upon publication of the final results, to instruct CBP to collect cash deposits of the estimated countervailing duties in the amounts calculated in the final results of this review for the respective companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent

¹⁹ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

²⁰ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Notification to Interested Parties

These preliminary results of administrative review 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 6, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Participating Companies Which Reported No POR Shipments of Subject Merchandise

1. An An Plywood Joint Stock Company
2. Arrow Forest International Co., Ltd.
3. Cam Lam Vietnam Joint Stock Company²²
4. Eagle Industries Company Limited
5. Golden Bridge Industries Pte. Ltd.
6. Govina Investment Joint Stock Company
7. Greatriver Wood Co., Ltd.²³
8. Greatwood Hung Yen Joint Stock Company²⁴
9. Hai Hien Bamboo Wood Joint Stock Company
10. Her Hui Wood (Vietnam) Co., Ltd.
11. Innovgreen Thanh Hoa Co. Ltd.
12. Lechenwood Vietnam Company Limited²⁵
13. Long LUU Plywood Production Co., Ltd.
14. TEKCOM Corporation
15. Thang Long Wood Panel Company Ltd.²⁶
16. TL Trung Viet Company Limited
17. Vietnam Zhongjia Wood Co., Ltd
18. Win Faith Trading Limited²⁷

²² We also initiated a review of this company under the minor name variation Camlam Vietnam Joint Stock Company. *See* Intent to Rescind Memorandum.

²³ We also initiated a review of Cong Ty TNHH Greatriver Wood. We have preliminarily treated these companies as the same entity.

²⁴ We also initiated a review of this company under its former name Greatwood Company Limited. *See* Circumvention Final Determination IDM at 76.

²⁵ We also initiated a review of Lechenwood Viet Nam Company Limited. *See* Intent to Rescind Memorandum.

²⁶ We also initiated a review of this company under the minor name variation Thang Long Wood Panel Company. *See* Intent to Rescind Memorandum.

²⁷ We also initiated a review of this company under the minor name variation Win Faith Trading. *See* Intent to Rescind Memorandum.

Appendix II

Companies Rescinded From Review

- A. Withdrawals of Requests for Review:
 1. Fulin Wood Import Export Company Limited
 2. Greentech Investment Co., Ltd.
 3. Star Light Multimedia Co., Ltd.
 4. Long Dat Import and Export Production Company
 5. VietBac Plywood LLC
 6. Greatwood Joint Stock Company
- B. No Suspended Entries during the POR
 1. BAC Son Woods Processing Joint Stock Company
 2. Huong Son Wood Group Co., Ltd.
 3. Long Phat Construction Investment and Trade Joint Stock Company

Appendix III

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Administrative Review, In Part
- V. Discussion of Methodology
- VI. Certification Program
- VII. Recommendation

[FR Doc. 2024–18286 Filed 8–14–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051]

Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China) were sold in the United States at below normal value (NV) during the period of review (POR) September 26, 2021, through December 31, 2022. Commerce also preliminarily finds that 19 companies had no subject shipments of hardwood plywood and that these companies will be eligible to participate in the certification program previously established with respect to the antidumping duty order on certain hardwood plywood products from China. Further, Commerce preliminarily determines that three companies subject to this review are part of the China-wide entity because they had shipments of

subject merchandise and did not demonstrate eligibility for a separate rate. Finally, we are rescinding this review with respect to 73 companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Rachel Jennings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1110.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce published in the **Federal Register** the antidumping duty order on hardwood plywood from China.¹ On January 3, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* covering entries of hardwood plywood from China from January 1, 2022, through December 31, 2022.² On March 14, 2023, based on timely requests for an administrative review, Commerce initiated the administrative review with respect to 98 companies.³

On July 20, 2023, we published in the **Federal Register** the *Circumvention Final Determination*, in which we: (1) determined that certain hardwood plywood exported from the Socialist Republic of Vietnam (Vietnam) and entered into the United States was circumventing the *Order* and therefore is now covered by the *Order*; and (2) established a certification program to allow eligible producers and exporters of hardwood plywood exported from Vietnam to certify that entries of hardwood plywood exported from Vietnam are not subject to the *Order*.⁴

¹ *See* Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 83 FR 504 (January 4, 2018) (*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 45 (January 3, 2023).

³ *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews, 88 FR 15642 (March 14, 2023) (*Initiation Notice*). Although we initiated this review with respect to 109 individual company names, we previously found that several of these companies were the same entity, while a number of other companies were duplicated via minor name variations. For further discussion, *see* Memorandum, “Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Hardwood Plywood Products from the People's Republic of China and Partial Rescission; 2021–2022,” dated concurrently with this notice (Preliminary Decision Memorandum).

⁴ *See* Certain Hardwood Plywood Products from the People's Republic of China: Final Scope

We also indicated that we would: (1) expand the POR for this administrative review to begin on September 26, 2021, so as to capture the first entry suspended as a result of the circumvention determination; and (2) allow interested parties to request reviews of unliquidated/suspended entries of merchandise from Vietnam that entered from September 26, 2021, through December 31, 2021.⁵

On August 11, 2023, Commerce notified parties that we received no additional requests for administrative reviews as a result of Commerce's decision to expand the POR,⁶ and on August 23, 2023, Commerce released entry data from U.S. Customs and Border Protection (CBP) to interested parties for comment.⁷ Subsequently, we notified parties of our intent to rescind this administrative review with respect to 73 of the 98 companies subject to this review because they either had no suspended entries during the POR or had all requests for review withdrawn.⁸

On January 31, 2024, Commerce deferred the deadline for completing the preliminary results of this review until July 30, 2024.⁹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.¹⁰ The deadline for the preliminary results is now August 6, 2024. For details regarding the events that occurred subsequent to the initiation of the review, see the Preliminary Decision Memorandum.

Scope of the Order

The merchandise covered by the scope of this *Order* is hardwood plywood from China. A complete description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Determination and Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders, 88 FR 46740 (July 20, 2023) (*Circumvention Final Determination*), and the accompanying Issues and Decision Memorandum (IDM).

⁵ See *Circumvention Final Determination* IDM at Comment 13.

⁶ See Memorandum "Companies Under Review for the Expanded POR," dated August 11, 2023.

⁷ See Memorandum, "CBP Data Release," dated August 23, 2023.

⁸ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated June 27, 2024 (Intent to Rescind Memorandum) at Attachment III.

⁹ See Memorandum, "Deferral of the Preliminary Results of Antidumping and Countervailing Duty Administrative Reviews; 2022," dated January 31, 2024.

¹⁰ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR subject to the antidumping duty order for which liquidation is suspended, Commerce may rescind an administrative review, in whole or only with respect to a particular exporter or producer.¹¹ At the end of the administrative review, any suspended entries are liquidated at the assessment rate computed for the review period.¹² Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate. On June 27, 2024, Commerce notified all interested parties of its intent to rescind this review with respect to 67 companies because those companies had no reviewable, suspended entries of subject merchandise and invited parties to comment.¹³ We received no comments on our intent to rescind the review with respect to these companies. Accordingly, in the absence of suspended entries of subject merchandise during the POR for these 67 companies for which this review was initiated, we are hereby rescinding this administrative review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(3).

In addition, pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. All parties timely withdrew their review requests for: (1) Fulin Wood Import Export Company Limited; (2) Greatwood Joint Stock Company; (3) Greentech Investment Co., Ltd.; (4) Long Dat Import and Export Production Company; (5) Star Light Multimedia Co., Ltd.; and (6) VietBac Plywood LLC. Because the review requests were timely withdrawn, and no other party requested a review of these companies, Commerce is rescinding this review with respect to these six companies (see Appendix II for a list of all companies for which Commerce is rescinding this review).

¹¹ See, e.g., *Forged Steel Fittings from Taiwan: Rescission of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 71317, 71318 (November 9, 2020); see also *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 54084 (October 26, 2018).

¹² See 19 CFR 351.212(b)(1).

¹³ See Intent to Rescind Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. See Appendix III for a complete list of topics discussed in the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Determination of No Shipments

In this administrative review, we issued questionnaires to all companies under review to gather information on the quantity and value (Q&V) of their shipments of hardwood plywood to the United States.¹⁴ We received responses to these questionnaires from 22 companies, all of which reported that their suspended entries consisted exclusively of non-subject merchandise. We issued additional questionnaires to these companies and received complete responses from only 15 of them. We have analyzed the information in these responses and preliminarily find that these 15 companies have provided information to support their claims that the hardwood plywood they exported to the United States are of non-subject plywood. We are also preliminarily accepting the claims of four additional companies from which Commerce is awaiting additional information, pending the receipt of the requested information.¹⁵

We also preliminarily find it appropriate to permit the 15 companies noted above, as well as Thang Long, to participate in the certification program

¹⁴ See Commerce's Letter, "Quantity and Value Questionnaire," dated November 20, 2023; see also Memorandum, "Clarification of Companies Required to Submit Responses to Q&V Questionnaire," dated November 28, 2023; and Commerce's Letters, "Request for Entry Information," dated February 5, 2024 (collectively, Q&V Questionnaire).

¹⁵ The responses to the questionnaires issued to the following companies are currently due on or after the date of these preliminary results: An An Plywood Joint Stock Company, Cosco Star International Co., Ltd., Greatwood Hung Yen Joint Stock Company, and Thang Long Wood Panel Company (Thang Long).

at the conclusion of this administrative review. The other three companies are currently eligible to participate in this certification program, and we preliminarily find no basis to alter their status.¹⁶

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.¹⁷ Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity.¹⁸ Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review. For additional information, *see* the Preliminary Decision Memorandum.

Separate Rates

In this administrative review, three companies under review had suspended entries but failed to provide Separate Rate Applications (SRAs) or separate rate certifications (SRCs) and/or responses to the Q&V Questionnaire. These companies are Hoang Lam Plywood Joint Stock Co. (Hoang Lam), Quang Phat Wood Joint Stock Company (Quang Phat), and Shanghai Luli Trading Co., Ltd. (Shanghai Luli). Commerce noted in its SRA that exporters must respond to Commerce's Q&V questionnaire as well as submit an SRA or SRC in order to receive consideration for separate rate status.¹⁹ As a result, we consider Hoang Lam, Quang Phat, and Shanghai Luli to be part of the China-wide entity. At the conclusion of the review, we intend to liquidate any suspended entries from these companies at the current rate for the China-wide entity (*i.e.*, 114.72 percent).²⁰ For additional information,

see the Preliminary Decision Memorandum.

Three additional companies under review (*i.e.*, Groll Ply and Cabinetry Co., Ltd. (Groll Ply), Plywood Sunshine Co., Ltd. (Plywood Sunshine), and Quoc Thai Forestry Import Export Limited Company (Quoc Thai)) had suspended entries of plywood exported from Vietnam and submitted both responses to the Q&V Questionnaire and SRAs. We preliminarily find that these three companies have demonstrated eligibility for separate rates. As noted below, we have assigned Groll Ply, Plywood Sunshine, and Quoc Thai, a dumping margin based on adverse facts available (AFA).

Use of Adverse Facts Available

Groll Ply, Plywood Sunshine, and Quoc Thai had entries of plywood during the POR that they claimed were of non-subject merchandise. We required these companies to provide information related to these entries, but they did not respond to these requests for information, and therefore, we are preliminary finding that Groll Ply, Plywood Sunshine, and Quoc Thai failed to support their claims that their entries of plywood during the POR were not of subject merchandise.²¹

Pursuant to sections 776(a) and (b) of the Act, Commerce has assigned Groll Ply, Plywood Sunshine, and Quoc Thai a dumping margin of 89.10 percent based on AFA, offset by the export subsidies determined in the companion countervailing duty (CVD) administrative review. These three companies ceased participating in this review and did not provide information requested by Commerce; accordingly, we find that necessary information is not available on the record, they failed to provide the requested information in the form and manner requested, and significantly impeded the proceeding, pursuant to section 776(a) of the Act. Additionally, we find that Groll Ply, Plywood Sunshine, and Quoc Thai had necessary information in their possession and elected not to submit the information and, thus, the three companies did not act to the best of their abilities in responding to Commerce's information requests by the applicable deadline, pursuant to section 776(b) of the Act. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Commerce preliminarily determines that the following dumping margins exist for the period of September 26, 2021, through December 31, 2022, for

entries of hardwood plywood exported by these companies:

Exporter	Dumping margin (percent)
Groll Ply and Cabinetry Co., Ltd	* 89.10
Plywood Sunshine Co., Ltd ..	* 89.10
Quoc Thai Forestry Import Export Limited Company ..	* 89.10

*This rate was determined wholly under section 776 of the Act, and was offset by the export subsidies calculated in the companion CVD administrative review.²²

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in 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 the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce is applying AFA to the above companies, there are no calculations to disclose.

Certification Eligibility

Due to their failure to provide necessary information for determining certification eligibility, we preliminarily determine that Groll Ply, Hoang Lam, Plywood Sunshine, Quang Phat, and Quoc Thai remain barred from participating in the certification program in this proceeding.

Verification

From July 1 through July 10, 2024, we conducted verification of the questionnaire responses of five exporters/producers under review, Arrow Forest International Co., Ltd., Hai Hien Bamboo Wood Joint Stock Company, Lechenwood Viet Nam Company Limited, Long Luu Plywood Production Co., Ltd., and TL Trung Viet Company Limited. We intend to verify the information submitted by the remaining exporters listed in Appendix I after the preliminary results.

Public Comment

In accordance with 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days

¹⁶ See Appendix I for a complete list of companies subject to this review that are preliminarily eligible to certify their entries of hardwood plywood exported from Vietnam.

¹⁷ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

¹⁸ *Id.*

¹⁹ See Commerce's Separate Rate Application at <https://access.trade.gov/Resources/nme/nme-sep-rate.html> (Commerce's Separate Rate Application), page 3.

²⁰ See *Certain Hardwood Plywood Products from the People's Republic of China: Notice of Decision Not in Harmony with the Final Determination of Antidumping Duty Investigation; Notice of Amended Determination pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order*, In Part, 88 FR 77966 (November 14, 2023).

²¹ See Preliminary Decision Memorandum.

²² See *Certain Hardwood Plywood Products from the People's Republic of China: Notice of Decision Not in Harmony with the Final Determination of Antidumping Duty Investigation; Notice of Amended Determination pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order*, In Part, 88 FR 77966 (November 14, 2023); *see also* Memorandum, "Export Subsidies Rate," dated concurrently with this notice.

after the date on which the last verification report is issued. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.²³ Pursuant to 19 CFR

351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

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.²⁴ 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).²⁵

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.

²³ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

²⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²⁵ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

Assessment Rates

Upon issuance of the final results of this review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.²⁶ For all entries of merchandise exported by the companies listed in Appendix I, we intend to instruct CBP to liquidate the entries without regard to antidumping duties in these preliminary results are unchanged for the final results. For entries of merchandise exported by Hoang Lam, Quang Phat, and Shanghai Luli, which are part of the China-wide entity, we will instruct CBP to liquidate their entries at the current rate for the China-wide entity (*i.e.*, 114.72 percent). For all suspended entries of merchandise exported by Groll Ply, Plywood Sunshine, and Quoc Thai, we will instruct CBP to liquidate their entries at the assigned rate of 89.10 percent. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For the companies (*see* Appendix II) for which this review is rescinded with these preliminary results, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 26, 2021, through December 31, 2022, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the preliminary results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise, entered, or withdrawn from warehouse, for

consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for Groll Ply, Plywood Sunshine, and Quoc Thai, will be 89.10 percent; (2) for previously investigated or reviewed exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.*, 114.72 percent); (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the exporter that supplied that non-Chinese exporter, where available, or the rate for the China-wide entity (*i.e.*, 114.72), if no alternate rate is available. These deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review 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 6, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping duty and Countervailing Operations.

Appendix I

Participating Companies Which Reported No POR Shipments of Subject Merchandise

1. An Plywood Joint Stock Company

²⁶ See 19 CFR 351.212(b)(1).

2. Arrow Forest International Co., Ltd.
3. Cam Lam Vietnam Joint Stock Company²⁷
4. Cosco Star International Co., Ltd.
5. Eagle Industries Company Limited
6. Golden Bridge Industries Pte. Ltd
7. Govina Investment Joint Stock Company
8. Greatriver Wood Company Limited²⁸
9. Greatwood Hung Yen Joint Stock Company²⁹
10. Hai Hien Bamboo Wood Joint Stock Company
11. Her Hui Wood (Vietnam) Co., Ltd.
12. Innovgreen Thanh Hoa Co., Ltd.
13. Lechenwood Viet Nam Company Limited³⁰
14. Long Luu Plywood Production Co., Ltd
15. TEKCOM Corporation
16. Thang Long Wood Panel Company Ltd.³¹
17. TL Trung Viet Company Limited
18. VietNam Zhongjia Wood Company Limited.
19. Win Faith Trading Limited³²

Appendix II

Companies Rescinded from Review

A. Withdrawals of Requests for Review

1. Fulin Wood Import Export Company Limited
2. Greatwood Joint Stock Company
3. Greentech Investment Co., Ltd.
4. Long Dat Import and Export Production Company
5. Star Light Multimedia Co., Ltd.
6. VietBac Plywood LLC

B. No Suspended Entries During the POR

1. Anhui Hoda Wood Co., Ltd.
2. BAC Son Woods Processing Joint Stock Company
3. Bao Yen MDF Joint Stock Company
4. Bergey (Tianjin) International Co., Ltd.
5. BHL Thai Nguyen Corp.
6. BHL Vietnam Investment and Development
7. Celtic Co., Ltd.
8. Chengxinli Wood Co Ltd of Lanshan
9. China Friend Limited
10. China National United Forestry Co.
11. Dong Tam Production Trading Company Limited
12. Dongguan Lingfeng Wood Industry Co.
13. Feixian Wanda Wood Factory
14. Happy Wood Industrial Group Co., Ltd.
15. High Hope Zhongding Corporation

²⁷ We also initiated a review of this company under the minor name variation Camlam Vietnam Joint Stock Company. See Intent to Rescind Memorandum.

²⁸ We also initiated a review of this company of Cong Ty TNHH Greatriver Wood. We have preliminarily treated these companies as the same entity.

²⁹ We also initiated a review of this company under its former name Greatwood Company Limited. See *Circumvention Final Determination* IDM at 76.

³⁰ We also initiated a review of Lechenwood Viet Nam Company Limited. We have preliminarily treated these companies as the same entity.

³¹ We also initiated a review of this company under the minor name variation Thang Long Wood Panel Company. See Intent to Rescind Memorandum.

³² We also initiated a review of this company under the minor name variation Win Faith Trading. See Intent to Rescind Memorandum.

16. Hunan Fuxi International Trade Co., Ltd.
17. Huang Son Wood Group Co., Ltd.
18. Jiangsu High Hope Arser Co. Ltd.
19. Jiaying Hengtong Wood Co., Ltd.
20. Lianyungang Yuntai International Trade Co., Ltd.
21. Linwood Vietnam Co. Ltd.
22. Linyi Chengen Import and Export Co., Ltd.
23. Linyi City Dongfang Fukai Wood Industry Co., Ltd.
24. Linyi City Dongfang Jinxin Economic & Trade Co., Ltd.
25. Linyi Dongstar Import & Export Co., Ltd.
26. Linyi Evergreen Wood Co., Ltd.
27. Linyi Glary Plywood Co., Ltd.
28. Linyi Highwise International Trade Co., Ltd.
29. Linyi Huasheng Yongbin Wood Co., Ltd.
30. Linyi Jiahe Wood Industry Co., Ltd.
31. Linyi Sanfortune Wood Co., Ltd.
32. Linyi Yachen Wood Co., Ltd.
33. Long Phat Construction Investment and Trade Joint Stock Company
34. Pingyi Jinniu Wood Co., Ltd.
35. Pizhou Dayun Import and Export Trade Co., Ltd.
36. Pizhou Jiangshan Wood Co., Ltd
37. Pizhou Ouyme Import & Export Trade Co., Ltd.
38. Qingdao Top P&Q International Corp.
39. Rongjia Woods Vietnam Company Limited
40. Shandong Dongfang Bayley Wood Company
41. Shandong Fangsi Import and Export Co.
42. Shandong Good Wood Imp and Exp Co.
43. Shandong Jinhua International Trading Co.
44. Shandong Junke Import & Export Trade Co., Ltd.
45. Shandong Wood Home Trading Co., Ltd.
46. Shanghai Brightwood Trading Co., Ltd.
47. Shanghai Futuwood Trading Co., Ltd.
48. Shenzhen Yumei Trading Co., Ltd
49. Shouguang Wanda Wood Co., Ltd.
50. Sumec Huongson Wood Group Co. Ltd.
51. Sumec International Technology Co.
52. Suqian Hopeway International Trade Co., Ltd.
53. Suzhou Oriental Dragon Import and Export Co., Ltd.
54. Tan Tien Co. Ltd.
55. Thanh Hoa Stone Export Company
56. Truong Son North Construction JSC
57. Vietind Co. Ltd.
58. Vietnam Golden Timber Company Limited
59. Xuzhou Emmet Import and Export Trade
60. Xuzhou Jiangheng Wood Products Co., Ltd.
61. Xuzhou Jiangyang Wood Industries Co., Ltd.
62. Xuzhou Shelter Imp & Exp Co., Ltd.
63. Xuzhou Shengping Imp. and Exp. Co., Ltd.
64. Xuzhou Timber International Trade Co., Ltd.
65. Yangzhou Hanov International Co., Ltd.
66. Yishui Win-Win Wood Co., Ltd.
67. Zhejiang Dehua TB Import & Export Co., Ltd.

Appendix III

List of Topics Discussed in the Preliminary Decision Memorandum

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–829]

Steel Concrete Reinforcing Bar From the Republic of Türkiye: 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 finds that certain producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Türkiye (Türkiye) made sales of subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) July 1, 2022, through June 30, 2023. In addition, Commerce is rescinding the review, in part, with respect to three companies which had no entries in the U.S. Customs and Border Production (CBP) data. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros or Samuel Evans, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4725 or (202) 482–2420, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2017, Commerce published the antidumping duty order on rebar from Türkiye in the **Federal Register**.¹ On September 11, 2023, based

¹ See *Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders*, 82 FR 32532 (July 14, 2017), as amended by *Notice of Court Decision Not in Harmony with*

on timely requests for review, Commerce initiated an administrative review of the *Order* covering six companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).² On March 6, 2024, we extended the deadline for the preliminary results of this administrative review to July 30, 2024.³ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁴ 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.⁵

Scope of the Order

The merchandise covered by the *Order* is rebar from Türkiye. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a) of the Act. We calculated export price and constructed export price in accordance with section 772 of the Act. We calculated NV 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 included in the Preliminary Decision Memorandum is attached as an 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>.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no entries of subject merchandise during the POR for which liquidation is suspended.⁶ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.⁷ Therefore, for an administrative review of a company to be conducted, there must be a suspended entry that Commerce can instruct and CBP to liquidate at the AD assessment rate calculated for the POR.⁸

On December 21, 2023, we notified parties of our intent to rescind this administrative review, in part, with respect to: (1) Diler Dış Ticaret A.Ş. (Diler); (2) Ekinciler Demir ve Çelik Sanayi A.S. (Ekinciler); and (3) Habas Sinaî ve Tibbi Gazlar İstihsal Endüstrisi A.S. (Habas) because there were no suspended entries of subject merchandise produced or exported by these companies during the POR, and we invited interested parties to comment.⁹ On January 4, 2024, Ekinciler and Diler commented on the Intent to Rescind Memorandum.¹⁰ On January 11, 2024, the Rebar Trade Action Coalition, the petitioner in this proceeding, submitted rebuttal comments.¹¹ We reviewed these comments and determine that, in the absence of any suspended entries of subject merchandise from Diler, Ekinciler, and Habas during the POR, we are rescinding the administrative review for these companies, in accordance with 19 CFR 351.213(d)(3).

Rate for Company Not Selected for Individual Examination

The Act and Commerce's regulations do not address the rate 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 market economy less-than-fair-value (LTFV) investigation, for guidance when calculating the rate 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 an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

We preliminarily calculated a dumping margin of zero for one of the two mandatory respondents, Icdas Çelik Enerji Tersane ve Ulaşım Sanayi A.Ş. (Icdas). Therefore, we have preliminarily assigned a dumping margin to Kaptan Demir Çelik Endüstrisi Ve Ticaret A.Ş./Kaptan Metal Dis Ticaret Ve Nakliyat A.Ş., the company not selected for individual examination in this review, based on the rate calculated for the other mandatory respondent, Colakoglu Metalurji A.Ş./Colakoglu Dis Ticaret A.Ş. (collectively, Colakoglu).

Preliminary Results of Review

We preliminarily determine the following estimated weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Colakoglu Metalurji A.Ş./ Colakoglu Dis Ticaret A.Ş.	1.05
Icdas Çelik Enerji Tersane ve Ulaşım Sanayi A.Ş.	0.00
Kaptan Demir Çelik Endüstrisi Ve Ticaret A.Ş./ Kaptan Metal Dis Ticaret Ve Nakliyat A.Ş.	1.05

Verification

On December 20, 2023, the petitioner requested that Commerce conduct verification of the factual information submitted by the respondents in this administrative review.¹² Accordingly, as provided in section 782(i)(3) of the Act, Commerce intends to verify the

¹ *the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination*, 87 FR 934 (January 22, 2022) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 62322 (September 11, 2022).

³ See Memorandum, "Extension of Deadline for the Preliminary Results of 2022–2023 Antidumping Duty Administrative Review," dated March 6, 2024.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Türkiye; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut- to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

⁷ See 19 CFR 351.212(b)(2).

⁸ See 19 CFR 351.213(d)(3).

⁹ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated December 21, 2023 (Intent to Rescind Memorandum).

¹⁰ See Ekinciler's and Diler's Letter, "Comments on Commerce's Intent to Rescind the Review," dated January 4, 2024.

¹¹ See Petitioner's Letter, "Rebuttal Comments on Intent to Rescind, In Part," dated January 11, 2024.

¹² See Petitioner's Letter, "Request for Verification," dated December 20, 2023.

information relied upon in determining its final results.

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).

Interested parties may submit case briefs to Commerce no later than seven days after the date on which the last verification report is issued in this administrative review. 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.¹³ Interested parties who submit case briefs or rebuttal briefs in this administrative review must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁴

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.¹⁵ 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).¹⁶

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 within 30 days after the date of

publication of this notice. 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. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁷

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹⁸ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), because both respondents reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those same sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by Colakoglu or Icdas for which these companies did not know that the merchandise they sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. We will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁹

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the review-specific rate, calculated as noted in the "Rate for Company Not Selected for Individual Examination" section, above. The final results of this review shall be the basis

for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.²⁰

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

For those companies for which we are rescinding this administrative review (i.e., Diler, Ekinciler, and Habas), we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2022, through June 30, 2023, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue these rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date 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 the companies listed above 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 covered by this review, 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 was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV 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 merchandise; and (4) the cash deposit rate for all other producers or exporters

¹³ See 19 CFR 351.309(d)(1); 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*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *APO and Service Final Rule*, 88 FR at 67077.

¹⁷ See 19 CFR 351.310(d).

¹⁸ See 19 CFR 351.303.

¹⁹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²⁰ See section 751(a)(2)(C) of the Act.

will continue to be 3.90 percent, the all-others rate established in the LTFV investigation.²¹

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

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, no later than 120 days after the date of publication of this notice 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 also serves as a 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: August 5, 2024.

Scot Fullerton,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Recommendation

[FR Doc. 2024-18297 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 19-3A001]

Export Trade Certificate of Review

ACTION: Notice of application for an amended Export Trade Certificate of Review for National Pecan Shellers Association (NPSA), Application No. 19-3A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA) of the International Trade Administration, has received an application for an amended Export Trade Certificate of Review (Certificate). This notice summarizes the proposed application and seeks public comments on whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT:

Amanda Reynolds, Acting Director, OTEA, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to ETCA@trade.gov. An original and two (2) copies should also be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for

determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 19-3A001."

Summary of the Application

Applicant: National Pecan Shellers Association, 4348 Carter Creek Pkwy Ste 101, Bryan, TX 77802.

Contact: Catherine Clark, Managing Editor at Texas Pecan Growers Association.

Application No.: 19-3A001.

Date Deemed Submitted: August 1, 2024.

Proposed Amendment: National Pecan Shellers Association seeks to amend its Certificate as follows:

1. Add the following entity as an Exporting Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- Rancho Pecana, El Paso, TX

2. Add the following entity as a Non-exporting Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)). This entity is the proposed Independent Third Party.

- Texas Pecan Growers Association, Bryan, TX (Independent Third Party)

3. Remove the following companies as Members of the Certificate:

- Exporting Members
 - Chase Pecan, LP, San Saba, TX
 - John B. Sanfilippo & Son, Inc., Elgin, IL
 - Lamar Pecan Company, Hawkinsville, GA
- Non-exporting Members
 - The Kellen Company, Atlanta, GA (Independent Third Party)

4. Change the location of the following Non-exporting Member of the Certificate:

- Pecan Export Trade Council's location changes from Atlanta, GA to Bryan, TX

NPSA's proposed amendment of its Certificate would result in the following Membership list:

Exporting Members

- Arnco, Inc. dba Carter Pecan, Panama City Beach, FL
- Diamond Foods LLC, Stockton, CA
- Easterlin Pecan Co, Montezuma, GA
- HNH Nut Company, Visalia, CA
- Hudson Pecan Co., Inc., Ocilla, GA
- Humphrey Pecan LLC, San Antonio, TX
- La Nogalera USA Inc, El Paso, TX
- Navarro Pecan Company, Corsicana, TX
- Pecan Grove Farms, Dallas, TX
- Pecan Star & Nut Corp, San Antonio, TX

²¹ See Order, 87 FR at 935.

- Rancho Pecana, El Paso, TX
- South Georgia Pecan Company, Valdosta, GA
- Southern Roots Nut Company, LLC, Cruces, NM

Non-Exporting Members

- Pecan Export Trade Council, Bryan, TX
- Texas Pecan Growers Association, Bryan, TX (Independent Third Party)

Dated: August 12, 2024.

Amanda Reynolds,

Acting Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2024-18272 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE178]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 95 Atlantic Migratory Cobia Data Webinar III.

SUMMARY: The SEDAR 95 assessment of the Atlantic stock of cobia will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 95 Atlantic Migratory Cobia data Webinar III has been scheduled for Friday, September 6, 2024, from 10 a.m. to 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571-4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 95 Atlantic Migratory Cobia Data Webinar III are as follows: Discuss and review available indices of abundance, removals data, and life history information, and provide recommendations for their use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been

notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 12, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-18318 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE182]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public webinar of its Risk Policy Working Group to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Friday, September 6, 2024, at 9 a.m.

ADDRESSES: Webinar registration URL information: https://nefmc-org.zoom.us/j/9qzoqE9P6i8n5mDSANISR_r81UQ3a.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Risk Policy Working Group (RPWG) Address Term of Reference (TOR) 2 by continuing to develop a revised Risk Policy concept. The RPWG will review an updated Risk Policy concept document and focus on the

implementation. In doing so, the group will consider applying the new approach to catch setting and management of species or stock for illustration purposes. They will also review plans for presenting the Risk Policy Concept to Council Advisory Panel members (TOR 3) prior to the September Council meeting. The RPWG will also discuss the focus of future simulation testing and develop a timeline for implementation after the September Council meeting. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: August 12, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-18319 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be considered.

DATES: The meeting is scheduled for September 11, 2024, from 3:00 p.m. to 5:00 p.m. Eastern Standard Time (EST). The time and the agenda topics described below are subject to change. For the latest agenda please refer to the SAB website: <http://sab.noaa.gov/SABMeetings/>.

ADDRESSES: The meeting will be held virtually. The link for the webinar registration will be posted, when available, on the SAB website: <https://sab.noaa.gov/current-meetings/>.

FOR FURTHER INFORMATION CONTACT: Casey Stewart, Executive Director, SSMC3, Room 11360, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 240-381-0833; Email: noaa.scienceadvisoryboard@noaa.gov; or visit the SAB website at <https://sab.noaa.gov/current-meetings/>.

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Status: The September 11, 2024, meeting will be open to public participation with a 10-minute public comment period at 3:45 p.m. EST on September 11, 2024. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the September 11, 2024 meeting should be received by the SAB Executive Director's Office (noaa.scienceadvisoryboard@noaa.gov) by September 4, 2024 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after these dates will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Special Accommodations: The meeting is virtual. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on September 04, 2024.

Matters to be Considered: The meeting on September 11, 2024, will include the following topic(s): (1) the

SAB Consent Calendar, and (2) Review of the Cooperative Institute for Marine, Earth and Atmospheric Systems (CIMEAS) report.

Meeting materials, including work products, will also be available on the SAB website: <https://sab.noaa.gov/current-meetings/current-meeting-documents/>.

Emily Larkin,

*Deputy Chief Financial Officer/
Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2024-18251 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE188]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Habitat Committee (HC) will hold an online public meeting.

DATES: The online meeting will be held Thursday, September 5, 2024, from 1 p.m. to 5 p.m., Pacific Daylight Time, and Friday, September 6, from 8:30 a.m. to 5 p.m., or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including a proposed agenda and instructions on how to attend the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820-2409.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the HC to consider items on the Pacific Council's September meeting agenda and to prepare supplemental reports as necessary. Topics will include Current

Habitat Issues, the Columbia River Dredge Materials Management Program, development of a national fishing effects database, and other topics as necessary.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: August 12, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-18317 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE171]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ecosystem Advisory Subpanel (EAS) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held Thursday and Friday, September 5-6, 2024, from 9 a.m. to 4 p.m., Pacific Time, or until business concludes for the day, on each day.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris

Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503)-820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820-2422.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the EAS to discuss and draft reports for items on the September 2024 Pacific Council meeting agenda. The EAS may also discuss other items related to the Council's Fishery Ecosystem Plan. An agenda for the webinar will be posted on the Pacific Council website in advance of the webinar.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503)-820-2412) at least 10 days prior to the meeting date.

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

Dated: August 12, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-18315 Filed 8-14-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Air Force Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force Scientific Advisory Board, Department of the Air Force.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice in accordance with chapter 10 of title 5,

United States Code, to announce that the following meeting of the Department of the Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. 10 September 2024 from 8:00 a.m.-5:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held at The Mark Center, 4800 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Lt Col Steven Ingraham, (240) 470-4566 (Voice), steven.ingraham@us.af.mil (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: <https://www.scientificadvisoryboard.af.mil/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (as enacted on Dec. 27, 2022, by section 3(a) of Pub. L. 117-286) (formerly the Federal Advisory Committee Act, 5 U.S.C., Appendix), section 552b of title 5, United States Code (popularly known as the Government in the Sunshine Act), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of this Department of the Air Force Scientific Advisory Board meeting is to provide dedicated time for members to begin collaboration on research and formally commence the Department of the Air Force Scientific Advisory Board's FY25 Secretary of the Air Force directed studies.

Agenda: [All times are Eastern Time] Tuesday, 10 September 2024:

0830-0900 Opening Remarks and Status Update
0900-0930 FY25 Study Terms of Reference
0930-1030 SAB Secretariat Update/ Training
1030-1100 Break
1100-1200 FY25 Study #1 Introduction
1200-1300 Lunch
1300-1400 FY25 Study #2 Introduction
1400-1430 FY25 Study #3 Introduction
1430-1500 Break
1500-1600 FY25 Study #4 Introduction

In accordance with section 1009(d) of title 5, United States Code (formerly sec. 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix) and 41 CFR 102-3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public

interest requires this meeting of the United States Department of the Air Force Scientific Advisory Board be closed to the public because it will involve discussions involving classified matters covered by section 552b(c)(1) of title 5, United States Code.

Written Statements: Any member of the public wishing to provide input to the United States Department of the Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c), section 1009(a)(3) of title 5, United States Code (formerly sec. 10(a)(3) of the Federal Advisory Committee Act), and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. The Designated Federal Officer will review all submissions with the Department of the Air Force Scientific Advisory Board Chairperson

and ensure they are provided to members of the Department of the Air Force Scientific Advisory Board. Written statements received after the meeting that is the subject of this notice may not be considered by the Scientific Advisory Board until the next scheduled meeting.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–18311 Filed 8–14–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–62]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–62, Policy Justification, and Sensitivity of Technology.

Dated: August 12, 2024.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

November 2, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-62, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$6.35 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for 
James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 22-62

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$4.76 billion
Other	\$1.59 billion

TOTAL	\$6.35 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twenty-four (24) C-130J-30 Aircraft with Four (4) each Rolls Royce AE-2100D Turboprop Engines installed
Twenty-four (24) Rolls Royce AE-2100D Turboprop Engines with Quick Engine Change Assembly (QECA) and Propellers installed (spares)
Sixty (60) Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) Security Devices, Airborne (48 installed, 12 spares)
Thirty-two (32) AN/ALQ-251 Radio Frequency Countermeasure (RFCM) Systems
Twenty-seven (27) Guardian Laser Transmitter Assemblies (GLTA) for Large Aircraft Infrared Countermeasures (LAIRCM) Systems (24 installed, 3 spares)

Sixteen (16) AN/AAQ-24(V)N LAIRCM System Processor Replacements (LSPR) (12 installed, 4 spares)
Twenty-four (24) Multifunctional Information Distribution System Joint Tactical Radio System (MIDS JTRS) (installed)
Non-MDE:
Also included are AN/AAQ-24(V)N LAIRCM Infrared Missile Warning Sensors (MWS), Control Interface Unit Replacements (CIRU), and classified memory card User Data Modules (UDM); KYV-5M communication security modules; AN/ARC-190 High Frequency (HF) radios; AN/ARC-210 radios; AN/ARN-153 tactical airborne navigation (TACAN) systems; AN/ARN-147 receivers; AN/ARN-149(V)

automatic direction finders; AN/APX-119 Identification Friend or Foe (IFF) transponders; AN/AAR-47 missile warning systems; AN/APN-241 Low-Power Color Radars (LPCR); AN/ALE-47 Countermeasures Dispensing Systems (CMDS); AN/ALR-56 Radar Warning Receivers (RWR); AN/PYQ-10 Simple Key Loaders; MX-20HD electro-optical/infrared targeting systems; AN/KIV-77 IFF cryptographic appliques; Advanced Digital Antenna Production (ADAP) system components; integration support and test equipment; aircraft and support equipment; secure communications equipment, precision navigation, and cryptographic devices; classified software delivery and support; spare and repair parts, consumables and accessories; maintenance and maintenance support; classified manuals, publications, and technical documentation; personnel training and training equipment, and U.S. Government and contractor engineering, technical and logistics support services, studies and surveys; and other related elements of logistical and program support.

(iv) *Military Department: Air Force* (AT-D-SAI)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 2, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—C-130J-30 Aircraft

The Government of Australia has requested to buy twenty-four (24) C-130J-30 aircraft with four (4) each Rolls Royce AE-2100D turboprop engines installed; twenty-four (24) Rolls Royce AE-2100D turboprop engines with Quick Engine Change Assembly (QECA) and propellers installed (spares); sixty (60) Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) security devices, airborne (48 installed, 12 spares); thirty-two (32) AN/ALQ-251 Radio Frequency Countermeasure (RFCM) systems; twenty-seven (27) Guardian Laser Transmitter Assemblies (GLTA) for Large Aircraft Infrared Countermeasures (LAIRCM) systems (24 installed, 3 spares); sixteen (16) AN/AAQ-24(V)N LAIRCM System Processor

Replacements (LSPR) (12 installed, 4 spares); and twenty-four (24) Multifunctional Information Distribution System Joint Tactical Radio System (MIDS JTRS) (installed). Also included are AN/AAQ-24(V)N LAIRCM Infrared Missile Warning Sensors (MWS), Control Interface Unit Replacements (CIRU), and classified memory card User Data Modules (UDM); KYV-5M communication security modules; AN/ARC-190 High Frequency (HF) radios; AN/ARC-210 radios; AN/ARN-153 tactical airborne navigation (TACAN) systems; AN/ARN-147 receivers; AN/ARN-149(V) automatic direction finders; AN/APX-119 Identification Friend or Foe (IFF) transponders; AN/AAR-47 missile warning systems; AN/APN-241 Low-Power Color Radars (LPCR); AN/ALE-47 Countermeasures Dispensing Systems (CMDS); AN/ALR-56 Radar Warning Receivers (RWR); AN/PYQ-10 Simple Key Loaders; MX-20HD electro-optical/infrared targeting systems; AN/KIV-77 IFF cryptographic appliques; Advanced Digital Antenna Production (ADAP) system components; integration support and test equipment; aircraft and support equipment; secure communications equipment, precision navigation, and cryptographic devices; classified software delivery and support; spare and repair parts, consumables and accessories; maintenance and maintenance support; classified manuals, publications, and technical documentation; personnel training and training equipment, and U.S. Government and contractor engineering, technical and logistics support services, studies and surveys; and other related elements of logistical and program support. The estimated total cost is \$6.35 billion.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Australia's capability to meet current and future threats by providing the Royal Australian Air Force (RAAF) with replacements for its aging cargo fleet, guaranteeing a reliable airlift capability, and allowing the RAAF to improve its overall operational capability. Australia will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Corporation, Marietta, GA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22-62

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The C-130J-30 Super Hercules is a military airlift aircraft that performs primarily the tactical portion of the airlift mission. The aircraft is capable of operating from rough, dirt strips and is the prime transport for air dropping troops and equipment into hostile areas. The C-130J is faster, goes further and holds more compared to legacy platforms, translating to greater power and enhanced capabilities.

a. The Rolls Royce AE 2100D3 is a 3,400 kW Turboprop Engine and the primary power plant on the C-130J Hercules military airlift aircraft. It uses dual Full Authority Digital Engine Control (FADEC) to control both engine and propeller.

b. The C-130J-30 is a stretch version of the C-130J. It adds 15 feet to the fuselage, increasing usable space in the cargo compartment to accommodate two more pallets of equipment.

2. The M-Code capable Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI), with an embedded GPS Precise Positioning Service (PPS) Receiver Application Module-Standard Electronic Module (GRAM-S/M), is a self-contained navigation system that provides acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and coordinated universal time (UTC) synchronized time. The embedded GRAM-S/M enables access to both the encrypted P(Y) and M-Code signals, providing protection against active spoofing attacks, enhanced military exclusivity, integrity, and anti-jam.

3. The AN/ALQ-251 radio frequency countermeasure (RFCM) system

provides superior situational awareness and protection against electronic warfare systems and radar-guided weapons systems in contested and congested electromagnetic spectrum environments.

4. The AN/AAQ-24(V)N LAIRCM system is a self-contained, directed-energy countermeasures system designed to protect aircraft from infrared-guided surface-to-air missiles. The LAIRCM system features digital technology micro-miniature solid-state electronics. The system operates in all conditions, detecting incoming missiles and jamming infrared-seeker equipped missiles with aimed bursts of laser energy. The LAIRCM system consists of multiple Missile Warning Sensors, the Guardian Laser Transmitter Assembly (GLTA), a System Processor Replacement (LSPR), a Control Interface Unit Replacement (CIUR), and a Classified Memory Card User Data Module (UDM).

a. The LAIRCM Missile Warning Sensors detect and declare threat missiles. The sensors are mounted on the aircraft exterior to provide omnidirectional protection. The sensors detect the rocket plume of missiles and send appropriate data signals to the System Processor Replacement (LSPR) for processing.

b. The Guardian Laser Transmitter Assembly (GLTA) is a laser transmitter pointer/tracker subsystem designed to track the inbound threat missile and point the laser jam source at the missile's seeker. The GLTA automatically deploys the countermeasure.

c. The LSPR analyzes the data from each Missile Warning Sensor and automatically deploys the appropriate countermeasure via the GLTA. The LSPR contains Built-in-Test (BIT) circuitry.

d. The Control Interface Unit Replacement (CIUR) displays the incoming threat for the pilot to take appropriate action. The CIUR also provides operator interface to program the LAIRCM system to initiate built-in-test (BIT), to display system status, and to provide the crew with bearing to threat missile launch.

e. The UDM card contains the laser jam codes. It is loaded into the LSPR prior to flight; when not in use, the Classified Memory Card User Data Module is removed from the LSPR and put in secure storage.

5. The Multifunctional Information Distribution System (MIDS) with Joint Tactical Radio System (JTRS) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity,

jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

6. The KYV-5M Communication Security Module enables secure voice for the ANDVT.

7. The AN/ARC-190 is a solid-state, high-frequency (HF) transceiver that provides beyond-line-of-sight communications capability for various military airborne applications.

8. The AN/ARC-210 is a voice communications radio system equipped with HAVE QUICK II, which employs cryptographic technology. Other waveforms may be included as needed.

9. The AN/ARN-153 is an airborne receiver-transmitter component of the Tactical Airborne Navigation (TACAN) avionics system.

10. AN/ARN-147 receivers combine all VHF Omni Ranging/Instrument Landing System (VOR/ILS) functions into one compact, lightweight set.

11. The AN/ARN-149(V) low-frequency, automatic direction-finding system provides automatic pointing to low-frequency and medium-frequency non-directional beacons (NDB), standard broadcast stations, and emergency stations on frequencies of 500 and 2182 kHz. An aural output provides station identification, weather reporting, and AM broadcast audio.

12. The AN/APX-119 is an Identification Friend or Foe (IFF) transponder that provides military aircraft with a secure combat identification capability to help reduce fratricide and enhance battlespace awareness, while providing safe access to civilian airspace.

13. The AN/AAR-47A(V)2 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying, fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew.

14. The AN/APN-241 is a Low-Power Color Radar (LPCR) are radars in the transport class with a high-resolution SAR mapping mode. In addition to meeting needs for precision navigation, this radar enables operators to execute landing missions on unimproved runways without aid from ground-based landing systems.

15. The AN/ALE-47 countermeasures dispensing system (CMDS) is an integrated, threat-adaptive, software programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The AN/ALE-47 uses data received over the

aircraft interfaces to assess the threat situation and to determine a response.

16. The AN/ALR-56 is a computer-controlled, advanced radar warning receiver (RWR) designed to provide improved aircrew situational awareness of the radar guided threat environment through improved performance in a dense signal environment and improved detection of modern threats signals.

17. The AN/PYQ-10 Simple Key Loader is a handheld device used for securely receiving, storing, and transferring data between compatible cryptographic and communications equipment.

18. The MX-20HD is a gyro-stabilized, multi-spectral, multi-field-of-view (FOV) Electro-Optical/Infrared (E.O./IR) targeting system. The system provides surveillance laser illumination and laser designation through use of an externally mounted turret sensor unit and internally mounted master control. Sensor video imagery is displayed in the aircraft real time and may be recorded for subsequent ground analysis.

19. The KIV-77 is a cryptographic applique for IFF. It can be loaded with Mode 5 classified elements.

20. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

21. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

22. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

23. All defense articles and services listed in this transmittal have been authorized for release and export to Australia.

[FR Doc. 2024-18293 Filed 8-14-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22-63]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

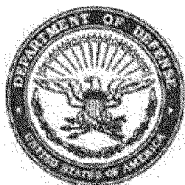
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached

Transmittal 22-63, Policy Justification, and Sensitivity of Technology.

Dated: August 12, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

November 15, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-69, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Switzerland for defense articles and services estimated to cost \$700 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for 
James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 22-63

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Belgium

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$358 million
Other	\$ 22 million
TOTAL	\$380 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to one hundred twenty (120) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)
Ten (10) AMRAAM C-8 Guidance Sections

Non-MDE:

Also included are spare AIM-120 control sections and containers; AIM-120C Captive Air Training Missiles (CATM); other spare parts,

consumables, accessories, and repair/return support; classified software; books, technical documentation, and other publications; training and training equipment; munitions support and support equipment; and other related elements of logistical and program support.

(iv) *Military Department: Air Force* (BE-D-YCG)

(v) *Prior Related Cases, if any: N/A*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None known at this time*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: November 8, 2022*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Belgium—Advanced Medium Range Air-to-Air Missiles for F-16 and F-35 Programs

The Government of Belgium has requested to buy up to one hundred twenty (120) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); and ten (10) AMRAAM C-8 Guidance Sections. Also included are spare AIM-120 control sections and containers; AIM-120C Captive Air Training Missiles (CATM); other spare parts, consumables, accessories, and repair/return support; classified software; books, technical documentation, and other publications; training and training equipment; munitions support and support equipment; and other related elements of logistical and program support. The estimated total cost is \$380 million.

This proposed sale will support the foreign policy and national security objectives of the United States by improving the security of a NATO Ally which is an important force for political stability and economic progress in Europe.

The proposed sale will improve Belgium's capability to meet current and

future threats by maintaining its F-16 and F-35 fleets in combat-ready status and providing a credible deterrent to regional threats. Belgium will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Belgium.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22-63

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM-120C-8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying and maneuvering targets. This potential sale will include Captive Air Training Missiles (CATM) as well as AMRAAM guidance section and control section spares.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used

to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Belgium can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to Belgium.

[FR Doc. 2024-18294 Filed 8-14-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22-60]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697-9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22-60, Policy Justification, and Sensitivity of Technology.

Dated: August 12, 2024.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

November 9, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-60, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Lithuania for defense articles and services estimated to cost \$495 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 22-60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Lithuania

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$ 440 million
Other	\$ 55 million

TOTAL \$495 million

Funding Source: National Funds and Foreign Military Financing (FMF) (if approved)

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Eight (8) M142 High Mobility Artillery Rocket System (HIMARS) Launchers

Thirty-six (36) M30A2 Guided Multiple Launch Rocket System (GMLRS) Alternative Warhead (AW) Missile Pods with Insensitive Munitions Propulsion System (IMPS)

Thirty-six (36) M31A2 GMLRS Unitary High Explosive (HE) Missile Pods

Thirty-six (36) XM403 Extended

Range GMLRS (ER GMLRS) Alternative Warhead (AW) Missile Pods with IMPS
Thirty-six (36) XM404 Extended Range GMLRS (ER GMLRS) Unitary Pods with IMPS
Eighteen (18) M57 Army Tactical Missile System (ATACMS) Missile Pods

Non-MDE:

Also included are M28A2 Low Cost Reduced Range Practice Rocket (LCRRPR) pods; International Field Artillery Tactical Data System (IFATDS); battle management system Vehicle Integration Kits; ruggedized laptops; training

equipment publications for HIMARS and munitions; and other related elements of program and logistics support.

(iv) *Military Department: Army (LH-B-UEG)*

(v) *Prior Related Cases, if any: None*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None known at this time*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: November 9, 2022*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Lithuania—M142 High Mobility Artillery Rocket System (HIMARS)

The Government of Lithuania has requested to buy eight (8) M142 High Mobility Artillery Rocket System (HIMARS) Launchers; thirty-six (36) M30A2 Guided Multiple Launch Rocket System (GMLRS) Alternative Warhead (AW) Missile Pods with Insensitive Munitions Propulsion System (IMPS); thirty-six (36) M31A2 GMLRS Unitary High Explosive (HE) Missile Pods; thirty-six (36) XM403 Extended Range GMLRS (ER GMLRS) Alternative Warhead (AW) Missile Pods with IMPS; thirty-six (36) XM404 Extended Range GMLRS (ER GMLRS) Unitary Pods with IMPS; and eighteen (18) M57 Army Tactical Missile System (ATACMS) Missile Pods. Also included are M28A2 Low Cost Reduced Range Practice Rocket (LCRRPR) pods; International Field Artillery Tactical Data System (IFATDS); battle management system Vehicle Integration Kits; ruggedized laptops; training equipment publications for HIMARS and munitions; and other related elements of program and logistics support. The total estimated cost is \$495 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the military capability of a NATO Ally that is an important force for ensuring political stability and economic progress within Eastern Europe.

The proposed sale will contribute to Lithuania's military goals of updating its capability while further enhancing interoperability with the United States and other allies. Lithuania intends to use these defense articles and services to modernize its armed forces and expand its capability to strengthen its homeland defense and deter regional threats. Lithuania will have no difficulty

absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin, Grand Prairie, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Lithuania for program management reviews to support the program. Travel is expected to occur approximately twice per year as needed to support equipment fielding and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22-60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(vii) *Sensitivity of Technology*

1. The M142 High Mobility Artillery Rocket System (HIMARS) is a C-130 transportable wheeled launcher mounted on a 5-ton Family of Medium Tactical Vehicles truck chassis. HIMARS is the modern Army-fielded version of the M270 Multiple Launch Rocket System (MLRS) launcher and can fire all the MLRS Family of Munitions/Missiles (FOM) that includes Guided Multiple Launch Rocket System (GMLRS), Extended Range GMLRS, and the Army Tactical Missile System (ATACMS). Utilizing the FOM, the HIMARS can engage targets between 15 and 300 kilometers with Global Positioning System/Precise Positioning Service (GPS/PPS)-aided precision accuracy.

2. The GMLRS M31A2 Unitary is the Army's primary munition for units fielding the M142 HIMARS and M270A1 MLRS Launchers. The M31A2 Unitary is a solid propellant artillery rocket that uses GPS/PPS-aided inertial guidance to accurately and quickly deliver a single high-explosive blast fragmentation warhead to targets at ranges from 15-70 kilometers. The rockets are fired from a launch pod container that also serves as the storage and transportation container for the rockets. Each rocket pod holds six (6) total rockets.

3. The M30A2 GMLRS AW shares a greater than 90% commonality with the M31A1/A2 Unitary. The primary difference between the GMLRS Unitary and GMLRS AW is the replacement of the Unitary high explosive warhead with a 200-pound fragmentation warhead of pre-formed tungsten

penetrators which is optimized for effectiveness against a large area and imprecisely located targets. The munitions otherwise share a common motor, GPS/PPS-aided inertial guidance and control system, a multi-option fuzing height of burst capability, and effective range of 15-70 km.

4. The M57 ATACMS Unitary is a conventional, semi-ballistic missile that utilizes a 500-pound high explosive warhead. It has an effective range of between 70 and 300 kilometers and has increased lethality and accuracy over previous versions of the ATACMS due to a GPS/Precise Position System (PPS) aided navigation system.

5. The ER GMLRS missiles provide a persistent, responsive, all-weather, rapidly deployed, long range, surface-to-surface, area- and point-precision strike capability. The XM403 Alternative Warhead (AW), like GMLRS M30A1/A2, carries a 200-pound fragmentation assembly filled with high explosives which, upon detonation, accelerates two layers of preformed penetrators optimized for effectiveness against large area and imprecisely located targets. The XM404 Unitary, like GMLRS M31A1/A2, has a 200-pound class unitary with a steel blast-fragmentation case, designed for low collateral damage against point targets. Both variants of the ER GMLRS missiles maintain the accuracy and effectiveness demonstrated by the baseline GMLRS out to a maximum range of 150 km (double that of the GMLRS capability).

6. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that Lithuania can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Lithuania.

[FR Doc. 2024-18288 Filed 8-14-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Docket ID: DoD–2024–OS–0065]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes**AGENCY:** Office of the Secretary, Department of Defense (DoD).**ACTION:** Notice of responses to comments received on the proposed Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

SUMMARY: This notice contains the responses to comments received on the proposed Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces. Although these rules of practice and procedure fall within the Administrative Procedure Act's exemptions for notice and comment, the Department, as a matter of policy, has decided to make these changes available for public review and comment before they are implemented.

DATES: Applicable September 16, 2024.**FOR FURTHER INFORMATION CONTACT:** Malcolm H. Squires, Jr., Clerk of the Court, telephone (202) 761–1448.**SUPPLEMENTARY INFORMATION:****Discussion of Comments and Changes**

On June 7, 2024, the United States Court of Appeals for the Armed Forces published a notice titled U.S. Court of Appeals for the Armed Forces Proposed Rules Changes in the **Federal Register** (89 FR 48601). Comments were accepted for 30 days until July 8, 2024. A total of five comments were received. Please see the summarized comments and the Court's responses below.

I. Public Comments

The publication of this notice finalizes the interim final rules published on June 6. The Court, after circulating the proposed comments amongst its Rules Committee and the five active judges, has decided to adopt some comments in part and reject others.

Several comments concerned the reduction in time for amicus to file briefs. The Court has decided to accept these proposals and expand the time to

file amicus briefs in support of parties to fourteen days. Similarly, after reviewing the comments, the Court has decided to expand the time to submit a waiver letter under Rule 21 to fourteen days.

Another comment was directed at the Court's student practice rule and suggested that the rules account for law students who do not attend an ABA accredited law school. After circulating the comment for review amongst the Rules Committee and the five active judges, the Court has decided not to make any changes to the proposed Rule 13A, as the rules provide that the Court may grant exceptions to any of the rules as is necessary.

II. Revisions to the Original Notice

The new Rule 21 will read:

* * * * *

(c) * * *

(2) Answer/Reply in Other Appeals.

An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than twenty-one days after the filing of such supplement (see Rule 21(e)). As a discretionary alternative if a formal answer is waived, an appellee may file with the Clerk a short letter, within fourteen days after the filing of the appellant's supplement to the petition, setting forth one of the following alternative positions:

(i) that the United States submits a general opposition to the assigned error(s) of law and relies on its brief filed with the Court of Criminal Appeals; or (ii) that the United States does not oppose the granting of the petition (for some specific reason, such as an error involving an unsettled area of the law). An appellant may file a reply no later than seven days after the filing of the appellee's answer or answer letter.

* * * * *

Comment: The time to submit a waiver letter was expanded to fourteen days after the filing of the appellant's supplement to the petition.

The new Rule 26 will read:

* * * * *

(d) An amicus curiae brief in support of a party must be filed no later than fourteen days after that party has filed its brief, supplement to the petition for grant of

review, petition for extraordinary relief, writ appeal petition, or answer. If no party is supported, the amicus curiae brief must be filed no later than seven days after the filing of the brief of the appellant/petitioner. In the case of a petition for new trial, the amicus curiae must file its brief no later than fourteen days after the petitioner has filed its brief with the Court. Motions for leave to file an amicus curiae brief under Rule 26(b)(4), together with the proposed brief, must be filed within the time allowed for filing the brief.

* * * * *

Comment: The time to file amicus curiae brief in support of a party was expanded to fourteen days after the original party has filed its brief.

Dated: August 9, 2024.

Patricia L. Toppings,*OSD Federal Liaison Officer, Department of Defense.*

[FR Doc. 2024–18280 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Transmittal No. 21–35]

Arms Sales Notification**AGENCY:** Defense Security Cooperation Agency, Department of Defense (DoD).**ACTION:** Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 21–35, Policy Justification, and Sensitivity of Technology.

Dated: August 12, 2024.

Patricia L. Toppings,*OSD Federal Register Liaison Officer, Department of Defense.***BILLING CODE 6001–FR–P**



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

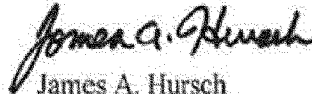
NOV 09 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-35, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Oman for defense articles and services estimated to cost \$385 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,


James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 21-35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Oman

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$185 million
Other	\$200 million

TOTAL	\$385 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*
Major Defense Equipment (MDE):
Forty-eight (48) AGM-154C Joint Stand Off Weapons (JSOW)

Non-MDE:

Also included are Dummy Air Training Missiles; Captive Flight Vehicles (CFVs) and/or Captive Air Training Missiles (CATMs); Environmental Determination Test Vehicles (EDTVs); Free Flight Vehicles (FFVs); containers; mission planning;

integration support and testing; munitions storage security and training; weapon operational flight program software development; transportation; tools and test equipment; support equipment; spare and repair parts; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department*: Navy (MU–P–AAF)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 9, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Oman—Joint Stand Off Weapons (JSOW)

The Government of Oman has requested to buy forty-eight (48) AGM–154C Joint Stand Off Weapons (JSOW). Also included are Dummy Air Training Missiles; Captive Flight Vehicles (CFVs) or Captive Air Training Missiles (CATMs); Environmental Determination Test Vehicles (EDTVs); Free Flight Vehicles (FFVs); containers; mission planning; integration support and testing; munitions storage security and training; weapon operational flight program software development; transportation; tools and test equipment; support equipment; spare and repair parts; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$385 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale would increase the Royal Air Force of Oman's ability to secure Oman's borders, airspace, and territorial waters. This expanded capacity will be a force multiplier and help negate regional security threats.

Recent attacks on ships in the Gulf of Oman have increased Oman's need for weapons that enable it to defend its territorial waters and ensure freedom of navigation. Oman will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles and Defense Company, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require annual trips to Oman involving U.S. Government and contractor representatives for technical reviews, support, and oversight for approximately seven years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The AGM–154 JSOW is used by Navy, Marine Corps, and Air Force, and allows aircraft to attack well-defended targets in day, night, and adverse weather conditions. The AGM–154C carries a BROACH warhead. The BROACH warhead incorporates an advanced multistage warhead. The JSOW uses the Global Positioning System (GPS) Precise Positioning System (PPS), which provides for a more accurate capability than the commercial version of GPS.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used

to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Oman can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Oman.

[FR Doc. 2024–18292 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–69]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at neil.g.hedlund.civ@mail.mil or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–69, Policy Justification, and Sensitivity of Technology.

Dated: August 12, 2024.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

November 15, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-69, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Switzerland for defense articles and services estimated to cost \$700 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for
James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 22-69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Switzerland

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$600 million
Other	\$100 million
TOTAL	\$700 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment:

Up to seventy-two (72) PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced (MSE) Missiles

Non-MDE:

Also included are telemetry kits; PAC-3 MSE missile round trainers; PAC-3 MSE empty round trainers; PAC-3 missile skid kits; launcher stations heater controls; classified missile repair and return; classified PAC-3 concurrent spare parts; unclassified PAC-3 concurrent spare parts; PAC-3 MSE canister consumables; quality assurance; Field Surveillance Program; U.S. Government and contractor technical, engineering, and logistics technical assistance; flight test support; flight test targets; and

other related elements of logistics and program support.

(iv) *Military Department:* Army (SZ-B-UCA)

(v) *Prior Related Cases, if any:* SZ-B-UAS

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 15, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Switzerland—PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced (MSE) Missiles**

The Government of Switzerland has requested to buy up to seventy-two (72) PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced (MSE) missiles. Also included are telemetry kits; PAC–3 MSE missile round trainers; PAC–3 MSE empty round trainers; PAC–3 missile skid kits; launcher stations heater controls; classified missile repair and return; classified PAC–3 concurrent spare parts; unclassified PAC–3 concurrent spare parts; PAC–3 MSE canister consumables; quality assurance; Field Surveillance Program; U.S. Government and contractor technical, engineering, and logistics technical assistance; flight test support; flight test targets; and other related elements of logistics and program support. The total estimated cost is \$700 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a friendly European nation that continues to be an important force for political stability and economic progress within Europe.

The proposed sale of the PAC–3 MSE missiles will enhance the capability of Switzerland's PATRIOT missile defense system. Switzerland will use the PATRIOT system and missiles to defend its territorial integrity and for regional stability. The proposed sale supports Switzerland's goal of improving national and territorial defense as well as interoperability with U.S. and NATO forces. Switzerland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed-Martin, Dallas, Texas. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require approximately five (5) U.S. Government and five (5) contractor representatives to travel to Switzerland for an extended period for equipment de-processing/fielding, and technical and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced missile is a small, highly agile, kinetic kill interceptor for defense against tactical ballistic missiles, cruise missiles and air-breathing threats. The MSE variant of the PAC–3 missile represents the next generation in hit-to-kill interceptors and provides expanded battlespace against evolving threats. The PAC–3 MSE improves upon the original PAC–3 capability with a higher performance solid rocket motor, modified lethality enhancer, more responsible control surfaces, upgraded guidance software, and insensitive munitions improvements.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems, which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Switzerland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Switzerland.

[FR Doc. 2024–18295 Filed 8–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION**Applications for New Awards; Strengthening Program Evaluation Capacity: Building Evidence of Effectiveness of Strategies To Increase Postsecondary Student Success**

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting

applications for new awards for fiscal year (FY) 2025 for the Strengthening Program Evaluation Capacity grant program.

DATES:

Application Packages Available: August 29, 2024.

Deadline for Transmittal of Applications: November 14, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT: Matthew Soldner. Telephone: 202–453–7441. Email: matthew.soldner@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:**Full Text of Announcement****I. Funding Opportunity Description**

Purpose of Program: In awarding grants under this program, the Institute of Education Sciences (IES) intends to build individual and organizational capacity to conduct high-quality evaluations of education interventions that are designed in accordance with evaluation standards identified by IES's What Works Clearinghouse (see <https://ies.ed.gov/ncee/wwc/Handbooks>). Sponsored by IES's National Center for Education Evaluation and Regional Assistance (NCEE), this program supports NCEE's larger mission to encourage the conduct and use of scientifically valid education research and evaluation throughout the United States.

Assistance Listing Numbers: 84.429A.

OMB Control Number: 4040–0001.

Competition in this Notice:

NCEE is announcing one competition under its Strengthening Program Evaluation Capacity (SPEC) program: Building Evidence of Effectiveness of Strategies to Increase Postsecondary Student Success (PS) Network (ALN 84.429A). Through this program, IES is seeking evaluation teams to join the new Building Evidence of Effectiveness of Strategies to Increase Postsecondary Student Success (SPEC–PS) Network. Evaluation teams will (1) engage in a series of IES-sponsored technical

assistance activities that will strengthen their capacity to design and conduct rigorous evaluations of a proposed postsecondary student success intervention, (2) implement the proposed intervention at more than one institution that participates in programs authorized by Title IV of the Higher Education Act of 1965 (HEA; 20 U.S.C. 1001 *et seq.*), and (3) conduct an independent evaluation of the intervention once implemented that includes an examination of the impact of the intervention on HEA program participants.

Evaluation teams must consist of employees at (1) State higher education agencies and/or (2) consortia of 2-year or 4-year institutions of higher education. Interventions proposed to be implemented and evaluated under this grant program must be allowable under one or more programs authorized by the HEA (20 U.S.C. 1001 *et seq.*) and the evaluations must examine the impact of the intervention on HEA program participants. Additional information, including about eligible evaluation teams and interventions, is provided in the request for applications (RFA).

Multiple Submissions: You may submit applications to more than one of the FY 2025 research grant programs offered through the Department, including those offered through IES as well as those offered through other offices and programs within the Department. However, you may submit only one application to the IES grant program announced here. If you submit multiple similar applications, IES will determine whether and which applications will be accepted for review and/or will be eligible for funding. In addition, if you submit the same or similar application to IES and to another funding entity within or external to the Department and receive funding for the non-IES application prior to IES scientific peer review of applications, you must withdraw the same or similar application submitted to IES, or IES may otherwise determine you are ineligible to receive an award. If reviews are happening concurrently, IES staff will consult with the other potential funder to determine the degree of overlap and which entity will provide funding if both applications are being considered for funding.

Exemption from Proposed Rulemaking: Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on matters relating to grants.

Program Authority: 20 U.S.C. 9561–9563 *et seq.*; Sec. 310 of Division H of the Consolidated Appropriations Act, 2023 (117 Pub. L. 328).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, 75.230, 75.250(a), and 75.708. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to these competitions.

Note: The Department will implement the provisions in the OMB final rule *OMB Guidance for Federal Financial Assistance*, which amends 2 CFR parts 25, 170, 175, 176, 180, 182, 183, 184, and 200, on October 1, 2024. Grant applicants should follow the provisions in the *OMB Guidance for Federal Financial Assistance* (89 FR 30046) when preparing an application. For more information about these updated regulations please visit: www.cfo.gov/resources/uniform-guidance/.

II. Award Information

Types of Awards: Cooperative agreements.

Fiscal Information: This competition will be supported with funds reserved under the authority in sec. 310 of Division H of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) for the purpose of carrying out rigorous and independent evaluations and to collect and analyze outcome data for any program authorized by the HEA.

Estimated Range of Awards: Up to \$1,000,000 for the entire project period of 3 years. The size of the awards will depend on the scope of the projects proposed.

Estimated Number of Awards: The number of awards will depend on the quality of the applications received and the availability of funds.

IES may waive any of the following limits on awards in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to the limits without funding only some of the equally ranked applications. In that case, IES may make a larger number of awards to include all applications of the same rank.

We intend to fund up to 3 evaluation teams. However, should funding be available, we may consider making additional awards to high-quality applications that remain unfunded after 3 awards are made.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 3 years.

III. Eligibility Information

1. Eligible Applicants: Eligible applicants are State higher education agencies or public or private institutions of higher education, as defined in section 101 of the HEA (20 U.S.C. 1001). Applicants that are public or private institutions of higher education must lead the activities of a consortium comprised of at least two public or private institutions of higher education, as defined in section 101 of the HEA.

2. a. Cost Sharing or Matching: The competition in this notice does not require cost sharing or matching.

b. Indirect Cost Rate Information: This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

3. Subgrantees: Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. Application Submission Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application.

2. *Other Information:* Information regarding program and application requirements for the competition can be found in the currently available IES NCEE Application Submission Guide and in the NCEE Request for Applications (RFA), which will be available on or before August 29, 2024, on the IES website at: <https://ies.ed.gov/funding/>. The application packages for this competition will also be available on or before August 29, 2024.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA. The forms that must be submitted are in the application package.

4. *Submission Dates and Times:* The deadline date for transmittal of applications is November 14, 2024.

We do not consider an application that does not comply with the deadline requirement.

5. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* For all its grant competitions, IES uses selection criteria based on a peer review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at https://ies.ed.gov/director/sro/peer_review/application_review.asp.

For the 84.429A competition, peer reviewers will evaluate the significance of the proposed capacity building, the significance of the proposed intervention, institutional resources, and engagement and dissemination.

For all IES competitions, applications must include budgets no higher than the relevant maximum award as set out in the relevant RFA. IES will not make an award exceeding the maximum award amount as set out in the relevant RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, IES may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, compliance with the IES policy regarding public access to research, and compliance with grant conditions. IES may also consider whether the applicant failed to submit

a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, IES requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, IES may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the Guidance for Federal Financial Assistance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications

for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual meeting of up to three days for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by IES. If you receive a multiyear award, you must submit an annual performance report that provides

the most current performance and financial expenditure information as directed by IES under 34 CFR 75.118. IES may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* To evaluate the overall success of its education research grant programs, IES annually assesses the percentage of projects that result in peer-reviewed publications and the number of IES-supported interventions with evidence of efficacy in improving learner education outcomes.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, IES considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether a grantee is in compliance with the IES policy regarding public access to research; and if IES has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, IES also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed in **FOR FURTHER INFORMATION CONTACT**, as well as in the RFA and application package, individuals with disabilities can obtain this document and a copy of the RFA in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the

Federal Register, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Matthew Soldner,

Acting Director, Institute of Education Sciences.

[FR Doc. 2024–18275 Filed 8–14–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Special Education Dissertation Research Fellowship Program

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for the Special Education Dissertation Research Fellowship Program.

DATES:

Application Package Available: August 29, 2024.

Deadline for Transmittal of Applications: November 14, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT:

Courtney Pollack. Telephone: 202–987–0999. Email: Courtney.Pollack@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: In awarding research training grant programs, the Institute of Education Sciences (IES)

aims to prepare individuals to conduct rigorous and relevant education and special education research that advances knowledge within the field and addresses issues important to education policymakers and practitioners.

Assistance Listing Number: 84.324G.

OMB Control Number: 4040–0001.

Competition in This Notice: The IES National Center for Special Education Research (NCSE) is announcing one competition: *Special Education Dissertation Research Fellowship Program (ALN 84.324G)*. Under the Dissertation program, doctoral students will receive support for conducting their dissertation and participating in related training with guidance from a sponsor at their institution. NCSE will consider only applications that address one or more of the following topics:

- Education Systems
- Education Technologies
- Low-Incidence Disabilities
- Postsecondary Education

Multiple Submissions: You may submit applications to more than one of the FY 2025 research and research training grant programs offered through the Department, including those offered through IES as well as those offered through other offices and programs within the Department. You may submit multiple applications to the grant program announced here as long as they specify different doctoral students and dissertation research. However, you may submit a given application only once for the IES FY 2025 grant competitions, meaning you may not submit the same application or similar applications to multiple grant programs within IES, to multiple topics within a grant competition, or multiple times within the same topic. If you submit multiple similar applications, IES will determine whether and which applications will be accepted for review and/or will be eligible for funding. In addition, if you submit the same or similar application to IES and to another funding entity within or external to the Department and receive funding for the non-IES application prior to IES scientific peer review of applications, you must withdraw the same or similar application submitted to IES, or IES may otherwise determine you are ineligible to receive an award. If reviews are happening concurrently, IES staff will consult with the other potential funder to determine the degree of overlap and which entity will provide funding if both applications are being considered for funding.

Exemption from Proposed

Rulemaking: Under section 191 of the

Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on matters relating to grants.

Program Authority: 20 U.S.C. 9501 *et seq.*

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, 75.230, 75.250(a), and 75.708. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this competition.

Note: The Department will implement the provisions in the OMB final rule *OMB Guidance for Federal Financial Assistance*, which amends 2 CFR parts 25, 170, 175, 176, 180, 182, 183, 184, and 200, on October 1, 2024. Grant applicants that anticipate a performance period start date on or after October 1, 2024 should follow the provisions in the OMB Guidance for Federal Financial Assistance (89 FR 30046) when preparing an application. For more information about these updated regulations please visit: www.cfo.gov/resources/uniform-guidance/.

II. Award Information

Type of Awards: Discretionary grants.

Fiscal Information: Although Congress has not yet enacted an appropriation for FY 2025, IES is inviting applications for this competition now so that applicants can have adequate time to prepare their applications. The actual level of funding, if any, depends on final congressional action. IES may announce additional competitions later in 2024.

Estimated Range of Awards: Up to \$50,000 for the entire project period of 1 year.

Estimated Number of Awards: The number of awards will depend on the quality of the applications received and the availability of funds.

IES may waive any of the following limits on awards in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to the limits without funding only some of the equally ranked applications. In that case, IES may make a larger number of awards to include all applications of the same rank.

IES intends to fund up to eight grants. However, should funding be available, IES may consider making additional awards to high-quality applications that remain unfunded after eight awards are made.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 1 year.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are institutions of higher education in the United States and its territories that confer doctoral degrees.

2. a. *Cost Sharing or Matching:* The competition in this notice does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* Under 34 CFR 75.562(c)(2), indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application.

2. *Other Information:* Information regarding program and application requirements can be found in the currently available IES Application

Submission Guide and in the Request for Applications (RFA), which will be available on or before August 29, 2024, on the IES website at: <https://ies.ed.gov/funding/>. The application package will also be available on or before August 29, 2024.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA. The forms that must be submitted are in the application package.

4. *Submission Dates and Times:* The deadline date for transmittal of applications is November 14, 2024.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* For all of its grant competitions, IES uses selection criteria based on a peer review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at https://ies.ed.gov/director/sro/application_review.asp.

Peer reviewers will be asked to evaluate the significance of the application, quality of the research plan, quality of the career plan, and quality of the management plan. These criteria will be described in greater detail in the RFA.

Applications must include budgets no higher than the maximum award as set out in the RFA. IES will not make an award exceeding the maximum award amount as set out in the RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, IES may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, compliance with the IES policy regarding public access to research, and compliance with grant conditions. IES may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, IES requires various

assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, IES may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the OMB's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an

objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunications and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual meeting of four days for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under the competition announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by IES. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by IES under 34 CFR 75.118. IES may also require more frequent

performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* To evaluate the overall success of its special education research grant programs, IES annually assesses the percentage of projects that result in peer-reviewed publications, the number of newly developed or modified interventions with evidence of promise for improving learner education outcomes, and the number of IES-supported interventions with evidence of efficacy in improving learner education outcomes. School readiness outcomes include pre-reading, reading, pre-writing, early mathematics, early science, and social-emotional skills that prepare young children for school. Developmental outcomes for infants and toddlers (birth to age three) include cognitive, communicative, linguistic, social, emotional, adaptive, functional, or physical development. Student academic outcomes include learning and achievement in academic content areas, such as reading, writing, math, and science, as well as outcomes that reflect students' successful progression through the education system, such as course and grade completion; high school graduation; and postsecondary enrollment, progress, and completion. Social and behavioral competencies include social and emotional skills, attitudes, and behaviors that are important to academic and post-academic success. Functional outcomes include behaviors and skills that learners need to participate in developmentally appropriate routines and activities. Transition outcomes include transition to employment, independent living, and postsecondary education. Employment and earnings outcomes include hours of employment, job stability, and wages and benefits, and may be measured in addition to student academic outcomes.

6. *Continuation Awards:* There is no option for a continuation award under this competition.

VII. Other Information

Accessible Format: On request to the program contact person listed in **FOR FURTHER INFORMATION CONTACT**, as well as in the RFA and application package, individuals with disabilities can obtain this document and a copy of the RFA in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Matthew Soldner,

Acting Director, Institute of Education Sciences.

[FR Doc. 2024-18271 Filed 8-14-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2715-000]

Timbermill 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 Timbermill 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 29, 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 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-18304 Filed 8-14-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC24-23-000]

Commission Information Collection Activities (FERC-725A); 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-725A (Mandatory Reliability Standards for the Bulk-Power System). There are no changes to the information collection.

DATES: Comments on the collection of information are due October 15, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24-23-000) by one of the following methods:

Electronic filing through <https://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, 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: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Doug Reimel may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-6461.

SUPPLEMENTARY INFORMATION:

Title: FERC–725A (Mandatory Reliability Standards for the Bulk-Power System).

OMB Control No.: 1902–0244.

Type of Request: Three-year extension of the FERC–725A information collection requirements with no changes to the current reporting requirements.

Abstract: On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPA 2005), was enacted into law.¹ EPA 2005 added a new section 215 to the FPA, which requires a Commission-certified electric reliability organization (ERO) (FERC–725) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight or the Commission can independently enforce Reliability Standards (FERC–725A).²

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.³ Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.⁴ The ERO is required to develop Reliability Standards, which are subject to Commission review and approval. The Reliability Standards will apply to users, owners and operators of the Bulk-Power System, as set forth in each Reliability Standard.

On March 16, 2007, the Commission issued Order No. 693, a Final Rule adding part 40, a new part, to the Commission's regulations. The Final Rule states that this part applies to all users, owners and operators of the Bulk-Power System within the United States (other than Alaska or Hawaii). It also

requires that each Reliability Standard identify the subset of users, owners and operators to which that particular Reliability Standard applies. The new regulations also require that each Reliability Standard that is approved by the Commission will be maintained on the ERO's internet website for public inspection.

In order for the Commission to perform its oversight function with regard to Reliability Standards that are proposed by the ERO, it is essential that the Commission receives timely information regarding all or potential violations of Reliability Standards. While section 215 of the FPA contemplates the filing of the record of an ERO or Regional Entity enforcement action, FERC needs information regarding violations and potential violations at or near the time of occurrence. Therefore, it will work with the ERO and regional reliability organizations to be able to use electronic filing of information so the Commission receives timely information. The new regulations also require that each Reliability Standard that is approved by the Commission will be maintained on the ERO's internet website for public inspection.

In accordance with section 39.5 of the Commission's regulations, the ERO must file each Reliability Standard or a modification to a Reliability Standard with the Commission. The filing is to include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability development proceedings conducted by the ERO or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the ERO and a demonstration that the proposed Reliability Standard is "just, reasonable, not unduly discriminatory or preferential, and in the public interest."

The existing burden inventory for the entire FERC–725A collection is estimated at 1,407,238 burden hours (Table 1). FERC–725A contains the information collection requirements for nearly all of the US wide Reliability Standards. The collection started in 2007 when FERC approved 83 Reliability Standards with an estimated

1,252,680 burden hours. Since that time, NERC has revised many of the original standards (as well as proposed new standards) resulting in many incremental additions to the total burden hours. Additionally, over time FAC–003, FAC–008, PER–003; INT–006; INT–009; TOP–001, TOP–002, TOP–003, TOP–010 revisions were captured in 725A collection. In August 2024, the associated manhours and cost for PER–003–2 are being relocated from 725A into 725Y (Table 2). This change will not result in change in the number of respondents in 725A as the same group of responsible entities have other obligation under 725A but the associated cost per entity will decrease slightly overall (Table 3).

*Estimate of Annual Burden:*⁵ The Commission estimates the burden and cost for this information collection as follows.

IC24–23–000 Renewal of 725A

The following table represents the current burden associated with all Mandatory Reliability Standards that fall under FERC–725A.

⁵ 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 part 1320.

⁶ This is a list of NERC registered entities who under 725A need to follow the NERC Standards. BA = Balancing Authority (98); DP = Distribution Provider (371); GP = Generator Owner (1,210); Generator Operator (1028); PA/PC Planning Authority/Planning Coordinator (62); RC = Reliability Coordinator (12); RP = Resource Planner (159); RSG = Reserve Sharing Group (8); FRSG = Frequency Response Sharing Group (1); TO = Transmission Owner (324); TOP = Transmission Operator (165); TP = Transmission Provided (203); TSP = Transmission Service Provider (70); for a sum total of (3,711). The same entity may have multiple registration obligation to follow under 725A, so an individual entity's obligation increases based on registration functions. These values were derived from the NERC Compliance data of April 16, 2024, using only unique United States registered entities.

⁷ The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2024, for 75% of the average of an Electrical Engineer (17–2071) \$79.31/hr., $79.31 \times .75 = 59.4825$ (\$59.48-rounded) (\$59.48/hour) and 25% of an Information and Record Clerk (43–4199) \$44.74/hr., $44.74 \times .25 = 11.185$ (\$11.19 rounded) (\$11.19/hour), for a total (\$59.48 + \$11.19 = \$70.67/hour).

¹ Energy Policy Act of 2005, Public Law No 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), to be codified at 16 U.S.C. 824o.

² 16 U.S.C. 824o(e)(3).

³ Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards, Order No. 672, 71 FR 8662 (February 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), order on reh'g, Order No. 672–A, 71 FR 19814 (April 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

⁴ North American Electric Reliability Corp., 116 FERC ¶ 61,062 (ERO Certification Order), order on reh'g & compliance, 117 FERC ¶ 61,126 (ERO Rehearing Order) (2006), order on compliance, 118 FERC ¶ 61,030 (2007) (January 2007 Compliance Order).

ORIGINAL 725A IC24–23–000

	Number and type of respondents ⁶	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁷	Total annual burden hours & total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Annual Review of 725A	3,711	1	3,711	379.21 hrs., \$26,798.77	1,407,238 hrs., \$99,449,509.46.	\$26,798.77
Total .....	.....	.....	.....	.....	1,407,238 hrs., \$99,449,509.46.	.....

ORIGINAL 725 A MOVING TO FERC–725Y IN DOCKET NO. IC24–16–000 RELIABILITY STANDARD PER–003–2

	Number and type of respondents ⁸	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁹	Total annual burden hours & total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Annual Review of Credentials.	12 (RC)	1	12	60 hrs., \$4,758.60	720 hrs., \$57,103.20	4,758.60
	98 (BA)	1	98	60 hrs., \$4,758.60	5,880 hrs., \$466,342.80	\$4,758.60
	165 (TOP)	1	165	60 hrs., \$4,758.60	9,900 hrs., \$785,169	4,758.60
Record Retention	(RC, BA, TOP) 275.	1	275	60 hrs., \$2,915.40	16,500 hrs., \$801,735	2,915.40
Total .....	.....	.....	.....	.....	33,000 hrs., \$2,110,350 .....	.....

• Electrical Engineer (Occupation Code: 17–2071): \$79.31 (to calculate the reporting requirements).

• Office and Administrative Support (Occupation Code: 43–0000): \$48.59 (to calculate the recordkeeping requirements).

Third table to show different from table 1 minus table 2.

Reliability standard & requirement	Number of entities ¹⁰	Number of annual responses per entity	Total number of responses	Average number of burden hours per response ¹¹	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)

FERC–725A

Mandatory Reliability Standards for Bulk Power System.	3,711	1	3,711	379.21 hrs., \$26,798.77	1,407,238 hrs., \$99,449,509.46.
PER–003–2 Net Changes ...	550 (No change) ..	1	550 (No Change)	– 60 hrs., \$4,240.20	– 33,000 hrs., \$2,332,110.00 (Reduction).
Total for FERC–725A ...	.....	.....	.....	.....	1,374,238 hrs., \$97,117,399.46.

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 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–18301 Filed 8–14–24; 8:45 am]

BILLING CODE 6717–01–P

⁸ For PER–003–2: RC = Reliability Coordinator; BA = Balancing Authority; TOP = Transmission Operator; TO = Transmission Owner; GOP = Generator Operator. The NERC compliance registry table April 16, 2024, was used to perform analysis.

⁹ The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2024. The estimates for cost per response are loaded hourly wage figure (includes benefits) based on two occupational categories for 2023 found on the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm):

¹⁰ This is a list of NERC registered entities who under 725A need to follow the NERC Standards. BA = Balancing Authority (98); DP = Distribution Provider (371); GP = Generator Owner (1,210); Generator Operator (1028); PA/PC Planning Authority/Planning Coordinator (62); RC = Reliability Coordinator (12); RP = Resource Planner (159); RSG = Reserve Sharing Group (8); FRSG = Frequency Response Sharing Group (1); TO = Transmission Owner (324); TOP = Transmission Operator (165); TP = Transmission Provided (203); TSP = Transmission Service Provider (70); for a sum total of (3,711). The same entity may have multiple registration obligation to follow under

725A so an individual entity's obligation increases based on registration functions. These values were derived from the NERC Compliance data of April 16, 2024 using only unique United States registered entities.

¹¹ The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2024, for 75% of the average of an Electrical Engineer (17–2071) \$79.31/hr., $79.31 \times .75 = 59.4825$ (\$59.48-rounded) (\$59.48/hour) and 25% of an Information and Record Clerk (43–4199) \$44.74/hr., $44.74 \times .25 = 11.185$ (\$11.19 rounded) (\$11.19/hour), for a total (\$59.48 + \$11.19 = \$70.67/hour).

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: RP24–964–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Termination of Transportation Service Agreement (EWM) to be effective 9/9/2024.

Filed Date: 8/8/24.

Accession Number: 20240808–5123.

Comment Date: 5 p.m. ET 8/20/24.

Docket Numbers: RP24–965–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 8–10–24 to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5060.

Comment Date: 5 p.m. ET 8/21/24.

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.

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 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–18305 Filed 8–14–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER24–2725–000]

Lone Star Solar, 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 Lone Star Solar, 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 29, 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 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–18303 Filed 8–14–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 15327–001]

New England Hydropower Company, LLC; Notice of Surrender of Preliminary Permit

Take notice that New England Hydropower Company, LLC, permittee for the proposed Middlebury Falls Project No. 15327, has requested that its preliminary permit be terminated. The permit was issued on July 25, 2024, and

would have expired on June 30, 2028.¹ The project would have been located on Otter Creek in Addison County, Vermont.

The preliminary permit for Project No. 15327 will remain in effect until the close of business, thirty days from the date of this notice. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.² New applications for this site may not be submitted until after the permit surrender is effective.

Dated: August 9, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–18300 Filed 8–14–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4169–006]

Campbell, David A.; Notice of Filing

Take notice that on August 7, 2024, David A. Campbell submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and section 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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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The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically 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.

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.

Comment Date: 5:00 p.m. Eastern Time on August 28, 2024.

Dated: August 8, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–18307 Filed 8–14–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–2085–000.

Applicants: PacifiCorp.
Description: Notice of termination of Rate Schedule 595 for PacifiCorp.
Filed Date: 5/20/24.

Accession Number: 20240520–5230.
Comment Date: 5 p.m. ET 8/30/24.
Docket Numbers: ER24–2392–001.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Amended ISA, SA No. 6698; AE2–110 to be effective 8/27/2024.

Filed Date: 8/8/24.
Accession Number: 20240808–5147.
Comment Date: 5 p.m. ET 8/29/24.
Docket Numbers: ER24–2706–000.
Applicants: Navajo Tribal Utility Authority.

Description: Petition for Limited Waiver of Navajo Tribal Utility Authority.

Filed Date: 7/22/24.
Accession Number: 20240722–5231.
Comment Date: 5 p.m. ET 8/16/24.
Docket Numbers: ER24–2725–000.
Applicants: Lone Star Solar, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 8/9/2024.
Filed Date: 8/8/24.

Accession Number: 20240808–5145.
Comment Date: 5 p.m. ET 8/29/24.
Docket Numbers: ER24–2726–000.
Applicants: MS Solar 4, LLC.

Description: Request for Limited Waiver of MS Solar 4, LLC.

Filed Date: 8/8/24.
Accession Number: 20240808–5151.
Comment Date: 5 p.m. ET 8/29/24.
Docket Numbers: ER24–2727–000.
Applicants: NTUA Generation-Utah, LLC.

Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 5/31/2024.

Filed Date: 8/9/24.
Accession Number: 20240809–5026.
Comment Date: 5 p.m. ET 8/30/24.
Docket Numbers: ER24–2728–000.
Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Colstrip Trans System LGIA—Concurrence Glendive Wind (RS No. 332) to be effective 6/18/2024.

Filed Date: 8/9/24.
Accession Number: 20240809–5031.
Comment Date: 5 p.m. ET 8/30/24.
Docket Numbers: ER24–2729–000.
Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Colstrip Trans System LGIA—Concurrence Glendive Wind (RS No. 333) to be effective 6/18/2024.

Filed Date: 8/9/24.
Accession Number: 20240809–5032.
Comment Date: 5 p.m. ET 8/30/24.
Docket Numbers: ER24–2730–000.

¹ New England Hydropower Company, LLC, 188 FERC ¶ 61,079 (2024).

² 18 CFR 385.2007(a)(2) (2023).

Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: § 205(d) Rate Filing: 2024 Abbreviated Rate Change Filing Moon Lake to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5043.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2731–000.

Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii): FE PA submits Amended CA, SA No. 6640 to be effective 10/9/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5044.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2732–000.

Applicants: Energia Sierra Juarez U.S. Transmission, LLC.

Description: § 205(d) Rate Filing: Filing of Second Amended and Restated Facilities Agreement to be effective 10/9/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5056.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2733–000.

Applicants: Union Electric Company.

Description: § 205(d) Rate Filing: Monthly System Support Resource Payment for Rush Island Energy Center to be effective 9/1/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5061.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2734–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 1st Amend LGIA, Tumbleweed ES2-Cancel eTariff Record (TOT778–SA215) to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5086.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2735–000.

Applicants: Henrietta BESS LLC.

Description: Baseline eTariff Filing: Shared Facilities Agreement Filing to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5092.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2736–000.

Applicants: MRP San Joaquin Energy, LLC.

Description: Baseline eTariff Filing: Shared Facilities Agreement Filing to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5094.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2737–000.

Applicants: Malaga BESS LLC.

Description: Baseline eTariff Filing: Shared Facilities Agreement Filing to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5095.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2738–000.

Applicants: Malaga Power, LLC.

Description: Baseline eTariff Filing: Shared Facilities Agreement Filing to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5096.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2739–000.

Applicants: Hanford BESS LLC.

Description: Baseline eTariff Filing: Shared Facilities Agreement Filing to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5101.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2740–000.

Applicants: ISO New England Inc., The Connecticut Light and Power Company.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO–NE/CL&P; Unexecuted Original Service Agreement LGIA–ISONE/CLP–24–01 to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5108.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2741–000.

Applicants: BCD 2024 Fund 2 Lessee, LLC.

Description: Tariff Amendment: BCD 2024 Fund 2 Lessee, LLC Notice of Cancellation of MBR Tariff to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5112.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2742–000.

Applicants: MRP San Joaquin Energy, LLC.

Description: § 205(d) Rate Filing: Normal filing COC Hanford Filing to be effective 8/10/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5117.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2743–000.

Applicants: Entergy Louisiana, LLC.
Description: § 205(d) Rate Filing: Bayou Galion LBA Agreement to be effective 8/13/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5137.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2744–000.

Applicants: Entergy Louisiana, LLC.

Description: § 205(d) Rate Filing: Sunlight Road LBA Agreement to be effective 9/1/2024.

Filed Date: 8/9/24.

Accession Number: 20240809–5138.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER24–2745–000.

Applicants: Huck Finn Solar, LLC.

Description: Tariff Amendment: 2024–08–09 Huck Finn Solar Notice of Cancellation of MBR Tariff to be effective 12/31/9998.

Filed Date: 8/9/24.

Accession Number: 20240809–5143.

Comment Date: 5 p.m. ET 8/30/24.

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 9, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–18306 Filed 8–14–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. IC24–20–000]

Commission Information Collection
Activities FERC–917 and FERC–918;
Consolidated Comment Request;
Extension**AGENCY:** Federal Energy Regulatory
Commission, DOE.**ACTION:** Notice of information
collections 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 collections, FERC–917 (Electric Transmission Facilities) and FERC–918 (Standards for Business Practices and Communication Protocols for Public Utilities), both under OMB Control No. 1902–0233. The Commission will submit this request for comment to the Office of Management and Budget (OMB) for review. No comments were received on the 60 day notice.

DATES: Comments on the collections of information are due September 16, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24–20–000 and the specific FERC collection number (FERC–917 and/or FERC–918) by one 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: OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain. Using the search function under the “Currently Under Review” field, select Federal Energy Regulatory Commission; click “submit,” and select “comment” to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov/ferc-online/overview>.

FOR FURTHER INFORMATION CONTACT:

Doug Reimel may be reached by email at DataClearance@FERC.gov, telephone at (202) 502–6461.

SUPPLEMENTARY INFORMATION:

Title: FERC–917, Electric Transmission Facilities and FERC–918, Standards for Business Practices and Communication Protocols for Public Utilities.

OMB Control No.: 1902–0233.

Type of Request: Three-year extension of the FERC–917 and FERC–918

information collection requirements with no changes to the reporting requirements.

Type of Respondents: Public utilities transmission providers.

Abstract: The information collection requirements in the FERC 917 and 918 include posting requirements in compliance with Federal Power Act sections 206. Furthermore, the requirements for posting are described in the Commission’s pro forma Open Access Transmission Tariff (OATT) that is prescribed by 18 CFR 35.28 to ensure non-discriminatory practices in electric energy systems and markets. Additionally, the specifications to posting information and standards that must be followed are outlined in 18 CFR part 37 (Open Access Same Time Information System (OASIS)) and part 38 (Standards for Public Utility Business Operations and Communications) of the Commission’s regulations.

The FERC 917 and 918 information collections specifically contain the burden related to gathering and posting information (on OASIS) as specified in the OATT¹ and the burden related to complying with standards that are described by the North American Energy Standards Board (NAESB).²

This notice and information collection request pertains to the extension of the existing requirements with no change to the reporting requirements.³

*Estimate of Annual Burden:*⁴ The Commission estimates the annual public reporting burden for the information collection to remain consistent with the previous estimate. However, the Commission has updated the number of respondents with a more current estimate.

FERC–917 (ELECTRIC TRANSMISSION FACILITIES) AND FERC–918 (STANDARDS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES)

	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average annual burden hrs. & cost ⁵ per response (\$)	Total average annual burden hours & total annual cost ⁵ (\$)	Average annual cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
FERC–917 & FERC–918						
Non-Discriminatory Open Access Transmission Tariff (reporting).	162	1	162	566 hrs.; \$56,600	91,692 hrs.; \$9,169,200 ...	\$56,600
Open Access Transmission Tariff (record keeping).	162	1	162	10 hrs.; \$1,000	1,620 hrs.; \$162,000	1,000

¹ The requirements for OASIS were established in FERC order 888 and 889. Later, in FERC Order 1000–A, the FERC Information Collection under OMB control no. 1902–0233 was created.

² 18 CFR part 38

³ There is a separate docket no. (RM21–17) that is revising the OATT at this time. To reduce confusion between the revision and the extension, the Commission is issuing this notice for the extension to requirements that are not being revised in the separate rulemaking effort.

⁴ 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 part 1320.

FERC-917 (ELECTRIC TRANSMISSION FACILITIES) AND FERC-918 (STANDARDS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES)—Continued

	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average annual burden hrs. & cost ⁵ per response (\$)	Total average annual burden hours & total annual cost ⁵ (\$)	Average annual cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Information to be posted on the OASIS and Auditing Transmission service (reporting).	162	1	162	376 hrs.; \$37,600	60,912 hrs.; \$6,091,200 ...	37,600
Information to be posted on the OASIS and Auditing Transmission service (record keeping).	162	1	162	45 hrs.; \$4,500	7,290 hrs.; \$729,000	4,500
Total .....	.....	.....	.....	.....	161,514 hrs.; \$16,151,400 .....	.....

Comments: Comments are invited on: (1) whether the collections 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 collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 9, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-18302 Filed 8-14-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2020-0415; FRL-12116-01-OAR]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an Information Collection Request (ICR),

Implementation of the 8-hour National Ambient Air Quality Standards for Ozone (Renewal) (EPA ICR Number: 2347.05, OMB Control Number: 2060-0695) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described later. This is a proposed extension of the ICR, which is currently approved through January 31, 2025. This document allows 60 days for public comments.

DATES: Comments must be submitted on or before October 15, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2020-0415, to EPA online using <https://www.regulations.gov> (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Oggeri, Office of Air Quality Planning and Standards, C504-05, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3255; email address: oggeri.francis@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through January 31, 2025. An agency may not conduct or sponsor a collection of information, and a person is not required to respond to

it unless it displays a currently valid OMB control number.

This document allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov> or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The telephone number for the Docket Center is (202) 566-1744. For additional information about EPA's public docket, visit <https://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The original ozone ICR No. 2347.01 that applied to the 2008 8-hour ozone NAAQS was issued after the ozone NAAQS was revised in 2012. The original ICR was renewed as No.

⁵ 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.

2347.02 for the period February 1, 2015, through January 31, 2018. The ICR No. 2347.02 was renewed in ICR No. 2347.03 for the period February 1, 2018, through January 31, 2021. The ICR No. 2347.03 was renewed in ICR No. 2347.04 for the period February 1, 2021, through January 31, 2025. The ICR No. 2347.01, 2347.02, and 2347.03 renewals applied to the 2008 8-hour ozone NAAQS before the ozone NAAQS was revised in 2015. The ICR renewal currently approved by OMB, ICR No. 2347.04, added the burden of implementing the 2015 8-hour ozone NAAQS and continued implementation of the 2008 and 1997 8-hour NAAQS requirements. This proposed ICR renewal continues to address all applicable State Implementation Plan (SIP) requirements for the remaining 2015 and 2008 ozone NAAQS nonattainment areas. This ICR will be effective from February 1, 2025, through January 31, 2028. States with nonattainment areas for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) are implementing the NAAQS under the Clean Air Act (CAA) and EPA-issued implementation regulations issued for that NAAQS. The state activities include, but are not limited to, developing and submitting attainment demonstrations, reasonable further progress (RFP) plans, reasonably available control technology (RACT) determinations, and maintenance plans. This proposed ICR renewal estimates the burden for states to meet the ongoing planning requirements that apply to their remaining nonattainment areas for the 2008 and 2015 NAAQS for the period covering February 1, 2025, to January 31, 2028. These requirements primarily result from 2015 ozone Moderate nonattainment areas that may fail to attain the NAAQS by their attainment date during this period and are reclassified to Serious with SIP revisions required from the states. In addition, this ICR renewal includes burden estimates for state and EPA activities related to redesignation requests for the 2018 and 2015 ozone NAAQS, and second maintenance plans for the 2008 NAAQS.

The burden estimates for states in this ICR renewal include the states burden to develop and submit attainment plans to meet the requirements prescribed in CAA sections 110 and part D, subparts 1 and 2 of Title I as interpreted by EPA's ozone NAAQS SIP requirements rules. An ozone NAAQS attainment plan contains state rules and other measures designed to improve air quality and achieve the NAAQS by the deadlines

established under the CAA. It also must address several additional CAA requirements related to demonstrating timely attainment and contain contingency measures if the nonattainment area does not achieve reasonable further progress throughout the attainment period or if the area does not attain the NAAQS by its attainment date. The burden estimate for states for the 2008 NAAQS accounts for 25 nonattainment areas. Six former nonattainment areas, also referred to as maintenance areas, have second maintenance plans due during the ICR period, and 19 nonattainment areas are eligible for redesignation to attainment based on 2021–2023 air quality data. Because some nonattainment areas for the 2008 ozone standards comprise portions of two or more states, the 25 nonattainment areas result in up to 32 total responses from states. The burden estimate for the 2015 NAAQS accounts for 28 nonattainment areas with SIP revisions expected to be due from their respective states. Because some nonattainment areas for the 2015 ozone standards are comprised of portions of two or more states, the 28 nonattainment areas result in up to 38 total responses from states. Out of these 28 nonattainment areas, 6 nonattainment areas are eligible for redesignation to attainment, 19 nonattainment areas are currently classified as Moderate that could be reclassified to Serious, and 3 areas received voluntary reclassifications from Moderate to Serious that will have SIP revisions due during the ICR renewal period covering February 1, 2025, to January 31, 2028. The nonattainment areas currently classified as Moderate that could be reclassified to Serious will be subject to additional attainment planning requirements if the areas fail to attain the NAAQS by the August 3, 2024, attainment date. Such Serious area SIPs will be due within about 12 months from the date of reclassification, which would be during the reporting period for this ICR. This ICR estimates that the states' average yearly burden is 63,000 hours, with a 3-year burden of 189,000 hours and estimated costs of \$15,615,887 for the 3-year burden.

The burden estimates for the EPA included in this ICR renewal include the EPA burden to review and to approve or disapprove the four primary requirements that apply to states with nonattainment areas for the 2008 Ozone NAAQS and 2015 Ozone NAAQS: the attainment demonstration, the RFP SIP submission, the RACT SIP submission, and a maintenance plan. Additional

obligations are the second maintenance plan SIP revisions for a few areas subject to ongoing requirements to implement the 2008 Ozone NAAQS and the burden of developing the required SIP revisions for the two tribal areas that are eligible for reclassification to attainment. Tribes may develop or submit attainment plans but are not required to do so. This ICR estimates the EPA's estimated average burden is 7,663 hours annually, with a 3-year burden of 22,990 hours and estimated costs of \$1,899,520 for the 3-year burden.

Form numbers: None.

Respondents/affected entities: State and Local government.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 70 (total).

Frequency of response: Once per triggering event, e.g., an air agency is required to revise and submit a SIP revision when an area under its jurisdiction is initially designated nonattainment or reclassified to a higher classification. For areas that are redesignated to attainment, an air agency is also required to submit an initial 10-year maintenance plan, and eight years later a second 10-year maintenance plan.

Total estimated burden: 63,000 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$5,205,295.62 (per year), which includes \$0 annualized capital or operation and maintenance costs.

Changes in the estimates: There is a decrease in the annual state's burden of \$56,133 hours below the 119,133 hours estimated from the previous ICR. The EPA estimates the total burden for state respondents to be 189,000 hours over the next 3 years compared to 357,399 hours for state respondents during the period of the 8-hour ozone NAAQS ICR currently approved by OMB (EPA ICR No. 2347.04). This decrease is generally due to fewer ozone program requirements coming due during the next 3 years compared to the previous ICR. There are both fewer active ozone nonattainment areas to trigger applicable requirements, and the incremental burden of triggered SIP revisions is expected to be lower than the overall SIP burden associated with areas when they are initially designated nonattainment. The previous ICR accounted for 96 respondents compared to 70 respondents for this renewal period. For the previous ICR, the majority of the burden hours and cost came from the foundational set of SIP requirements due for the 2015 8-hour ozone NAAQS for all 52 areas initially

designated in 2018 as nonattainment. Additionally, the previous ICR accounted for the reclassification of 2008 8-hour ozone NAAQS nonattainment areas from Serious to Severe, in addition to second maintenance plan development for the 2008 and 1997 ozone NAAQS. In comparison, this ICR renewal burden hours and costs are accounting for the fewer incremental SIP requirements for the 2015 8-hour NAAQS for reclassification of nonattainment areas from Moderate to Serious (19 nonattainment areas), and second 10-year maintenance plans coming due only for the 2008 ozone NAAQS.

The burden estimate is detailed in the supporting statement located in the docket for this proposed ICR. The adjustments to the cost assumptions are summarized in sections 6(b) and 6(c) of the supporting statement. Cost estimates for the ICR renewal are based on estimates calculated using 2024 dollars.

Scott Mathias,

Director, Air Quality Planning and Standards.

[FR Doc. 2024-18247 Filed 8-14-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0519, OMB 3060-1292; FR ID 238478]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 16, 2024.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRa@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060-0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02-278.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions.

Number of Respondents and Responses: 171,026 respondents; 193,328,796 responses.

Estimated Time per Response: .004 hours (15 seconds) to 8 hours.

Frequency of Response: Annual, monthly, on occasion and one-time reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements are found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243, December 20, 1991, 105 Stat. 2394, which added section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

Total Annual Burden: 3,535,421 hours.

Total Annual Cost: \$1,357,200.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060-0519 enable the Commission to gather information regarding violations of section 227 of the Communications Act, the Do-Not-Call Implementation Act (Do-Not-Call Act), and the Commission’s implementing rules. If the information collection was not conducted, the Commission would be unable to track and enforce violations of section 227 of the Communications Act, the Do-Not-Call Act, or the Commission’s implementing rules. The Commission’s implementing rules provide consumers with several options for avoiding most unwanted telephone solicitations.

The national do-not-call registry supplements the company-specific do-not-call rules for those consumers who

wish to continue requesting that particular companies not call them. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

A provision of the Commission's rules, however, allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the "do-not-call" registry requirements.

On September 21, 2004, the Commission released the Safe Harbor Order, published at 69 FR 60311, October 8, 2004, establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing National Do-Not-Call Registry safe harbor to require telemarketers to scrub their lists against the Registry every 31 days.

On December 4, 2007, the Commission released the DNC NPRM, published at 72 FR 71099, December 14, 2007, seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration.

On June 17, 2008, in accordance with the Do-Not-Call Improvement Act of 2007, the Commission revised its rules to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Do-Not-Call Registry to protect consumer privacy rights. The Commission released a Report and Order in CG Docket No. 02–278, FCC 08–147, published at 73 FR 40183, July 14, 2008, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five-year registration period. Specifically, the Commission modified § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

On February 15, 2012, the Commission released a Report and Order in CG Docket No. 02–278, FCC 12–21, originally published at 77 FR 34233, June 11, 2012, and later corrected at 77 FR 66935, November 8, 2012, revising its rules to: (1) require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and for all prerecorded telemarketing calls to residential lines; (2) eliminate the established business relationship exception to the consent requirement for prerecorded telemarketing calls to residential lines; (3) require telemarketers to include an automated, interactive opt-out mechanism in all prerecorded telemarketing calls, to allow consumers more easily to opt out of future robocalls during a robocall itself; and (4) require telemarketers to comply with the 3% limit on abandoned calls during each calling campaign, in order to discourage intrusive calling campaigns.

Finally, the Commission also exempted from the Telephone Consumer Protection Act requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996.

OMB Control Number: 3060–1292.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, Fourth Report and Order, CG Docket No. 17–59, FCC 20–187.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,493 respondents; 575,941 responses.

Estimated Time per Response: .25 to 40 hours.

Frequency of Response: On-occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in sections 4(i), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 202, 217, 227, 227b, 251(e), 303(r), 403.

Total Annual Burden: 173,440 hours.

Total Annual Cost: No cost.

Needs and Uses: On December 29, 2020, the Commission adopted Advanced Methods to Target and Eliminate Unlawful Robocalls Fourth Report and Order ("Call Blocking Fourth Report and Order"). Unwanted and illegal robocalls have long been the

Federal Communication Commission's ("Commission") top source of consumer complaints and one of the Commission's top consumer protection priorities. In 2019, Congress passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. In addition to directing the Commission to mandate adoption of caller ID authentication technology and encourage voice service providers to block calls by establishing safe harbors, the TRACED Act directs the Commission to ensure that both consumers and callers are provided with transparency and effective redress when calls are blocked in error. In the Call Blocking Fourth Report and Order, the Commission took several steps to better protect consumers from unwanted and illegal robocalls, and implement the TRACED Act. The Commission expanded the existing safe harbor for blocking of calls, established affirmative requirements to ensure that voice service providers better police their networks against illegal calls, and adopted several transparency and redress requirements to ensure that erroneous blocking can be quickly identified and remedied.

47 CFR 64.1200(k)(1), originally adopted in the Call Blocking Fourth Report and Order requires any terminating voice service provider that blocks calls on an opt-in or opt-out basis to provide, on the request of the subscriber to a particular number, a list of all calls intended for that number that the voice service provider or its designee has blocked. The list must include the prior 28 days of blocked calls and must be provided to the subscriber within 3 business days.

The TRACED Act expressly directs the Commission to ensure that both consumers and callers are provided with transparency. In the Call Blocking Fourth Report and Order, the Commission determined that, while opt-in or opt-out blocking must already be disclosed to consumers, a consumer may be unaware that particular calls are blocked absent such a list. Consumers can use the list to determine whether to opt out of blocking services or reach out to callers whose calls may have been blocked.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–18179 Filed 8–14–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 238052]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License**AGENCY:** Federal Communications Commission.**ACTION:** Notice.**DATES:** The agency must receive comments on or before October 15, 2024.**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, 202-418-2054, Rolanda-Faye.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: The Media Bureau shall provide notice in the **Federal Register** that an application to modify an AM or FM station's community of license has been filed. See 71 FR 76208, 76211 (published December 20, 2006). The following applicants filed AM or FM proposals to change the community of license: AKAL MEDIA KKDZ, INC., KKDZ(AM), FAC ID NO. 12112, FROM: SEATTLE, WA, TO: KENT, WA, FILE NO. 0000247664; PROGRESSIVE BROADCASTING SYSTEM, INC., WCMR(AM), FAC ID NO. 53650, FROM: ELKHART, IN, TO: DUNLAP, IN, FILE NO. 0000249659; CSN INTERNATIONAL, INC., KSOA(FM), FAC ID NO. 767193, FROM: SOLEDAD, CA, TO: SOUTH DOS PALOS, CA, FILE NO. 0000246748; AND ELIJAH RADIO, WLJL(FM), FAC ID NO. 764082, FROM: RIVERSIDE, AL, TO: TALLADEGA, AL, FILE NO. 0000247585. The full text of these applications is available electronically via Licensing and Management System (LMS), <https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html>.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2024-18194 Filed 8-14-24; 8:45 am]

BILLING CODE 6712-01-P

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning:

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 15, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060-1307.

Title: Performance Evaluation of Numbering Administration Vendor(s).
Form Number: N/A.

Type of Review: Revision of a currently information collection.

Respondents: Business or other for-profit entities, Not-for-profit entities, and State, Local and Tribal governments.

Number of Respondents and Responses: 6,237 respondents and 6,237 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information is contained in 47 U.S.C. 251(e)(1).

Total Annual Burden: 1,561 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is requesting Office of Management and Budget (OMB) approval this revised information collection. This collection of information is an annual performance satisfaction survey of its vendor(s) acting as administrators for various telephone number management functions. These functions may be performed by one or multiple vendors under one or multiple contracts. The vendor(s) act pursuant to their contract(s) with the Federal Communications Commission (FCC) and the FCC's numbering rules. See 47 CFR 52.1 *et seq.*

The survey will be designed and administered by the Numbering Administration Oversight Working Group (NAOWG) of the North American Numbering Council (NANC). The NANC is a Federal Advisory Committee established under the Federal Advisory Committee Act. The NANC advises the FCC and makes recommendations, reached through consensus, that foster efficient and impartial number administration. The NANC is composed of representatives of telecommunications carriers, regulators, cable providers, Voice Over internet Protocol (VoIP) providers, industry associations, vendors, and consumer advocates. Working groups, including the NAOWG, made up of industry experts, have been established by the NANC to assist in its efforts. The NANC charter can be found at <https://www.fcc.gov/files/charter-north-american-numbering-council>.

The relevant contract(s) require that the Commission and/or its designee shall develop and conduct a performance survey for each administrator. The results of this consumer satisfaction survey will provide the FCC with indicators on how well the vendor(s) are acting as the North American Numbering Program Administrator (NANPA), Pooling Administrator (PA), Routing Number Administrator (RNA) and Reassigned Numbering Database Administrator (RNDA) is meeting its contractual obligations and accomplishing its mission as the NANPA/PA/RNA/RNDA.

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1307; FR ID 238466]

Information Collection Being Reviewed by the Federal Communications Commission**AGENCY:** Federal Communications Commission.

Federal Communications Commission.
Marlene Dortch,
Secretary, Office of the Secretary.
[FR Doc. 2024–18180 Filed 8–14–24; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2024–20]

Filing Dates for the Texas Special Election in the 18th Congressional District

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a Special General Election on November 5, 2024, to fill the U.S. House of Representatives seat in the 18th Congressional District held by the late Representative Sheila Jackson Lee. There are two possible elections, but only one may be necessary. Under Texas law, all qualified candidates, regardless of party affiliation, will appear on the ballot. The majority winner of the Special General Election is declared elected. Should no candidate achieve a majority vote, the Governor will then set the date for a Special Runoff Election that will include only the top two vote-getters. Committees participating in the Texas

special election are required to file pre- and post-election reports.

ADDRESSES: 1050 First Street NE, Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, (202) 694–1100 or (800) 424–9530, info@fec.gov.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Texas Special General Election shall file a 12-day Pre-General Report on October 24, 2024. If there is a majority winner, committees must also file a Post-General Report on December 5, 2024. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special General Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Texas Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Texas special election may be found on the FEC website at <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/>.

Possible Special Runoff Election

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registant PACs that aggregate in excess of \$22,700 during the special election reporting periods. (See charts below for closing date for each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION

Report	Close of books ¹	Reg./cert. & overnight mailing deadline	Filing deadline
If Only the Special General (11/05/2024) is Held, Political Committees Involved Must File			
Pre-General	10/16/2024	10/21/2024	10/24/2024
Post-General	11/25/2024	12/05/2024	12/05/2024
Year-End	12/31/2024	01/31/2025	01/31/2025
If Two Elections are Held, Political Committees Involved in Only the Special General (11/05/2024) Must File			
Pre-General	10/16/2024	10/21/2024	10/24/2024
Year-End	12/31/2024	01/31/2025	01/31/2025

¹ The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

Dated: August 12, 2024.

On behalf of the Commission.

Sean J. Cooksey,
Chairman, Federal Election Commission.
[FR Doc. 2024–18299 Filed 8–14–24; 8:45 am]
BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1816]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA37

Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final guidance.

SUMMARY: The Board and the FDIC (together, the agencies) are adopting this final guidance for the 2025 and subsequent resolution plan submissions by certain domestic banking organizations. The final guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted under the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (the Dodd-Frank Act), and the jointly issued implementing regulation (the Rule). The scope of application of the final guidance is domestic triennial full filers (specified firms or firms), which are domestic Category II and III banking organizations. The final guidance describes the agencies' expectations, depending on the resolution strategy chosen by the firm, regarding a number of key vulnerabilities in plans for an orderly resolution under the U.S. Bankruptcy Code (*i.e.*, capital; liquidity; governance mechanisms; operational; legal entity rationalization; and insured depository institution (IDI) resolution, if applicable). The final guidance modifies and clarifies certain aspects of the proposed guidance based on the agencies' consideration of comments to the proposal, additional analysis, and further assessment of the business and risk profiles of the firms.

DATES: The final guidance is available on August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Board: Catherine Tilford, Deputy Associate Director, (202) 452–5240, Elizabeth MacDonald, Assistant Director, (202) 475–6316, Tudor Rus, Manager, (202) 475–6359, Mason Laird, Senior Financial Institution Policy Analyst II, (202) 912–7907, Caroline Elkin, Senior Financial Institution Policy Analyst, (202) 263–4888, Division of Supervision and Regulation; or Jay Schwarz, Deputy Associate

General Counsel, (202) 452–2970; Andrew Hartlage, Special Counsel, (202) 452–6483; Brian Kesten, Counsel, (202) 843–4079; or Sarah Podrygula, Senior Attorney, (202) 912–4658, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Robert C. Connors, Senior Advisor, (202) 898–3834; Mark E. Haley, Chief, (917) 320–2911, Patrick R. Bittner, Senior Policy Specialist, (202) 898–6571, Division of Complex Financial Institution Supervision and Resolution; Celia Van Gorder, Assistant General Counsel (Acting), (202) 898–6749; Dena S. Kessler, Counsel, (202) 898–3833; Gregory J. Wach, Counsel, (202) 898–6972, Legal Division.

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I. Introduction*A. Background*

Section 165(d) of the Dodd-Frank Act¹ and the Rule² require certain financial institutions to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers, (b) triennial full filers, and (c) triennial reduced filers.³ The terms “covered company” and “triennial full filer” have the meanings given in the Rule, as do other, similar terms used

throughout this final guidance document.

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.⁴ The Rule requires each covered company's full resolution plan to include, among other things, a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material entities, and interconnections and interdependencies.⁵ Targeted resolution plans are required to include a subset of information contained in a full plan.⁶ In addition, the Rule requires that all resolution plans consist of two parts: a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies, and a section that the agencies make available to the public.⁷ Public sections of resolution plans can be found on the agencies' websites.⁸

Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. To assist the development of covered companies' resolution planning capabilities and plan submissions, the agencies have provided feedback on individual plan submissions, issued guidance to certain groups of covered companies, and issued answers to frequently asked questions. The agencies believe that guidance can help focus the efforts of similarly situated covered companies to improve their resolution capabilities and clarify the agencies' expectations for those filers' future progress in their resolution plans. To date, the agencies have issued guidance to (a) U.S. global systemically important banks (GSIBs),⁹

⁴ 12 CFR 243.4(b) and 381.4(b).

⁵ 12 CFR 243.5 and 381.5.

⁶ 12 CFR 243.6(b) and 381.6(b).

⁷ 12 CFR 243.11(c) and 381.11(c).

⁸ The public sections of resolution plans submitted to the agencies are available at www.federalreserve.gov/supervisionreg/resolution-plans.htm and www.fdic.gov/regulations/reform/resplans/.

⁹ Guidance for section 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019) (2019 U.S. GSIB Guidance).

¹ 12 U.S.C. 5365(d).

² 12 CFR parts 243 and 381.

³ 12 CFR 243.4 and 381.4.

which constitute the biennial filer group; and (b) certain large foreign banking organizations (FBOs) that are triennial full filers.¹⁰ The agencies have not, however, thus far issued guidance to domestic triennial full filers and the additional FBOs that make up the remainder of the triennial full filers.

Several developments inform the final guidance:

- The agencies' consideration of comments to the proposed guidance (as defined below);
- The agencies' review of domestic triennial full filers' 2021 resolution plans and the issuance of individual letters communicating the agencies' feedback on those submitted plans;
- The agencies' recent experience with the resolutions of Silicon Valley Bank, Signature Bank, and First Republic Bank, and related stress experienced by a range of other financial institutions; and
- The agencies' analysis of the current risk profiles of the domestic triennial full filers.

The preamble to the 2019 revisions to the Rule indicated that the agencies would make any future resolution guidance available for comment,¹¹ and on August 29, 2023, the agencies invited comments on proposed guidance for the 2024 and subsequent resolution plan submissions by domestic triennial full filers (proposed guidance or proposal).¹²

The Rule requires triennial full filers to submit their resolution plans on or before July 1 of each year in which a resolution plan is due.¹³ At the time the agencies issued the proposed guidance, triennial full filers were required to submit their next resolution plans on or before July 1, 2024. In the proposal, the agencies requested comment about whether the agencies should provide more than six months for firms to take into consideration the expectations in the finalized guidance. Several comments discussed the timing of the next resolution plan submission and its relationship to the final guidance as well as other regulatory requirements. Most requested extensions, with several requesting at least a year and one stating six months would be adequate. Two

commenters stated a maximum of six months from publication of the final guidance to the first submission would be adequate.

On January 17, 2024, the agencies announced an extension of the resolution plan submission deadline for the triennial full filers from July 1, 2024, to March 31, 2025.¹⁴ At this time, the agencies are further extending the 2025 resolution plan submission deadline for all triennial full filers to October 1, 2025, to provide the firms with sufficient time to develop their full resolution plans in light of the final guidance. The agencies are also clarifying that all triennial full filers' subsequent resolution plan submission, a targeted resolution plan, is due on or before July 1, 2028, and that future resolution plan submissions will be due every three years after that, alternating between full and targeted resolution plans, pursuant to the Rule,¹⁵ unless the agencies exercise their authority under the Rule to alter the submission date for future resolution plan submissions.¹⁶

Resolution Plan Strategy

U.S.-based covered companies subject to the Rule have adopted one of two resolution strategies: (1) a single point of entry (SPOE) strategy where only the top tier bank holding company enters resolution through a bankruptcy proceeding; or (2) a multiple point of entry (MPOE) strategy where the top tier bank holding company files for bankruptcy, the FDIC-insured bank subsidiary enters resolution pursuant to the Federal Deposit Insurance Act of 1950, as amended (the FDI Act), and where other entities enter the appropriate resolution regimes. The SPOE and MPOE resolution strategies that firms have chosen present different risks and entail different types of planning and development of capabilities; accordingly, the proposal contained content applicable to SPOE resolution strategies and separate content applicable to MPOE resolution strategies.

Commenters supported inclusion of expectations for both MPOE and SPOE resolution strategies, and supported firms' ability to choose either strategy. However, some commenters questioned whether the agencies were expecting or encouraging firms to adopt an SPOE resolution strategy and recommended that the agencies disclose publicly whether they prefer a particular

resolution strategy, and engage in notice and comment rulemaking if they do. For firms that change resolution strategies, some commenters requested that the agencies provide a transition period and made statements about the preferred length of such a transition period, and one requested that the agencies not issue any findings regarding a firm's first resolution plan that adopts a different resolution strategy.

The agencies do not prescribe a specific resolution strategy for any firm. This guidance, similarly, does not suggest that any firm should change its resolution strategy, nor are the agencies identifying a preferred strategy for a specific firm or set of firms. The selection of a preferred strategy, including MPOE or SPOE as a preferred resolution strategy, should reflect the characteristics of the firm and its business operations and support the goal of the resolution plan to substantially mitigate serious adverse effects of the firm's failure on financial stability in the United States. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate a rapid and orderly resolution.

The agencies are providing separate guidance for an SPOE resolution strategy and an MPOE resolution strategy in acknowledgment that firms are free to adopt the resolution strategy that best suits their operations and organizations. Further, the agencies note there may be resolution strategies other than SPOE and MPOE that could facilitate a rapid and orderly resolution. The specified firms should continue to submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms. Regardless of strategy, a resolution plan should address the key vulnerabilities, support the underlying assumptions required to successfully execute the chosen resolution strategy, and demonstrate the adequacy of the capabilities necessary to execute the selected strategy.

Moreover, because the agencies do not prescribe resolution strategies, firms may voluntarily change their preferred strategy in the future. However, reflecting the voluntary nature of resolution strategy changes, the agencies do not anticipate providing a transition period during which a firm would be free from potential findings under the Rule while it effectuates a change in resolution strategy, whether from MPOE to SPOE, or to any other resolution strategy. A firm controls the timing of when it submits its first plan with a different strategy; accordingly, it can take the time it needs to put in place the

¹⁰ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

¹¹ Resolution Plans Required, 84 FR 59194, 59204 (Nov. 1, 2019) (2019 *Federal Register* Rule Publication).

¹² <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829b.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23067.html>. See also Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers, 88 FR 64626 (Sept. 19, 2023).

¹³ 12 CFR 243.4(b)(3) and 381.4(b)(3).

¹⁴ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240117a.htm>; <https://www.fdic.gov/news/press-releases/2024/pr24002.html>.

¹⁵ 12 CFR 243.4(b) and 381.4(b).

¹⁶ 12 CFR 243.4(d)(2) and 381.4(d)(2).

resources and capabilities needed to submit a plan that satisfies the standard in section 165(d) of the Dodd-Frank Act and the Rule. The standard of review for a resolution plan submission of a firm that transitions to a new strategy is therefore the same as for any firm subject to the Rule.¹⁷

B. Connection to Other Rulemakings

Long-Term Debt Proposal

The agencies, as well as the Office of the Comptroller of the Currency (together with the agencies, the Federal banking agencies), issued in August 2023 a proposed rule for comment that would require certain large holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs, to issue and maintain outstanding a minimum amount of long-term debt (LTD), among other proposed requirements.¹⁸ The agencies have received comments on the LTD proposal, and will consider all comments received in context of the LTD rulemaking. The agencies requested comments on the proposed guidance that take the LTD proposal into consideration.

One commenter recommended that, for purposes of their resolution plans, firms should only assume their existing outstanding LTD and not the projected LTD that would be in place once the firm has achieved full compliance with the LTD proposal. Another commenter argued that the agencies should consider the interaction between the proposed guidance and LTD proposal, with a goal of having them work together to improve the resolvability of applicable banking organizations and avoid duplicative or contradictory requirements. The commenter also asserted that calibration of an IDI's internal LTD requirement could lead banking organizations using an MPOE resolution strategy to adopt an SPOE resolution strategy because of the costs of compliance with such internal LTD issuance. One commenter discussed whether the agencies should align the objectives of the LTD proposal and the resolution planning under the Rule.

The Federal banking agencies have not finalized the LTD rulemaking as of the issuance of this final guidance. The agencies recognize that LTD issued and

maintained by a specified firm could affect the firm's strategic analysis of the funding, liquidity, and capital needs of, and resources available to, the covered company and its material entities.¹⁹ However, the agencies believe that the finalization of a requirement to maintain a specified amount of LTD would not affect this guidance in any material way. Any final LTD rule will address the manner in which its requirements will be implemented. This final guidance is intended to convey the agencies' expectations regarding the content of resolution plan submissions, and not to contradict, modify, or accelerate a company's obligations under other laws or regulations. As provided in the final guidance, firms should develop their resolution plans in accordance with the current state of the applicable legal and policy frameworks. The agencies also recognize, however, that there may be phase-in periods during which rules become effective. Should the LTD rule be finalized in advance of October 1, 2025, the agencies will not expect firms to incorporate the requirements of the rule into their 2025 resolution plan submissions. This should provide firms covered by the LTD rule with reasonable time to consider any final LTD rule in a future resolution plan submission.

Further, and as noted above, the agencies are not recommending that any specified firm adopt any particular strategy in response to this guidance or the LTD proposal.

FDIC IDI Resolution Plan Proposal

The agencies received three comments on the connection between the proposal and the IDI Rule.²⁰ The FDIC published proposed revisions to the IDI Rule on September 19, 2023,²¹ and published final revisions on July 9, 2024.²² Those commenters recommended coordinating aspects of the proposed guidance and the Proposed IDI Rule, including having consistent terms and concepts. One commenter requested that cross-referencing to section 165(d) resolution plans be permitted under the Proposed IDI Rule. Another comment questioned whether a more holistic approach would

be possible to synchronize the requirements of section 165(d) planning and IDI Rule resolution planning. One commenter asserted that the MPOE guidance could cause confusion on the part of firms by conflating resolution strategies and the underlying purpose of the Rule and the IDI Rule.

The Rule requires a covered company to submit a resolution plan that would allow for the rapid and orderly resolution of the firm under the Bankruptcy Code in the event of material financial distress or failure. The final guidance clarifies the agencies' expectations regarding certain topics and provides direction as to how a covered company may demonstrate its compliance with its statutory obligation under section 165(d) of the Dodd-Frank Act to develop a resolution plan allowing for its rapid and orderly resolution. The IDI Rule serves a different purpose: the IDI Rule assists the FDIC in preparing to manage the resolution of a covered insured depository institution. While these two rules may be complementary, they are not the same. Additionally, whether to align the IDI Rule with the Rule or permit cross-referencing to section 165(d) resolution plans under the IDI Rule is outside the scope of this guidance.

C. Proposed Guidance

On August 29, 2023, the agencies invited public comment on proposed guidance for how domestic triennial full filers' resolution plans could address key challenges in resolution, which was proposed to apply beginning with the specified firms' 2024 resolution plan submissions.²³ The proposal identified the banking organizations to which the guidance would apply and articulated several areas of guidance: capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and IDI resolution, if applicable. The proposed guidance described the agencies' proposed expectations for each of these areas. Most substantive topics were bifurcated, with separate guidance for an SPOE resolution strategy and an MPOE resolution strategy. The proposed guidance concluded with information about the format and structure of a plan that applied equally to plans contemplating either an SPOE resolution strategy or an MPOE resolution strategy.

The proposed guidance for firms that adopt an SPOE resolution strategy was generally based on the 2019 U.S. GSIB Guidance, with certain modifications

¹⁹ See 12 CFR 243.5(c)(1)(iii) and 381.5(c)(1)(iii).

²⁰ 12 CFR 360.10 (IDI Rule).

²¹ Resolution Plans Required for Insured Depository Institutions With \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion But Less Than \$100 Billion in Total Assets, 88 FR 64579 (Sept. 19, 2023) (Proposed IDI Rule).

²² Resolutions Plans Required for Insured Depository Institutions with \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion but Less Than \$100 Billion in Total Assets, 89 FR 56620 (July 9, 2024).

²³ *Supra* note 12.

¹⁷ See 12 CFR 243.8 and 381.8.

¹⁸ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829a.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23065.html>. See also Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (Sept. 19, 2023) (LTD proposal).

that reflected the specific characteristics of and potential risks posed by the failure of the specified firms. The proposed guidance for firms that adopt an MPOE resolution strategy incorporated certain aspects of the 2019 U.S. GSIB Guidance that the agencies believed are applicable to large banking organizations, with modifications appropriate to this strategy and institutions with the characteristics displayed by the specified firms. For MPOE firms, the proposed guidance also omitted aspects of the 2019 U.S. GSIB Guidance that would not be pertinent to MPOE resolution strategies. The agencies also proposed to clarify their expectations for specified firms that adopt an MPOE resolution strategy that includes the resolution of a material entity that is a U.S. IDI.

The agencies invited comments on all aspects of the proposed guidance. The agencies also specifically requested comments on a number of issues, including the interaction of resolution guidance with a final long-term debt rule, the amount of time between the publication of the final guidance and the firms' next resolution plans, the appropriateness of guidance on IDI resolution, and whether to issue derivatives and trading expectations.

II. Overview of Comments

The agencies received and reviewed eight comment letters on the proposed guidance. Commenters included various financial services trade associations, a law firm, two public interest groups, and certain individuals. In addition, the agencies met with representatives of a banking organization that would be a specified firm and a trade association that represents banking organizations that would be specified firms at their request to discuss issues relating to the proposed guidance.²⁴ This section provides an overview of the general themes raised by commenters. The comments received on the proposed guidance are further discussed below in the sections describing the final guidance (and, in some cases, previously in section I), including any changes that the agencies have made to the proposed guidance in response to comments.

Differentiating Expectations Based on Size, Complexity, and Risk

One commenter contended that the proposed guidance did not sufficiently differentiate expectations among firms subject to resolution planning guidance. The commenter argued that section 165 of the Dodd-Frank Act requires the agencies to tailor application of prudential standards issued pursuant to that section, such as resolution planning guidance; contended that the proposal was too similar to the 2019 U.S. GSIB Guidance; and encouraged expectations in the final guidance to be further differentiated based on size, risk, and other factors.

Resolution Strategy and Transition Period

Several commenters supported the proposal's inclusion of expectations for both MPOE and SPOE resolution strategies and the agencies' statement that firms have ability to choose their preferred strategy. However, as noted above, some commenters questioned whether the agencies were expecting or encouraging firms to adopt an SPOE resolution strategy and recommended that the agencies disclose publicly whether they prefer a particular resolution strategy. For firms that change resolution strategies, some commenters requested that the agencies provide a transition period during which the agencies would not make credibility findings in connection with a plan review.

Capital and Liquidity

The agencies received a number of comments on the capital and liquidity sections of the proposed guidance. Regarding the capital section of the proposed guidance, one commenter asserted that including expectations regarding the positioning of capital for firms with an SPOE resolution strategy is premature given that finalization of a proposal to modify the capital requirements for large banking organizations²⁵ and the LTD proposal may impact firms' capital planning, contended that the proposal included expectations that are duplicative of existing capital requirements, and suggested removing the guidance on Resolution Capital Adequacy and Positioning (RCAP) from the final guidance. Regarding expectations for firms using an MPOE resolution strategy, one commenter agreed that additional expectations are not

warranted, while another commenter argued for capital plans for each material entity and asked the agencies to align expectations for the MPOE capital guidance with SPOE capital guidance.

Regarding the liquidity section of the proposed guidance, one commenter argued that Resolution Liquidity Adequacy and Positioning (RLAP) expectations are not appropriate due to the comparatively simple legal entity structures and reduced risk profiles of these firms and claimed that RLAP is redundant with certain regulatory requirements. In addition, one commenter requested that the final guidance strengthen expectations for liquidity in resolution by including a procedure or protocol for liquidity related decisions, irrespective of resolution strategy.

IDI Resolution Analysis

The agencies received a number of comments on the proposed guidance related to the resolution of a subsidiary material entity U.S. IDI. Multiple commenters requested clarity on how the firm's plan should address the expectations regarding the FDIC's statutory least-cost requirement and questioned whether there is sufficient information available for firms to effectively evaluate whether a proposed resolution plan would satisfy the least-cost analysis expectations. These commenters also questioned whether the least-cost analysis would be of value to FDIC in an actual resolution and argued that the guidance should be aligned with the requirements of the IDI Rule. One stated sufficient time should be given for firms to conduct new analyses and seek additional guidance from the agencies and that aspects of this section of the proposal should not be finalized.

Another commenter argued that firms should not be expected to demonstrate that their preferred strategy would be consistent with the FDIC's statutory least-cost requirement. One commenter further suggested that the Proposed IDI Rule is a better forum to address how IDI subsidiaries can be resolved under the FDI Act.

Another commenter suggested that the agencies should require firms to develop resolution strategies involving bridge depository institutions (BDIs) and recommended that the guidance address the value of assets transferred to such a BDI, how the resolution plan would address the IDI's franchise value, and how the preferred resolution strategy would result in a least-costly resolution.

²⁴ Summaries of those meetings and copies of the comments can be found on each agency's website. https://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=OP-1816&doc_ver=1; <https://www.fdic.gov/resources/regulations/federal-register-publications/2023/2023-guidance-resolution-plan-submissions-domestic-triennial-3064-za37.html>.

²⁵ Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity, 88 FR 64028 (Sept. 18, 2023) (Capital proposal).

Derivatives and Trading

Some commenters supported including expectations for derivatives and trading activity in the final guidance, contending that derivatives activity for domestic triennial full filers may increase in the future and proposed applying such guidance to firms with net derivatives exceeding a given threshold. However, one commenter supported not including such expectations, stating it was appropriate to exclude such guidance because the specified firms have limited derivatives and trading portfolios, particularly relative to the U.S. G–SIB banking organizations covered by such guidance.

Connection to Other Rules

The agencies received a number of comments about the interaction of the proposed guidance with several other rulemaking initiatives by the Federal banking agencies. For example, some commenters recommended coordinating the FDIC's Proposed IDI Rule revisions with the resolution plan rule and final guidance for the specified firms. Two commenters suggested that the agencies consider the interaction between the proposed guidance and the LTD proposal to ensure the two proposals work together to improve the resolvability of applicable banking organizations and avoid duplicative or contradictory requirements. One commenter also expressed concern including certain expectations in the final guidance, such as those relating to capital, would be premature before finalizing the Capital proposal and LTD proposal, which impact firms' capital planning.

Timing of Next Resolution Plan

Several comments discussed the timing of the next resolution plan submission and its relationship to this final guidance. Some commenters recommended providing at least one year between issuing final guidance and the deadline for domestic triennial full filers' next resolution plan submissions. However, other commenters suggested that six months from publication of the final guidance to the first resolution plan submission would be adequate for firms to take into account the guidance.

III. Final Guidance

After considering the comments, conducting additional analysis, and further assessing the business and risk profiles of domestic triennial full filers, the agencies are issuing final guidance that includes certain modifications and clarifications from the proposal. In particular, the capital, liquidity, governance mechanisms, operational,

IDI resolution, separability, and assumptions sections of the final guidance reflect changes from the proposed guidance. In addition, as was noted in the proposal,²⁶ the final guidance consolidates all prior resolution planning guidance for the firms in one document. Further, as was noted in the proposal,²⁷ the final guidance is not intended to override the obligation of an individual firm to respond in its next resolution plan submission to pending items of individual feedback or any shortcomings or deficiencies jointly identified or determined by the agencies in that firm's prior resolution plan submissions. The guidance is drafted to reflect the current conditions in the industry and institutions as they exist today.

As discussed below,²⁸ several commenters asserted that the proposal did not adequately differentiate among covered companies based on their size, complexity, and risk to financial stability. The guidance, however, takes into account the size and complexity of firms, their resolution strategy, and whether they are based in the United States or in a foreign jurisdiction. In addition, the final guidance is not meant to limit firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy.

The agencies also note that commenters described certain expectations that are set forth in the guidance as "requirements." As the agencies indicated in the proposed guidance and are now reaffirming, the final guidance does not have the force and effect of law. Rather, the final guidance outlines the agencies' supervisory expectations regarding each subject area covered by the final guidance.²⁹ The final guidance includes language reflecting this position.³⁰

Finally, the agencies made several minor, non-substantive changes from the proposal, including to align the wording of guidance directed at firms that adopt an SPOE resolution strategy and firms that adopt an MPOE resolution strategy.

A. Scope of Application

The agencies proposed applying the guidance to all domestic triennial full filers and invited comment on all

aspects of the proposed scope of the guidance. The agencies received no comments concerning the scope of the guidance's application and are finalizing this section of the guidance as proposed.

B. Transition Period

The proposed guidance did not describe how the guidance would be applied to domestic banking organizations that become covered by its scope, but it did request comment on all aspects of the proposed scope of application. To provide certainty to domestic banking organizations, the final guidance states that when a domestic banking organization becomes a specified firm, the final guidance will apply to the firm's next resolution plan submission with a submission date that is at least 12 months after the time the firm becomes a specified firm.³¹ If a specified firm ceases to be a domestic triennial full filer, it will no longer be considered a specified firm, and the guidance will no longer be applicable to that firm as of the date the firm ceases to be a domestic triennial full filer.

C. Capital

For specified firms with an SPOE resolution strategy, the agencies proposed capital expectations substantially similar to those in the 2019 U.S. GSIB Guidance. The ability to provide sufficient capital to material entities without disruption from creditors is essential to an SPOE resolution strategy's objective of ensuring that material entities can continue to operate as the firm is resolved. The proposal described expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (e.g., debt that a parent holding company may choose to forgive or convert to equity) among the material entities within the firm (RCAP). The proposal also described expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The agencies received several comments on the capital section of the proposed guidance. One commenter asserted that including expectations in this guidance regarding the positioning of capital is premature given that finalization of the Capital proposal and the LTD proposal may impact firms' capital planning. The commenter argued

²⁶ See proposed guidance at 88 FR 64628.

²⁷ See *id.*

²⁸ See *infra* section III.K of this document.

²⁹ See 12 CFR 262.7 and appendix A to 12 CFR part 262; 12 CFR part 302.

³⁰ See *infra* section V.I of this document.

³¹ The plan type for that next submission remains as specified by the Rule, *i.e.*, a full or targeted resolution plan. See 12 CFR 243.4 and 381.4.

that existing capital requirements are sufficient for the size and complexity of the firms subject to this guidance without RCAP expectations, which, the commenter asserted, would add more complexity to the resolution planning process.

After reviewing these comments, the agencies are finalizing this section of the guidance generally as proposed, but with one clarification. Proposed guidance related to the methodology for periodically estimating the amount of capital that may be needed to support material entities in bankruptcy (RCEN) could have been construed as establishing a mandatory minimum capital requirement. As the agencies have discussed elsewhere, resolution plan guidance is not binding and does not establish legal requirements.³² The final guidance clarifies the kind of information the agencies expect a firm to provide if that firm's resolution strategy includes recapitalizing material entities but does not establish requirements for firms.

RCAP expectations are important for firms to ensure the appropriate positioning of capital and other loss-absorbing instruments among the material entities within the firm and to effectively execute a SPOE resolution strategy. Finalizing RCAP expectations is not premature in light of outstanding proposals such as the LTD rulemaking and other pending rules because the RCAP expectations can be achieved with or without the LTD contemplated in the LTD proposal. The Federal banking agencies have not finalized the LTD proposal as of the issuance of this final guidance, and comments on that proposed rule are currently under consideration. Specifically, the final guidance does not rely on or presume the finalization of pending rules and instead states, consistent with the proposal, that a resolution plan should be based on the current state of the applicable legal and policy frameworks.³³ The guidance is intended to assist firms in developing their resolution plans, which are required to be submitted pursuant to the Dodd-Frank Act and the Rule. While other capital and resolution-related rules may establish minimum standards applicable to firms submitting resolution plans, this guidance is designed to facilitate a firm's own analysis of its expected needs in resolution across that firm's material entities.

Additionally, the stress experienced by and the failure of several large banking organizations in March 2023

highlighted the fast-moving nature of stress events, as several banking organizations entered resolution proceedings rapidly. These events also highlighted the potential for the failure of a large regional banking organization to affect financial stability. Successful execution of an SPOE resolution strategy—including the need to ensure that individual material entities have adequate capital to maintain operations as the firm is resolved—is unlikely to be successful under a short time frame without advance planning. Appropriate positioning of capital and other loss-absorbing instruments among the firm's material entities is an important element of this advanced planning to reduce uncertainty and enable timely recapitalization consistent with an SPOE resolution strategy. Accordingly, the agencies are finalizing guidance that includes RCAP expectations for firms that adopt an SPOE strategy.

For firms that adopt an MPOE resolution strategy, the agencies did not propose further expectations concerning capital and asked a question about whether capital-related expectations should be applied. In response, one commenter agreed with the proposal that additional expectations are not warranted for firms using an MPOE resolution strategy, arguing that such expectations would serve no purpose. However, another commenter contended that it is not prudent to assume that material entities within a holding company structure can be wound down in an orderly manner and that, at a minimum, capital plans are needed for each material entity to preserve its value during the transition period between a firm's failure and when it can be sold or closed in an orderly way. The commenter asked the agencies to reconsider expectations for firms that adopt an MPOE resolution strategy and align them with expectations for firms that adopt an SPOE resolution strategy.

The agencies have determined that additional capital expectations for firms selecting an MPOE resolution strategy are not necessary at this time. Under an MPOE resolution strategy, most material entities do not continue as going concerns upon the firm's entry into resolution proceedings and are likely to have already depleted existing capital. Accordingly, the agencies are finalizing this section as proposed.

D. Liquidity

For firms that adopt an SPOE resolution strategy, the agencies proposed liquidity expectations substantially similar to those in the 2019 U.S. GSIB Guidance. A firm's

ability to reliably estimate and meet its liquidity needs prior to, and in, resolution is important to the execution of a firm's resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows subsidiaries to continue to operate while the firm is being resolved in accordance with the firm's preferred resolution strategy. For firms that adopt an MPOE resolution strategy, the agencies proposed that a firm should have the liquidity capabilities necessary to execute its preferred resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution.

The agencies received several comments on the liquidity section of the proposed guidance. One commenter supported including RLAP expectations in the final guidance for firms that adopt an SPOE resolution strategy, while another commenter requested that the agencies remove RLAP from the final guidance. The second commenter argued that RLAP expectations are not appropriate due to the comparatively simple legal entity structures and reduced risk profiles of the firms subject to the proposed guidance. The commenter also claimed that RLAP would be redundant to certain regulatory requirements, such as the Liquidity Coverage Ratio (LCR) and Internal Liquidity Stress Testing (ILST).

Another commenter requested that, irrespective of resolution strategy, the guidance strengthen expectations for liquidity in resolution by including a procedure or protocol for liquidity related decisions. The commenter argued that the guidance should affirm the importance of overcoming barriers to moving liquidity across material legal entities and clarify which types of transfers of liquidity are permissible for material entities in resolution.

After reviewing these comments, the agencies are finalizing this section of the guidance largely as proposed, with one clarifying edit concerning forecasting maximum operating liquidity and peak funding needs. The final guidance clarifies that these forecasts should ensure that material entities can operate through resolution, as compared to the proposed guidance that provided that the forecasts should ensure that material entities can operate after the firm files for bankruptcy.

RLAP expectations are not addressed by ILST and other regulatory requirements. Maintaining sufficient

³² See *supra* section III of this document.

³³ See *infra* section V.VIII of this document.

and appropriately positioned liquidity is critical to executing an SPOE resolution strategy, regardless of the size and complexity of the banking organization. The LCR and ILST requirements that commenters referenced serve a different purpose—to promote resilience of firms' funding profiles—and are not focused on resolution planning.

Finally, the agencies are not establishing expectations regarding procedures or protocols for liquidity-related decisions and the types of transfers of liquidity that are permissible for material entities in resolution for firms that adopt a MPOE resolution strategy. The Rule already includes requirements for firms to include detailed descriptions of funding and liquidity needs and resources of material entities, and to identify interconnections and interdependencies related to liquidity arrangements.³⁴ Beyond the assumptions specified in the final guidance related to liquidity, additional details of how each firm provisions liquidity in the lead up to and during resolution are not needed at this time. Furthermore, firms should follow procedures and protocols that are aligned with their larger liquidity management frameworks to facilitate their preferred resolution strategies.

E. Governance Mechanisms

The agencies proposed governance mechanisms expectations for domestic firms that use an SPOE resolution strategy. These firms would have been expected to develop an adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress to ensure that there is sufficient time to prepare for resolution-related actions. The agencies did not propose governance mechanisms expectations for domestic firms contemplating an MPOE resolution strategy, as entry of certain types of material entities into resolution would be determined by criteria prescribed in statute or dependent to some extent on actions taken by regulatory authorities in implementing a statute. The agencies requested comment on whether to apply additional governance mechanisms expectations to domestic firms contemplating an MPOE resolution strategy. Some commenters called for the agencies to apply similar governance mechanisms expectations regardless of a firm's preferred resolution strategy, arguing that many aspects of resolution

planning are the same or similar for MPOE and SPOE resolution strategies.

One commenter also encouraged the agencies to adopt expectations that firms articulate their internal legal strategy, processes for making key decisions, and roles and responsibilities leading up to and after a material entity of a firm using an MPOE resolution strategy enters bankruptcy. Another commenter claimed that governance mechanisms are needed for domestic MPOE filers to preserve the value of each material entity during the transition period between failure and orderly resolution. However, another commenter argued that final guidance should not include governance mechanisms expectations for domestic MPOE filers as such expectations would not meaningfully improve resolvability.

After review and consideration of these comments, the agencies are finalizing this section of the guidance largely as proposed, with one clarification applicable only to firms that adopt an SPOE strategy. The proposed guidance provided that a firm can reproduce a legal analysis that was submitted in a prior plan submission, and that the firm should build upon the analysis. The final guidance clarifies that the agencies expect that a firm that relies upon a previously submitted analysis ensure it remains accurate and up to date. While there is a general obligation for firms to submit plans that contain accurate information, the agencies are providing this clarification due to the agencies' experience that certain legal matters in some resolution plan submissions have been outdated.

Regarding firms that adopt an MPOE strategy, the agencies are finalizing this section of the guidance as proposed. Under an MPOE resolution strategy, certain material entities' entry into resolution is typically determined by or dependent on the actions of supervisory and resolution authorities. Adopting expectations for triggers, playbooks, pre-bankruptcy support, internal legal strategy, processes for making key decisions, and roles and responsibilities for domestic triennial full filers adopting an MPOE resolution strategy, with their present operations, activities, and structures, would not meaningfully improve the resolvability of the specified firms. Accordingly, the final guidance does not contain governance mechanisms expectations for those firms.

F. Operational

For firms that adopt an SPOE resolution strategy, the agencies proposed aspects of the operational expectations of the 2019 U.S. GSIB

Guidance and SR letter 14–1,³⁵ with modifications based on the specific characteristics and complexities of the specified firms. Like the 2019 U.S. GSIB Guidance, the proposal contained expectations on managing, identifying, and valuing collateral; management information systems (MIS); and shared and outsourced services. For firms that adopt an MPOE resolution strategy, the agencies proposed operational expectations based on SR letter 14–1 and the 2019 U.S. GSIB Guidance that are limited to those most relevant to an MPOE resolution strategy. As noted in the proposal, development and maintenance of operational capabilities is important to support and enable execution of a firm's preferred resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse effects on U.S. financial stability.

The agencies received two comments on the proposed guidance. One comment argued that the proposed guidance's expectation that MPOE firms remediate vendor arrangements to support continuity of shared and outsourced services is overbroad. The commenter asserted that this expectation is inappropriate for MPOE firms that mostly receive external services through their IDIs because termination of such vendor contracts due to *ipso facto* clauses would be stayed by the FDI Act,³⁶ and as many firms include resolution-resilient terms in vendor contracts when those contracts undergo periodic review and renewal. The commenter recommended that the Agencies specify that this expectation would apply only to contracts not covered by the FDI Act stay. Another commenter contended that firms with limited payment, clearing, and settlement (PCS) activities, such as firms without identified critical operations related to those activities, should not have to develop the same capabilities as firms with more complex PCS activities.

After review and consideration of these comments, the agencies are finalizing this area of the guidance with three clarifications applicable only to firms that adopt an SPOE strategy, and one modification applicable to firms with either preferred resolution strategy. First, the proposed guidance for firms that adopt an SPOE strategy stated that a firm should maintain a fully

³⁴ 12 CFR 243.5(c)(1)(iii) and (g) and 381.5(c)(1)(iii) and (g).

³⁵ SR letter 14–1, "Principles and Practices for Recovery and Resolution Preparedness" (Jan. 24, 2014), available at: <https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm>.

³⁶ See 12 U.S.C. 1821(e)(13).

actionable implementation plan to ensure the continuity of shared services that support identified critical operations or core business lines. Implied in the concept of supporting identified critical operations or core business lines is the notion that a firm would need to be able to execute its resolution strategy. Accordingly, the final guidance for firms that adopt an SPOE strategy explicitly states that a firm's implementation plan to ensure continuity of shared services should include those services that are material to the execution of the firm's resolution strategy.

Second, the proposed guidance for firms that adopt an SPOE strategy stated that a firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution through a framework to support such access and the provided elements of such a framework. The agencies note that prior instances of resolution plan guidance contained certain limitations on similar PCS framework expectations,³⁷ and the final guidance adopts that language to clarify the scope of said expectations.

Third, the proposed PCS guidance for firms that adopt an SPOE strategy contained several references to "various currencies." The agencies note that in the finalization of the 2020 FBO Guidance, the agencies revised similar language in response to a comment requesting that certain aspects of that guidance be made consistent with international expectations.³⁸ The final guidance is adopting the language from the 2020 FBO Guidance for that same reason.

Additionally, the agencies recognize that firms anticipate relying on external parties for the execution of some aspects of the resolution strategy, and the proposal included and the final guidance maintains the expectation that a firm identify and support the continuity of outsourced services that support critical operations or are material to the execution of the preferred resolution strategy. Such outsourced services that firms may rely on could be employing outside bankruptcy counsel and consultants to help prepare documents needed to file for bankruptcy, and to represent the firm during the course of the bankruptcy proceedings. The agencies expect that covered companies engage in advance planning to help facilitate their ability to complete all filings, motions, supporting declarations and other documents to prepare for and file an

orderly resolution in bankruptcy. In recognition of this expectation, the final guidance states that—regardless of strategy—those professionals' services could be material to the execution of a firm's preferred resolution strategy and, if so, should be accounted for in the firm's resolution plan. Accordingly, the agencies expect that firms should prepare during business-as-usual to ensure they can complete and file all documents needed to initiate their preferred resolution strategy.

The other aspects of this section of the guidance are being finalized as proposed. The comment addressing contract remediation correctly observes that the FDI Act permits the FDIC as receiver of a failed IDI to enforce contracts with that IDI notwithstanding any provisions in the contract permitting termination due to insolvency or appointment of the receiver. However, it is advantageous for contracts that support identified critical operations or that are material to the execution of the resolution strategy to not purport to permit termination. Counterparties may not be aware of the receiver's authority under the FDI Act to enforce such agreements, potentially requiring the receiver to seek authority from a court to compel the counterparty's performance, which could lead to interruption of identified critical operations and capabilities needed to execute the resolution strategy. Further, counterparties located overseas may not recognize the authority afforded the receiver to compel the performance of contracts. The agencies recognize that contract remediation is an ongoing process and encourage firms to make such changes proactively.

Regarding PCS activities, as discussed elsewhere,³⁹ the Agencies note that the level of detail provided in a firm's plan should be both consistent and commensurate with the firm's risk and activities.

G. Legal Entity Rationalization and Separability

For domestic banking organizations that adopt an SPOE resolution strategy, the agencies proposed adopting legal entity rationalization (LER) and separability expectations from the 2019 U.S. GSIB Guidance. The LER expectations explained that a firm's legal structure should support the firm's preferred resolution strategy, including by: facilitating the recapitalization and liquidity support of material entities; facilitating the sale, transfer, or wind-down of certain discrete operations;

adequately protecting the subsidiary IDIs from risks arising from the activities of any nonbank subsidiaries of the firm; and minimizing complexity that could impede an orderly resolution. The separability expectations outlined that a firm should identify discrete operations that could be sold or transferred in resolution, with the objective of providing optionality in resolution, including via a detailed separability analysis that addresses divestiture options, execution plans, and impact assessments.

For domestic banking organizations using an MPOE resolution strategy, the agencies proposed LER and separability expectations that are reduced as compared to those contained in the 2019 U.S. GSIB Guidance. The LER expectations clarified that the firm should consider various factors and describe in its plan how the legal entity structure aligns core business lines and any identified critical operations with the firm's material entities, as well as any cases where a material entity IDI relies on an affiliate that is not the IDI's subsidiary during resolution. The separability expectations explained that a firm should include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution and provide supporting analysis, including an execution plan, identification of any impediments and mitigants, a financial impact assessment, and an identified critical operation impact assessment.

The agencies received one comment on the LER and separability guidance for domestic banking organizations. The commenter contended that separability analysis is inappropriate for businesses and legal entities that would be wound down in resolution, as it may not be feasible to sell or otherwise transfer such businesses, and that separability analysis would not enhance resolvability. The commenter further claimed that many elements of the separability analysis may not be appropriate for firms that are not active in the investment banking space or lack large mergers and acquisitions teams.

After consideration of the comment received, the agencies are issuing legal entity rationalization guidance for both SPOE and MPOE firms. LER criteria enhance an orderly resolution by promoting in business-as-usual a corporate structure that supports a firm's preferred resolution strategy. The agencies are retaining these expectations, in part, to encourage firms to consider resolution implications of changes to corporate structure, including from future growth or mergers and acquisitions. For firms with SPOE

³⁷ 2020 FBO Guidance at 85 FR 83572–73.

³⁸ See 2020 FBO Guidance at 85 FR 83566.

³⁹ See *infra* section III.K of this document.

resolution strategies, the agencies continue to encourage the firms to develop and apply LER criteria to facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of orderly resolution. The agencies continue to encourage firms using MPOE resolution strategies to consider potential sales, transfers, and wind-downs during resolution as they maintain their legal entity structures.

However, the separability section of guidance is not needed at this time for the specified firms due to their current corporate structures and other separability-related expectations. Most of the specified firms have three or fewer material entities, with the overwhelming majority of their assets concentrated in their IDIs. In addition, the Rule requires firms to address the feasibility and impact of sales or divestitures and the final LER guidance contains separability-related expectations. The agencies may consider the need for firm-specific separability expectations in the future for specified firms that substantially increase their non-bank activities or change in a way such that separability becomes critical to their resolvability.

Finally, the agencies moved the description of their expectation on governance processes from the proposed separability section to the LER section of the final guidance text.

H. Insured Depository Institution Resolution

Background

In the proposal, the agencies provided clarifying expectations as to how a firm adopting an MPOE resolution strategy with a material entity IDI should explain how the IDI can be resolved under the FDI Act in a manner that is consistent with the overall objectives of the resolution plan. In particular, the proposed expectations for IDI resolution were designed to support the resolution plans' effectiveness in substantially mitigating the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States, while also adhering to the legal requirements of the FDI Act without relying on the assumption that the systemic risk exception will be invoked in connection with the resolution of the firm. For example, the agencies proposed clarifying that if a firm adopting an MPOE resolution strategy selects an IDI resolution strategy other than a payout liquidation, the firm's plan should provide information supporting the feasibility of

the firm's selected strategy, although such a feasibility analysis need not consist of a full FDI Act least-cost requirement analysis. The agencies proposed that a firm could instead provide a more limited analysis. The proposal noted that the same expectations would not be applicable to firms adopting an SPOE resolution strategy because the U.S. IDI subsidiaries of such firms would not be expected to enter resolution.

The agencies received a number of comments on the proposed guidance related to the resolution of a subsidiary material entity U.S. IDI. Some commenters requested additional clarity on how the firm's plan should address the expectation that the plan include an analysis of how the resolution strategy could potentially meet the FDIC's statutory least-cost requirement. One commenter suggested that the agencies should require firms to develop resolution strategies involving BDIs. This commenter recommended that the guidance address how firms could describe and quantify the value of the firm's assets transferred to such a BDI, and that the agencies should provide guidance so that firms would address how the resolution plan would incorporate the value of the IDI's assets and liabilities, including its franchise value, and how the preferred resolution strategy would result in a least-costly resolution. The commenter also recommended that firms and regulators reach agreement on certain assumptions regarding valuations.

Another commenter argued that firms adopting an MPOE strategy should not be expected to demonstrate that their preferred strategy would be consistent with the FDIC's statutory least-cost requirement. This commenter stated that efforts to conduct a hypothetical least-cost requirement analysis, or a proxy for that analysis, would be of no or minimal value to the FDIC in an actual resolution event. The commenter claimed that it would not be possible to conduct a least-cost test requirement analysis in a resolution plan submission in the absence of actual bids from actual buyers. Instead, the commenter recommended that the guidance provide expectations for how firms selecting an MPOE strategy could demonstrate their valuation capabilities. The commenter also suggested that because a least-cost requirement analysis is not a component of the Proposed IDI Rule, it also should not be a component of the guidance. This commenter requested sufficient time to address any finalized guidance that provides expectations for including least-cost requirement analysis.

Several commenters suggested that the Proposed IDI Rule is a better forum to address how the IDI subsidiary of a specified firm selecting an MPOE strategy can be resolved under the FDI Act in a manner that is consistent with the FDI Act. A commenter also suggested that the agencies' expectations for resolution plan submissions under the Rule should align with the requirements of the FDIC's IDI Rule plan submissions.

When an IDI fails and the FDIC is appointed receiver, the FDIC generally must use the resolution option for the failed IDI that is least costly to the DIF of all possible methods (the least-cost requirement).⁴⁰ A resolution plan that contemplates the separate resolution of a U.S. IDI that is a material entity and the appointment of the FDIC as receiver for that IDI should explain how the resolution could be achieved in a manner that adheres to applicable law, including the FDI Act, and that would achieve the overall objectives of the resolution plan. Prior resolution plans that have addressed the resolution of the IDIs in MPOE strategies have sometimes included resolution mechanics that are not consistent with the FDI Act, including inappropriate assumptions that uninsured deposits could automatically be transferred to a BDI.

Separate and distinct from the Rule, the FDIC has a regulation, the IDI Rule, requiring certain IDIs (covered IDIs or CIDs) to submit to the FDIC resolution plans providing information about how the CIDI can be resolved under the FDI Act. Contemporaneous with publication of the proposed guidance, the FDIC published in the **Federal Register** the Proposed IDI Rule, a proposed rulemaking to amend and restate the IDI Rule, which has since been finalized and was published in the **Federal Register** on July 9, 2024.

The IDI Rule and the Rule each have different goals, and, accordingly, the expected content of the respective resolution plans is different. The purpose of the IDI Rule is to ensure that

⁴⁰ See 12 U.S.C. 1823(c)(4)(A). A deposit payout and liquidation of the failed IDI's assets (payout liquidation) is the general baseline the FDIC uses in a least-cost requirement determination. See 12 U.S.C. 1823(c)(4)(D). An exception to this requirement exists when a determination is made by the Secretary of the Treasury, in consultation with the President and after a written recommendation from two-thirds of the FDIC's Board of Directors and two-thirds of the Board, that complying with the least-cost requirement would have serious adverse effects on economic conditions or financial stability and implementing another resolution option would avoid or mitigate such adverse effects. See 12 U.S.C. 1823(c)(4)(G). A specified firm should not assume the use of this systemic risk exception to the least-cost requirement in its resolution plan.

the FDIC has access to the information it needs to resolve a CIDI efficiently in the event of its failure, including an understanding of the CIDI's ability to produce the information the FDIC would need to conduct a least-cost determination under a wide range of circumstances.

The Rule serves a different purpose. The Rule requires a covered company to submit a resolution plan that would allow rapid and orderly resolution of the firm under the Bankruptcy Code in the event of material financial distress or failure. The regional bank failures in March 2023 demonstrated that banking organizations of size and complexity similar to that of the specified firms—or even smaller and less complex banking organizations—can be disruptive to U.S. financial stability. In the case of Silicon Valley Bank and Signature Bank, uninsured depositors would have faced the potential for significant losses had the least costly approach to resolution, a payout liquidation, been adopted. The potential for contagion from the deposit runs at the firms that failed, as well as related potential for risks to the economy and financial stability, led the Secretary of the Treasury, in consultation with the President and after a written recommendation from the FDIC's Board of Directors and the Board, to invoke the systemic risk exception to enable the FDIC to resolve these institutions in a way that would avoid or mitigate serious adverse effects on economic conditions or financial stability. Though a specified firm would be conducting its analysis without input in the form of actual bids from potential buyers, the agencies expect firms to use available information to estimate the value of its franchise for purposes of conducting the limited least-cost analysis articulated in the guidance.

If a firm's resolution plan under the Rule that includes an MPOE strategy calls for resolving an IDI using a strategy other than payout liquidation, the plan should explain how the requirements of the FDI Act could be met without depending upon extraordinary government support. Even though this analysis is not binding in an actual resolution scenario, an analysis showing that the firm's preferred resolution strategy could satisfy requirements of the FDI Act could help the firm demonstrate that the resolution plan's preferred strategy could be executed in a manner consistent with applicable law. If a resolution plan does not provide such an explanation, it may be appropriate to conclude that the strategy would not satisfy the FDI Act's relevant provisions, such as the least-cost

requirement, which could represent a weakness in the plan. As a general matter, the agencies followed this practice in reviewing previous full resolution plan submissions.

Guidance. In response to commenters, the agencies are providing additional detail to help address commenters' questions related to the FDI Act's least-cost requirement and how it relates to the expectations in this final guidance. The final guidance does not express a change in the agencies' expectations. Instead, the final guidance provides more detail on approaches a firm can use to explain how the resolution of its IDI subsidiary can be achieved in a manner that substantially mitigates the risk that the firm's failure would have serious adverse effects on U.S. financial stability while also complying with the statutory and regulatory requirements governing IDI resolution. The final guidance lists a number of different common strategies for resolving an IDI and describes the kind of information that a firm could provide to explain how a resolution using one of the example strategies could be consistent with the least-cost requirement. The final guidance also provides information about calculating the value of an IDI's assets and its franchise value. Finally, the final guidance explicitly notes that the agencies are not expecting a firm to provide a complete least-cost analysis.

Strategies for Resolving an IDI

Purchase and Assumption Transaction. The FDIC typically seeks to resolve a failed IDI by identifying, before the IDI's failure, one or more potential acquirers so that as many of the IDI's assets and deposit liabilities as possible can be sold to and assumed by the acquirer(s) instead of remaining in the receivership created on the failure date.⁴¹ This transaction form, termed a purchase and assumption or P&A transaction, has often been the resolution approach that is least costly to the DIF, and is usually considered the easiest for the FDIC to execute and the least disruptive to the depositors of the failed IDI—particularly in the case of transactions involving the assumption of all the failed IDI's deposits by the assuming institution (an all-deposit transaction).

The limited size and operational complexity present in most small-bank failures have been significant factors in allowing the FDIC to execute P&A transactions with a single acquirer on numerous occasions. Resolving an IDI

via a P&A transaction over the closing weekend, however, has not always been available to the FDIC, particularly in failures involving large IDIs. P&A transactions require lead time to identify potential buyers and allow due diligence on, and an auction of, the failing IDI's assets and banking business, also termed its franchise. The acquiring banks must also have sufficient excess capital to absorb the failed IDI's assets and deposit franchise, sufficient expertise to manage business integration, and the ability to comply with several legal requirements. Larger failed banks can pose significant, and potentially systemic, challenges in resolutions that make a P&A transaction less viable. These challenges include: a more limited pool of potential acquirers as a failed IDI increases in size; operational complexities that require lengthy advance planning on the part of the IDI and the FDIC; the development of certain expertise; potential market concentration and antitrust considerations; and potentially the need to maintain the continuity of activities conducted in whole or in part in the IDI that are critical to U.S. financial stability.

Alternative Resolution Strategies. If no P&A transaction that meets the least-cost requirement can be accomplished at the time an IDI fails, the FDIC must pursue an alternative resolution strategy. The primary alternative resolution strategies for a failed IDI are (1) a payout liquidation, or (2) utilization of a BDI.

Payout Liquidation. The FDIC conducts payout liquidations by paying insured deposits in cash or transferring the insured deposits to an existing institution or a new institution organized by the FDIC to assume the insured deposits (generally, a Deposit Insurance National Bank or DINB). In payout liquidations, the FDIC as receiver retains substantially all of the failed IDI's assets for later sale, and the franchise value of the failed IDI is lost. A payout liquidation is often the most costly and disruptive resolution strategy because of this destruction of franchise value and the FDIC's direct payment of insured deposits.

Bridge Depository Institution. If the FDIC determines that temporarily continuing the operations of the failed IDI is less costly than a payout liquidation, the FDIC may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.⁴² Generally, a BDI would continue

⁴¹ See generally <https://www.fdic.gov/resources/resolutions/bank-failures/> for background about the resolution of IDIs by the FDIC.

⁴² Before a BDI may be chartered, the chartering conditions set forth in 12 U.S.C. 1821(n)(2) must

the failed bank's operations according to business plans and budgets approved by the FDIC and carried out by FDIC-selected BDI leadership. In addition to providing depositors continued access to deposits and banking services, the BDI would conduct any necessary restructuring required to rationalize the failed IDI's operations and maximize value to be achieved in an eventual sale. Subject to the least-cost requirement, the initial structure of the BDI may be based upon an all-deposit transaction, a transaction in which the BDI assumes only the insured deposits, or a transaction in which the BDI assumes all insured deposits and a portion of the uninsured deposits. Once a BDI is established, the FDIC seeks to stabilize the institution while simultaneously planning for the eventual exit and termination of the BDI. In exiting and terminating a BDI, the FDIC may merge or consolidate the BDI with another depository institution, issue and sell a majority of the capital stock in the BDI, or effect the assumption of the deposits or acquisition of the assets of the BDI.⁴³ While utilizing a BDI can avoid the negative effects of a payout liquidation, such as destruction of franchise value, many of the same factors that challenge the feasibility of a traditional P&A transaction also complicate planning for the termination of a BDI through a sale of the whole entity or its constituent parts.

Though one commenter suggested that the guidance should require firms to develop resolution strategies involving BDIs, the agencies do not maintain an expectation that firms will develop resolution strategies involving BDIs. The expectations provided in this guidance are also intended to be helpful to firms that have chosen to involve a BDI in their resolution strategy.

Least-Cost Analysis for Resolution Plans. The final guidance does not include an expectation that firms provide in their resolution plans a complete least-cost analysis. Such an analysis would, for example, include a

also be satisfied. For purposes of this guidance, if the Plan provides appropriate analysis concerning the feasibility of the BDI strategy, there is no expectation that the resolution plan also demonstrate separately that the conditions for chartering the BDI have been satisfied.

⁴³ 12 U.S.C. 1821(n)(10).

comparison of the preferred strategy for resolving an IDI that is a material entity against every other possible resolution method. While a firm may choose to provide a complete least-cost analysis, this guidance discusses expectations regarding a limited least-cost analysis that would explain how the firm's preferred strategy is not more costly than a payout liquidation and, if applicable, an insured-only BDI.

One commenter suggested that the agencies should provide guidance for how firms should address the valuation of an IDI's assets and liabilities, including its franchise value. In this final guidance, the agencies are providing additional explanation for how firms can develop and support the valuation of the IDI's assets and liabilities in an IDI resolution. This guidance includes a description of how firms can assess the franchise value of a firm's business.

Example. The following example should be read in conjunction with section VIII of the guidance text, *Insured Depository Institution Resolution*. This example is only intended to provide firms with an illustration of the types of considerations and calculations that could be included in a firm's analysis explaining how its preferred strategy would be less costly than a payout liquidation and, if applicable, an insured-only BDI. This example is not intended to serve as a template for firms or to provide guidelines for reasonable valuations of a firm's assets or liabilities. The valuations described in this example are intended to be illustrative and are not guidance about the likely values of a firm's assets and liabilities in an individual resolution plan or in resolution.

Bank A has \$500 billion in total assets, consisting of \$250 billion loans; \$75 billion cash and equivalents; \$125 billion in investment securities; and other assets totaling \$50 billion. The bank's initial funding structure consists of \$400 billion in deposits; \$25 billion in various unsecured payables and debt; \$25 billion in secured funding; and \$50 billion in capital instruments. For this example, the bank assumes it would encounter idiosyncratic events at a time when severely adverse economic conditions are present, and this combination of events would cause the

bank to be closed by the chartering authority and the FDIC appointed as receiver. The illustrative tables below reflect values as of the appointment of the FDIC as receiver.

The initial events combine to cause immediate losses of \$25 billion recognized as direct operating charges and \$15 billion through write-downs/provision expense for the loan portfolio, and \$60 billion of deposit runoff occurs.

- For purposes of conducting the analysis, the firm's management assumes that additional value diminution is present in the loan portfolio. Accordingly, after thoroughly analyzing the quality of its loan portfolio and determining the potential for additional credit losses, as well as considering the market value of the loan portfolio based upon the type of loans it holds in comparison with comparable sales transactions, and after further considering sensitivity testing, management supports an estimate near \$175 billion for the loan portfolio.

- In developing its Resolution Plan, the firm's management further supports that \$40 billion of additional deposit runoff would occur in addition to the initial \$60 billion. At the time of failure, Bank A's remaining \$300 billion of deposits are 60 percent insured and 40 percent uninsured. The ratio of insured deposits to uninsured deposits is used to calculate the pro rata recovery of depositors and the losses imposed on the DIF as a result.⁴⁴

- The deposit runoff is assumed to be met by using \$50 billion of cash and selling \$50 billion of investment securities. The remaining \$75 billion investment portfolio is entirely invested in short-term U.S. Treasury securities with an estimated value of \$70 billion.

- The other assets are implicated in the initial idiosyncratic loss. These other assets include fixed assets, foreclosed property, intellectual property, and miscellaneous items with a market value of \$25 billion.

- As shown in table 1, the Plan provides an analysis of the payout liquidation strategy. This strategy includes an expected loss to the DIF of \$18 billion.

⁴⁴ See *infra* note 45.

TABLE 1—ILLUSTRATION OF BANK A PAYOUT LIQUIDATION—COST ESTIMATE
[Dollars in billions]

Liquidation market value		Payout liquidation liability claim and amount recovered		
Category	Value	Category	Claim	Recovery/(loss)
Loans	\$175	Secured Claims	\$25	\$25/(\$0).
Securities	\$70	Deposits Insured	\$180	\$162/(\$18).
Cash	\$25	FDIC incurs the loss for the insured deposits so that all insured deposits are fully repaid.		
Other	\$25			
Total	\$295	Deposits Uninsured	\$120	\$108/(\$12).
		Unsecured Claims/Debt	\$25	\$0/(\$25).
		Equity Holders		No recovery.

Loss to Deposit Insurance Fund (to make whole insured depositors) = \$18 billion.⁴⁵
Losses to uninsured depositors = \$12 billion.

• However, the Plan also asserts and supports that the payout liquidation approach fails to reflect the franchise value of the combined deposit and loan relationships stemming from considerations such as the low administrative costs associated with servicing large deposits, the elimination of significant customer acquisition

costs, the stable fee income stream associated with the accounts due to barriers to entry for certain products, and the importance and value of integrating the loan and deposit products.

• The Plan calculates, and provides the analysis supporting the calculation, that the economic benefit of packaging

these benefits together in an all-deposit BDI is \$20 billion, which is reflected as a bid premium to liquidation pricing in table 2.

• The result is that the all-deposit BDI is less costly to the DIF than liquidation because of the inclusion of the bid premium.

TABLE 2—ILLUSTRATION OF BANK A PREFERRED STRATEGY—COST ESTIMATE
[Dollars in billions]

All deposit bridge market value		All deposit bridge bank liability claim and amount recovered		
Category	Value	Category	Claim	Recovery/(loss)
Loans	\$175	Secured Claims	\$25	\$25/(\$0).
Securities	\$70	Deposits Insured	\$180	\$174/(\$6).
Cash	\$25	FDIC incurs the loss for the insured deposits so that all insured deposits are fully repaid.		
Other	\$25			
Sub Total	\$295	Deposits Uninsured	\$120	\$116/(\$4).*
Bid Premium	\$20	Unsecured Claims/Debt	\$25	\$0/(\$25).
Total	\$315	Equity Holders		No recovery.

Loss to Deposit Insurance Fund (to make whole insured and uninsured depositors) = \$10 billion, which is less than the payout liquidation loss.⁴⁶

*Losses to uninsured depositors total \$4 billion and are absorbed by the DIF.

I. Derivatives and Trading Activities

The agencies requested comment on whether to provide derivatives and trading activities guidance for specified firms that adopt an SPOE or MPOE resolution strategy. Some commenters argued that no derivatives and trading guidance is needed for domestic triennial full filers because they have limited derivatives and trading portfolios, particularly relative to the U.S. GSIB banking organizations covered by such guidance. These

commenters also noted that not all of these biennial filers, which are Category I firms, are subject to this type of guidance. Other commenters supported providing such guidance to domestic triennial full filers, despite observing that these firms engage in less activity than the biennial filers. One commenter cautioned that derivatives activities for domestic triennial full filers may increase in the future and proposed the inclusion of an orderly-wind-down analysis for firms with net derivatives exceeding a given threshold. Another

commenter recommended that the guidance include expectations for: roles and responsibilities in derivatives unwind, plan reporting regarding derivatives exposures, plan risk assessments in cross-border activity, barriers to swift unwind of derivatives activities booked outside the United States, and capabilities to generate detailed derivative reports. This commenter also argued that firms should specify plans to wind-down between affiliates and external

⁴⁵ Calculation: (1) \$295 billion asset value less secured claim of \$25 billion = \$270 billion available to depositors and junior claims; (2) \$270 billion available spread pro-rata across \$300 billion depositor class; 60 percent insured deposits and 40 percent uninsured deposits; (3) \$270 billion × .6 =

\$162 billion paid to insured depositors; \$270 billion × .4 = \$108 billion paid to uninsured depositors.

⁴⁶ Calculation: (1) \$315 billion asset value less secured claim of \$25 billion = \$290 billion available to depositors and junior claims; (2) \$290 billion

available spread pro-rata across \$300 billion depositor class; 60 percent insured deposits and 40 percent uninsured deposits; (3) \$290 billion × .6 = \$174 billion paid to insured depositors; \$290 billion × .4 = \$116 billion paid to uninsured depositors.

counterparties, as well as describe potential sale of some trading positions.

After reviewing the comments and considering the scope of derivatives and trading activities of domestic Category I, II, and III banking organizations,⁴⁷ the agencies determined that the banking organizations that would be specified firms have limited derivatives and trading operations compared to the subset of biennial filers that are the subject of derivatives and trading guidance. The agencies also note that the Rule includes certain requirements regarding derivatives and trading activities with which all covered companies—including domestic triennial full filers—must comply, as well as the overall requirement to provide a strategic analysis describing the covered company's plan for orderly resolution.⁴⁸ The agencies believe that for this set of covered companies, given their current activities, the topic of derivatives and trading activities is sufficiently addressed by the Rule. The agencies are therefore finalizing the guidance without including expectations on derivatives and trading activity for the specified firms.

The agencies also recognize that derivatives activity or risk for domestic triennial full filers may change in the future. The agencies may consider the need for firm-specific derivatives and trading expectations in the future for specified firms that substantially increase their derivatives and trading activities or change in a way such that having a strategy to wind-down their derivatives portfolios is critical to their resolvability.

J. Format and Structure of Plans; Assumptions

This section of the proposal described the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Under the proposal, plans would have been expected to contain an executive summary, a narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions were generally similar to those in the 2019 U.S. GSIB Guidance, except that the

proposed guidance reflected the expectations that (a) a firm should support any assumptions that it will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy and clarified expectations around such assumptions, and (b) a firm should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt an MPOE resolution strategy, the proposal included the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress, including consideration of the likelihood of the diminution of the firm's liquidity and capital levels prior to bankruptcy. The proposal also included several questions about assumptions and whether to include answers to frequently asked questions.

The agencies received one comment in response to a question posed regarding assumptions related to lending facilities, including the Discount Window. The commenter supported the proposed assumptions guidance regarding these facilities and recommended that the agencies consider providing additional guidance on assumptions related to the amount, timing, and limitations of liquidity that might become available from these sources. However, the additional guidance requested by the commenter is unnecessary, and the agencies are finalizing this section of the guidance as proposed with one clarification. Specifically, the proposed guidance regarding the relevant assumptions already includes references to timing and limitations of liquidity commensurate with the activities of firms subject to the guidance.

As a clarification, the agencies have added a reference to Federal Home Loan Banks (FHLBs) as a type of borrowing for which firms should provide support in their resolution plans if they assume access during the period immediately prior to entering bankruptcy. The agencies' experiences in 2023 showed that many IDIs depend heavily on FHLB funding in times of stress and, accordingly, the agencies expect firms to be prepared to support any assumptions around such reliance for resolution planning purposes.

The final guidance also includes an expectation contained in the 2019 U.S. GSIB Guidance and the 2020 FBO Guidance regarding the parameters of economic forecasting in a resolution plan submission. Those guidance documents stated that a resolution plan

should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which a resolution plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.⁴⁹ While this assumption is similar to a provision in the Rule,⁵⁰ the agencies believe it is important to provide guidance to firms about the timing of the required assumption in the Rule. The Board provides DFAST scenario information to the specified firms through the Board's public website.⁵¹

The agencies also received a comment recommending that more of firms' resolution plans be disclosed publicly to promote market discipline and specifically asking that the public portion of resolution plans describe potential acquirers of operations in the event of resolution. The Rule establishes at a high-level the required content of the public section of a resolution plan,⁵² and this final guidance clarifies the agencies' expectations with respect to that section. The agencies are mindful that the public disclosure of resolution plans, which may contain private commercial information, has both benefits and drawbacks, and the agencies believe that, at the moment, the Rule—revisions to which are outside the scope of this guidance—and the final guidance appropriately balance transparency with confidentiality.

The agencies are otherwise finalizing this section of the guidance as proposed.⁵³ The agencies did not receive any comments in response to the proposal's request for comments about answers to frequently asked questions, and the agencies have not included those prior answers to frequently asked questions because these prior answers were requested by and prepared for a different set of firms.

K. Additional Comments

Differentiating Resolution Plan Guidance

The agencies received several general comments about whether the expectations in the proposal were suitably modified from expectations

⁴⁷ See FR Y-15 Systemic Risk Report, 2nd quarter 2023 data. Publicly available at the National Information Center, <https://www.ffiec.gov/NPW>. See also *Quarterly Report on Bank Trading and Derivatives Activities—Third Quarter 2023*. Publicly available at <https://www.occ.gov/publications-and-resources/publications/quarterly-report-on-bank-trading-and-derivatives-activities/index-quarterly-report-on-bank-trading-and-derivatives-activities.html>.

⁴⁸ See 12 CFR 243.2 and 381.2; 12 CFR 243.5(c) and (e)(6)–(7), and 381.5(c) and (e)(6)–(7).

⁴⁹ 2019 U.S. GSIB Guidance at 84 FR 1459; 2020 FBO Guidance at 85 FR 83578.

⁵⁰ 12 CFR 243.4(h)(1) and 381.4(h)(1).

⁵¹ <https://www.federalreserve.gov/publications/dodd-frank-act-stress-test-publications.htm>.

⁵² 12 CFR 243.11(c) and 381.11(c).

⁵³ The agencies also are clarifying one expectation in the Financial Statements and Projections subsection of the Format and Structure of Plans; Assumptions section of the guidance that could be construed to impose a requirement on the specified firms.

included in past resolution plan guidance and whether the proposal appropriately distinguished between different types of triennial full filers. Several commenters contended that the proposed guidance did not sufficiently differentiate expectations among firms subject to resolution planning guidance. One commenter argued that section 165 of the Dodd-Frank Act requires the agencies to differentiate the content of the resolution planning guidance; the proposal was too similar to the 2019 U.S. GSIB Guidance; and expectations for the specified firms should be further differentiated based on size, risk, and other factors. Another commenter argued that the proposed guidance favors the MPOE resolution strategy by including fewer expectations for firms that adopt that strategy and recommended that final guidance for firms adopting an MPOE resolution strategy should be more aligned with guidance for resolution plan filers with an SPOE resolution strategy.

While the differentiation requirement in section 165 of the Dodd-Frank Act does not apply to this non-binding resolution plan guidance, the guidance differentiates among covered companies, taking into consideration their size, complexity, and other risk-related factors; their resolution strategy, whether SPOE or MPOE; and whether they are domestic or foreign-based.

The thresholds and risk-based indicators that form the basis of the risk-based category framework used by the Rule are designed to take into account an individual firm's particular activities and organizational footprint that may present significant challenges to an orderly resolution.⁵⁴ The Rule, using those categories, defines triennial full filers as one cohort because the failure of a Category II or III banking organization could pose a threat to U.S. financial stability. Banking organizations in these two categories often have similar characteristics, such as organizational structures, and similar resolution strategies that benefit from similar resolution guidance. Accordingly, the agencies believe the guidance is equally appropriate for domestic Category II and III banking organizations. In addition, as discussed above, the regional bank failures in March 2023 demonstrated that the failure of banking organizations with \$100 billion to \$250 billion in total consolidated assets can be disruptive to U.S. financial stability. For these reasons, providing the guidance to domestic triennial full filers in that asset

range is appropriate to prevent or mitigate risks to the financial stability of the United States.

Guidance for specified firms that adopt an SPOE resolution strategy is differentiated relative to guidance for Category I banking organizations (*i.e.*, the 2019 U.S. GSIB Guidance), notably with the absence of derivatives and trading expectations, which are applicable to most of the U.S. GSIBs, and other operational guidance as well as reduced separability expectations. Other aspects of the SPOE guidance are appropriately similar to the 2019 U.S. GSIB Guidance because the successful execution of an SPOE resolution strategy benefits from the capabilities discussed in the guidance. The guidance for firms that adopt an MPOE resolution strategy includes substantially simpler expectations, relative to SPOE guidance and the 2019 U.S. GSIB Guidance, in the areas of capital, liquidity, governance mechanisms, operational, legal entity rationalization and separability, derivatives and trading expectations, and PCS. Having simpler expectations relative to SPOE guidance does not necessarily mean a firm adopting an MPOE strategy will encounter fewer challenges developing its resolution plan; regardless of the strategy chosen, the firm is responsible for providing adequate information and analysis to demonstrate its plan will facilitate an orderly resolution. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate an orderly resolution, and the agencies are not suggesting that any firm change its resolution strategy, nor do the agencies identify a preferred strategy for a specific firm or set of firms.⁵⁵

Finally, resolution plan guidance for Category II and III banking organizations is adapted to whether a covered company is based in the United States or in a foreign jurisdiction, with dedicated guidance documents for each type of firm. The Rule differentiates between banking organizations based on home jurisdiction,⁵⁶ and whether a banking organization is based in the United States can significantly impact its resolution strategy, resolution capabilities, and resolution planning. Accordingly, expectations for domestic and foreign-based triennial full filers are differentiated in the areas of capital, liquidity, governance mechanisms,

shared services, separability, branches, and group-wide resolution plans.

Comments About Resolution Planning and the Proposal

The agencies received several general comments about resolution planning guidance. The agencies have considered these commenters' input but have made no modifications to the final guidance.

One commenter expressed support for the proposed guidance, in part, because it reaffirms that bankruptcy is the preferred resolution strategy and would improve the quality of resolution plan submissions through enhanced information and assumptions, better enabling the resolution of a specified firm in an orderly manner. Another commenter praised the agencies' proposal for providing needed clarity and transparency on expectations for specified firms' resolution plans, and for making several improvements that will improve specified firms' resolution plans.

Another commenter recommended that the agencies adopt the content of the guidance in the form of a legally binding and enforceable rule, in part due to the size and scope of specified firms, the importance of resolution planning, and the financial stability implications involved. This commenter also suggested that the large bank failures in 2023 demonstrated the need for improvement in banking organizations' resolution planning and the agencies' process for assessing these plans.

Resolution planning is important to U.S. financial stability; however, the agencies have not made changes to the guidance in response to these comments. The Rule, which is legally enforceable, identifies the specific topics that must be addressed in resolution plans. In contrast, resolution plan guidance outlines the agencies' supervisory expectations and priorities and articulates the agencies' general views regarding appropriate resolution planning practices for the specified firms. The final guidance provides examples of resolution plan content and capabilities that the agencies generally consider consistent with effective resolution planning. This approach is consistent with resolution planning guidance provided to other covered companies in the past, including guidance for Category I banking organizations and certain foreign Category II banking organizations.

A commenter argued that the agencies should allow for an iterative process for domestic triennial full filers to develop their strategies and capabilities, similar to the gradual maturation of Category I

⁵⁵ See *infra* section I.A, Resolution Plan Strategy, of this document for further discussion about why the agencies are differentiating expectations depending on whether a firm adopts an SPOE or MPOE resolution strategy.

⁵⁶ See 12 CFR 243.5(a) and 381.5(a).

⁵⁴ See 2019 Federal Register Rule Publication at 84 FR 59197–201.

banking organizations' resolution plans. This commenter also argued the agencies should provide more than one year for firms to incorporate the final guidance into their next resolution plan submissions and that the guidance should not be the basis for a deficiency.

By statute and under the Rule, each resolution plan filer must submit a plan for orderly resolution under the Bankruptcy Code, and the agencies must assess the credibility of each plan. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate an orderly resolution and the agencies are not suggesting that any firm change its resolution strategy, nor do the agencies identify a preferred strategy for a specific firm or set of firms. The standard of review for a resolution plan submission of a firm that transitions to a new strategy is the same as for any firm subject to the Rule. The agencies stated in the preamble to the 2019 revisions to the Rule that they would endeavor to finalize guidance a year in advance of the next applicable resolution plan submission date, and the agencies are extending the next resolution plan submission deadline for these firms to provide at least one year advanced notice of general guidance.⁵⁷ The agencies also reaffirm that the guidance does not have the force and effect of law, and the agencies do not take enforcement actions or issue findings based on resolution planning guidance.

Comments Outside the Scope of Proposal

The agencies received several comments outside the scope of the proposed guidance. One commenter urged the agencies to shorten the length between resolution plan submissions under the Rule, from three to two years, and evaluate key aspects of plans annually. This commenter also recommended the agencies create an independent committee to advise the agencies on resolution planning matters as well as require large banking organizations to hold more capital generally. Another commenter argued that any LTD requirements should reflect a banking organization's preferred resolution strategy and not push a banking organization to adopt a particular strategy while another commenter recommended finalizing the LTD proposal as proposed. A commenter also encouraged the FDIC to provide banking organizations at least one year to comply with any final IDI

Rule. Another commenter also recommended that the agencies promote resolvability by requiring large corporations to hold term deposits at the specified firms. In addition, another commenter suggested including in the final guidance expectations related to green financing. The agencies have not made any changes to the guidance to address these comments.

IV. Paperwork Reduction Act

Certain provisions of the final guidance contain "collections of information" 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 agencies have requested and OMB has assigned to the agencies the respective control numbers shown. The information collections contained in the final guidance have been submitted to OMB for review and approval by the FDIC under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final guidance under the authority delegated to the Board by OMB and has approved these collections of information.

The agencies did not receive any comments related to the PRA.

The agencies have a continuing interest in the public's opinions of information collections. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** caption in the proposed guidance notice. All comments will become a matter of public record. 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.

Collection title: Board: Reporting Requirements Associated with Regulation QQ.

FDIC: Reporting Requirements Associated with Resolution Planning.

OMB control number: Board 7100–0346; FDIC 3064–0210.

Frequency: Triennial, Biennial, and on occasion.

Respondents: Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978 and meets the relevant total consolidated assets threshold) with total consolidated assets of \$250 billion or more, a bank holding companies with \$100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

Current actions: The final guidance modifies certain provisions of the proposed guidance. For domestic firms, the final guidance eliminates expectations related to separability, reducing the average burden hours per response by 3,000 for domestic firms using an SPOE strategy and 975 for domestic firms using an MPOE strategy. The final guidance also clarifies expectations around operational shared services for firms using an SPOE resolution strategy and around the IDI Resolution Plan/Least Cost Test for all firms. Regarding operational shared services, the guidance clarifies that a firm's implementation plan to ensure continuity of shared services should include those that are material to the execution of the resolution strategy, such as reliance on outside bankruptcy counsel and consultants. Regarding the FDI Act's least-cost requirement and how it relates to expectations around IDI resolution, the agencies provided additional detail on how firms can develop and support the valuation of an IDI's assets and liabilities in an IDI resolution. The agencies do not anticipate these clarifications impacting the burden estimates.

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. As a result of this split and the final revisions, there is a proposed net increase in the overall estimated burden hours of 14,922 hours for the Board and 14,304 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection would be 216,129 hours and the total FDIC estimated burden would be 210,844 hours.

The following table presents only the change in the estimated burden hours, as amended by the final guidance, broken out by agency. The table does not include a discussion of the remaining estimated burden hours,

⁵⁷ See 2019 *Federal Register* Publication at 84 FR 59204.

which remain unchanged.⁵⁸ As shown in the table, the triennial full filers' resolution plan submissions would be

estimated more granularly according to SPOE and MPOE resolution strategies.

FR QQ	Estimated number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Board Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
<i>Current Total</i>				42,446
Final				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3	1	5,285	15,855
<i>Final Total</i>				57,368
FDIC Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	6	1	4,667	28,002
<i>Current Total</i>				37,779
Final				
Triennial Full:				
FBO SPOE	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,285	10,570
<i>Final Total</i>				52,083

* There are currently no domestic triennial full filers utilizing an SPOE strategy. Estimated hours per response for a domestic SPOE triennial full filer would be 10,535 hours.

V. Text of the Final Guidance

Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers

I. Introduction

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (the FDIC) (together, the agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the agencies promulgated a joint rule

implementing the provisions of Section 165(d).¹ Subsequently, in November 2019, the agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the agencies' experience implementing the joint rule since its adoption.² Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain domestic financial companies required to submit Plans to assist their further development of a Plan for their 2025 and subsequent Plan

submissions. Specifically, the guidance applies to any domestic covered company that is a triennial full filer under the Rule³ because it is subject to Category II or III standards in accordance with the Board's tailoring rule (specified firms or firms).⁴ The Plan for a specified firm would address the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

The document does not have the force and effect of law.⁵ Rather, it describes the agencies' expectations and priorities regarding the specified firms' Plans and the agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be

⁵⁸ In addition to the revisions to the estimations for triennial full filers, the agencies have revised the estimation for biennial filers from 40,115 hours per response to 39,550 hours per response to align with burden estimation methodology with what was used for triennial full filers under the final guidance. Specifically, the agencies removed a component for a biennial filer's analysis of its critical operations as part of its submission of

targeted and full resolution plans, because this critical operations analysis is integrated in the preparation of such plans.

¹ Resolution Plans Required, 76 FR 67323 (Nov. 1, 2011).

² Resolution Plans Required, 84 FR 59194 (Nov. 1, 2019). The amendments became effective December 31, 2019. The "Rule" means the joint rule

as amended in 2019. Terms not defined herein have the meanings set forth in the Rule.

³ See 12 CFR 243.4(b)(1) and 381.4(b)(1).

⁴ Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

⁵ See 12 CFR 262.7 and appendix A to 12 CFR part 262; 12 CFR part 302.

developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of their resolution strategy.

When a domestic banking organization first becomes a specified firm,⁶ this document will apply to the firm's next resolution plan submission that is due at least 12 months after the date the firm becomes a specified firm. If a specified firm ceases to be subject to Category II or III standards, it will no longer be a specified firm, and this document would no longer apply to that firm.

In general, this document is organized around a number of key challenges in resolution (capital; liquidity; governance mechanisms; operational; legal entity rationalization; and insured depository institution resolution (IDI), if applicable) that apply across resolution plans, depending on their strategy. Additional challenges or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan. In addition, each topic of this guidance is separated into expectations for a specified firm that adopts a single point of entry (SPOE) resolution strategy for its Plan and expectations for a specified firm that adopts a multiple point of entry (MPOE) resolution strategy for its Plan.

Under the Rule, the agencies will review a Plan to determine if it satisfactorily addresses key potential challenges, including those specified below. If the agencies jointly decide that an aspect of a Plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the Plan, the agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code. The agencies may not take enforcement actions or issue findings based on this guidance.

II. Capital

SPOE

The firm should have the capital capabilities necessary to execute its resolution strategy, including the modeling and estimation process described below.

Resolution Capital Adequacy and Positioning (RCAP). In order to help ensure that a firm's material entities⁷

could operate while the parent company is in bankruptcy, the firm should have an adequate amount of loss-absorbing capacity to recapitalize those material entities. Thus, a firm should have outstanding a minimum amount of loss-absorbing capacity, including long-term debt, to help ensure that the firm has adequate capacity to meet that need at a consolidated level (external LAC).⁸

A firm's external LAC should be complemented by appropriate positioning of loss-absorbing capacity within the firm (*i.e.*, internal LAC), consistent with any applicable rules requiring prepositioned resources at IDIs in the form of long-term debt. After adhering to any requirements related to prepositioning long-term debt at IDIs, the positioning of a firm's remaining resources should balance the certainty associated with pre-positioning resources directly at material entities with the flexibility provided by holding recapitalization resources at the parent (contributable resources) to meet unanticipated losses at material entities. That balance should take account of both pre-positioning at material entities and holding resources at the parent, and the obstacles associated with each. With respect to material entities that are not U.S. IDIs subject to pre-positioned long-term debt requirements, the firm should not rely exclusively on either full pre-positioning or parent contributable resources to recapitalize such entities. The Plan should describe the positioning of resources within the firm, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned resources at a material entity are in the form of intercompany debt and there are one or more entities between that material entity and the parent, the firm should structure the instruments so as to ensure that the material entity can be recapitalized.

Resolution Capital Execution Need (RCEN). To the extent necessitated by the firm's resolution strategy, material entities need to be recapitalized to a level that allows them to operate or be wound down in an orderly manner following the parent company's bankruptcy filing. The firm should have a methodology for periodically estimating the amount of capital that

may be needed to support each material entity after the bankruptcy filing (RCEN). The firm's positioning of resources should be able to support the RCEN estimates. In addition, the RCEN estimates should be incorporated into the firm's governance framework to ensure that the parent company files for bankruptcy at a time that enables execution of the preferred strategy.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,⁹ consistent with the firm's resolution strategy. The RCEN methodology should be calibrated such that recapitalized material entities will have sufficient capital to maintain market confidence as required under the preferred resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for "well-capitalized" status and meet estimated additional capital needs throughout resolution. Material entities that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

MPOE

N/A.

III. Liquidity

SPOE

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at or readily available to material entities and a methodology for estimating the liquidity needed to successfully execute the resolution strategy, as described below.

Resolution Liquidity Adequacy and Positioning (RLAP). With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each material entity (including material entities that are non-U.S. branches)—*i.e.*, the high-quality liquid assets (HQLA) at the material

⁸ Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (Jan. 24, 2017); Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (Sept. 19, 2023).

⁹ The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred resolution strategy.

⁶ See 12 CFR 252.5(c)–(d).

⁷ The terms "material entities," "identified critical operations," and "core business lines" have the same meaning as in the Rule.

entity less net outflows to third parties and affiliates—and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile and risk of the firm. The model should balance the reduction in frictions associated with holding liquidity directly at material entities with the flexibility provided by holding HQLA at the parent available to meet unanticipated outflows at material entities. Thus, the firm should not rely exclusively on either full pre-positioning or an expected contribution of liquid resources from the parent. The model¹⁰ should ensure that the parent holding company holds sufficient HQLA (inclusive of its deposits at the U.S. branch of the lead bank subsidiary) to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity position of each material entity (HQLA less net outflows) should be measured using the firm's internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to an affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Additionally, the RLAP methodology should take into account: (A) the daily contractual mismatches between inflows and outflows; (B) the daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) the daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key financial market utilities (FMUs), and foreign supervisors, among others.

Resolution Liquidity Execution Need (RLEN). The firm should have a methodology for estimating the liquidity needed after the parent's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. The RLEN estimate should be incorporated into the firm's governance framework to ensure that the firm files for bankruptcy in a timely way, *i.e.*, prior to the firm's HQLA falling below the RLEN estimate.

The firm's RLEN methodology should:

(A) Estimate the minimum operating liquidity (MOL) needed at each material entity to ensure those entities could continue to operate post-parent's bankruptcy filing and/or to support a wind-down strategy;

(B) Provide daily cash flow forecasts by material entity to support estimation of peak funding needs to stabilize each entity under resolution;

(C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates; and

(D) Estimate the minimum amount of liquidity required at each material entity to meet the MOL and peak needs noted above, which would inform the firm's board(s) of directors of when they need to take resolution-related actions.

The MOL estimates should capture material entities' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that material entities could operate without disruption during the resolution. The peak funding needs estimates should be projected for each material entity and cover the length of time the firm expects it would take to stabilize that material entity. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that material entities could operate through resolution consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, *i.e.*, the minimum amount of HQLA required to facilitate the execution of the firm's strategy. The RLEN estimate should be tied to the firm's governance mechanisms and be incorporated into the playbooks as discussed below to assist the board of directors in taking timely resolution-related actions.

MPOE

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy. A Plan with an MPOE resolution strategy should include analysis and projections of a range of liquidity needs during resolution, including intraday; reflect likely failure and resolution scenarios; and consider the guidance on assumptions provided in Section VIII, Format and Structure of Plans; Assumptions.

IV. Governance Mechanisms

SPOE

Playbooks and Triggers. A firm should identify the governance mechanisms that would ensure execution of required board actions at the appropriate time (as anticipated under the firm's preferred strategy) and include pre-action triggers and existing agreements for such actions. Governance playbooks should detail the board and senior management actions necessary to facilitate the firm's preferred strategy and to mitigate vulnerabilities, and should incorporate the triggers identified below. The governance playbooks should also include a discussion of:

(A) The firm's proposed communications strategy, both internal and external;¹¹

(B) The boards of directors' fiduciary responsibilities and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken;

(C) Potential conflicts of interest, including interlocking boards of directors; and

(D) Any employee retention policy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for all entities whose boards of directors would need to act in advance of the commencement of resolution proceedings under the firm's preferred strategy.

The firm should demonstrate that key actions will be taken at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To ensure that these actions will occur, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to senior management and the board(s) to potentially take the corresponding actions at each stage of distress leading eventually to the decision to file for bankruptcy;

(B) Successful recapitalization of subsidiaries prior to the parent's filing for bankruptcy and funding of such entities during the parent company's bankruptcy to the extent the preferred strategy relies on such actions or support; and

¹⁰ "Model" refers to the set of calculations estimating the net liquidity surplus/deficit at each legal entity and for the firm in aggregate based on assumptions regarding available liquidity, *e.g.*, HQLA and third-party and interaffiliate net outflows.

¹¹ External communications include those with U.S. and foreign authorities and other external stakeholders, such as large depositors and shareholders.

(C) The timely execution of a bankruptcy filing and related pre-filing actions.¹²

These triggers should be based, at a minimum, on capital, liquidity, and market metrics, and should incorporate the firm's methodologies for forecasting the liquidity and capital needed to operate as required by the preferred strategy following a parent company's bankruptcy filing. Additionally, the triggers and related actions should be specific.

Triggers linked to firm actions as contemplated by the firm's preferred strategy should identify when and under what conditions the firm, including the parent company and its material entities, would transition from business-as-usual (BAU) conditions to a stress period and from a stress period to the recapitalization/resolution periods. Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to ensure that resources are available and can be downstreamed, if anticipated by the firm's strategy, and with adequate time for the preparation of the bankruptcy petition and first-day motions, necessary stakeholder communications, and requisite board actions. Triggers identifying the onset of stress and recapitalization/resolution periods, and the associated escalation procedures and actions, should be discussed directly in the governance playbooks.

Pre-Bankruptcy Parent Support. The Plan should include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to planned provision of capital and liquidity to the subsidiaries prior to the parent's bankruptcy filing (Support). Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (e.g., imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the Plan regarding each element of the claim, the

anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's preferred resolution strategy.

The analysis should include mitigants to the potential challenges to the planned Support. The Plan should identify the mitigant(s) to such challenges that the firm considers most effective. In identifying appropriate mitigants, the firm should consider the effectiveness of a contractually binding mechanism (CBM), pre-positioning of financial resources in material entities, and the creation of an intermediate holding company. Moreover, if the Plan includes a CBM, the firm should consider whether it is appropriate that the CBM should have the following:

- (A) Clearly defined triggers;
- (B) Triggers that are synchronized to the firm's liquidity and capital methodologies;
- (C) Perfected security interests in specified collateral sufficient to fully secure all Support obligations on a continuous basis (including mechanisms for adjusting the amount of collateral as the value of obligations under the agreement or collateral assets fluctuates); and
- (D) Liquidated damages provisions or other features designed to make the CBM more enforceable.

The firm also should consider related actions or agreements that may enhance the effectiveness of a CBM. A copy of any agreement and documents referenced therein (e.g., evidence of security interest perfection) should be included in the Plan.

The governance playbooks included in the Plan should incorporate any developments from the firm's analysis of potential legal challenges regarding the Support, including any Support approach(es) the firm has implemented. If the firm analyzed and addressed an issue noted in this section in a prior plan submission, the Plan may reproduce that analysis and arguments and should build upon it to at least the extent described above, including ensuring that, as with all other aspects of the Plan, it remains accurate and up to date. In preparing the analysis of these issues, firms may consult with law firms and other experts on these matters. The agencies do not object to appropriate collaboration between firms, including through trade organizations and with the academic community, to develop analysis of common legal challenges and available mitigants.

MPOE

N/A.

V. Operational

SPOE

Payment, Clearing, and Settlement Activities Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,¹³ or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution through a framework to support such access by:

- Identifying clients,¹⁴ FMUs, and agent banks as key from the firm's perspective for the firm's material entities, identified critical operations, and core business lines, using both quantitative (volume and value)¹⁵ and qualitative criteria;
- Mapping material entities, identified critical operations, core business lines, and key clients to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank essential to an orderly resolution under its preferred resolution strategy that reflects the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (e.g., a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations, or a firm's contractual relationship with an agent bank) and indirect relationships (e.g., a firm's provision of clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank).

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses

¹³ A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of a financial market utility (FMU) through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations (e.g., payment services or custody services).

¹⁴ For purposes of this section, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and any related credit or liquidity offered in connection with those services.

¹⁵ In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

¹² Key pre-filing actions include the preparation of any emergency motion required to be decided on the first day of the firm's bankruptcy.

considerations that would assist the firm and its key clients in maintaining continued access to PCS services in the period leading up to and including the firm's resolution. Each playbook should provide analysis of the financial and operational impact to the firm's material entities and key clients due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's material entities, identified critical operations and core business lines, and key clients, while the firm is in resolution. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its preferred resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

- Description of the firm's relationship as a user with the key FMU or key agent bank and the identification and mapping of PCS services to material entities, identified critical operations, and core business lines that use those PCS services;
- Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution,¹⁶ the operational and financial impact of such actions on each material entity, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and
- Discussion of PCS-related liquidity sources and uses in BAU, in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by material entity.

○ *PCS Liquidity Sources:* These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and key client prefunded amounts in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (e.g., facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU

and key agent bank obligations (including margin requirements) in all currencies relevant to the firm's participation, including placements of firm liquidity at central banks, key FMUs, and key agent banks.

○ *PCS Liquidity Uses:* These may include firm and key client margin and prefunding and intraday extensions of credit, including incremental amounts required during resolution.

○ *Intraday Liquidity Inflows and Outflows:* The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.

*Content Related to Providers of PCS Services.*¹⁷ Individual key FMU and key agent bank playbooks should include:

- Identification and mapping of PCS services to the material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;
- Identification and mapping of PCS services to key clients to whom the firm provides such PCS services and any related credit or liquidity offered in connection with such services;
- Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to its key clients, including the viability of transferring key client activity and any related assets, as well as any alternative arrangements that would allow the firm's key clients continued access to PCS services if the firm could no longer provide such access (e.g., due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;
- Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as: (i) requiring key clients to designate or appropriately pre-

position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (e.g., direct members of key FMUs) or any similar custodial arrangements that allow ready access to key clients' funds for such obligations in all relevant currencies of key clients of the firm's operations; (ii) delaying or restricting key client PCS activity; and (iii) restricting, imposing conditions upon (e.g., requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients; and

- Descriptions of how the firm will communicate to its key clients the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients (e.g., due to the key client's BAU usage of that access and/or related intraday credit or liquidity), and the expected timing and form of such communication.

Capabilities. The firm is expected to have and describe capabilities to understand, for each material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. The firm should be able to:

- Track the following items by: (i) material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:
 - PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;¹⁸
 - Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;¹⁹
 - Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and²⁰
 - Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).²¹

• Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's operations and customers

¹⁶ Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

¹⁷ Where a firm is a provider of PCS services through the firm's own operations, the firm is expected to produce a playbook for the material entities that provide those services, addressing each of the items described under "Content Related to Providers of PCS Services," which include contingency arrangements to permit the firm's key clients to maintain continued access to PCS services.

¹⁸ 12 CFR 243.5(e)(12) and 381.5(e)(12).

¹⁹ *Id.*

²⁰ 12 CFR 252.34(h).

²¹ 12 CFR 243.5(f)(1)(i) and 381.5(f)(1)(i).

and counterparties of those operations;²²

- Develop contingency arrangements in the event of such adverse actions;²³ and

- Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral. The firm is expected to have and describe its capabilities to manage, identify, and value the collateral that it receives from and posts to external parties and affiliates. Specifically, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;

- Be able to track both collateral sources (*i.e.*, counterparties that have pledged collateral) and uses (*i.e.*, counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;

- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;

- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;

- Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and

- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.²⁴

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy and

how frequently the firm would need to produce the information, with the appropriate level of granularity. The firm should have the capabilities to produce the following types of information, as applicable, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;

- Gross and net risk positions with internal and external counterparties;

- Guarantees, cross holdings, financial commitments and other transactions between material entities;

- Data to facilitate third-party valuation of assets and businesses, including risk metrics;

- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);

- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);

- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;

- Licenses and memberships to all exchanges and value transfer networks, including FMUs;

- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;

- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and

- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that

support identified critical operations or core business lines, or are material to the execution of the resolution strategy, and robust arrangements to support the continuity of shared and outsourced services, including, without limitation, appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or core business lines, or are material to the execution of the resolution strategy. Examples may include personnel, facilities, systems, data warehouses, intellectual property, and counsel and consultants involved in the preparation for and filing of bankruptcy. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

The firm should (A) maintain an identification of all shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy;²⁵ (B) maintain a mapping of how/where these services support its core business lines and identified critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution. The firm should also store SLAs in a central repository or repositories in a searchable format, develop and document contingency strategies and arrangements for replacement of critical shared services, and complete re-alignment or restructuring of activities within its corporate structure. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of

²² 12 CFR 252.34(f).

²³ *Id.*

²⁴ The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

²⁵ This should be interpreted to include data access and intellectual property rights.

stabilization as required in the firm's preferred strategy) in such entities sufficient to cover contract costs, consistent with the preferred resolution strategy.

The firm should identify all critical service providers and outsourced services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, and identify any that could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance, and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

Qualified Financial Contracts. The Plan should reflect how the early termination of qualified financial contracts triggered by the parent company's bankruptcy filing could impact the resolution of the firm's operations, including potential termination of any contracts that are not subject to statutory, contractual or regulatory stays of direct default or cross-default rights. A Plan should explain and support the firm's strategy for addressing the potential disruptive effects in resolution of early termination provisions and cross-default rights in existing qualified financial contracts at both the parent company and material entity subsidiaries. This discussion should address, to the extent relevant for the firm, qualified financial contracts that include limitations of standard contractual direct default and cross default rights by agreement of the parties.

MPOE

Payment, Clearing, and Settlement Activities Capabilities. The firm is expected to have and describe capabilities to understand, for each material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- As users of PCS services:
 - Track the following items by: (i) material entity; and (ii) with respect to customers, counterparties, and agents

and service providers, location and jurisdiction:

- PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;

- Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;

- Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and

- Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).

- Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's operations and customers and counterparties of those operations;

- Develop contingency arrangements in the event of such adverse actions; and

- Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including intraday requirements.

- As providers of PCS services:

- Identify their PCS clients and the services they provide to these clients, including volumes and values of transactions;

- Quantify and explain time-sensitive payments; and

- Quantify and explain intraday credit provided.

Managing, Identifying and Valuing Collateral. The firm is expected to have and describe its capabilities to manage, identify and value the collateral that it receives from and posts to external parties and affiliates, including tracking collateral received, pledged, and available at the CUSIP level and measuring exposures.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy. The firm should have the capabilities to produce the following types of information, as applicable, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty,

maturity, and gross payable and receivable;

- Gross and net risk positions with internal and external counterparties;

- Guarantees, cross holdings, financial commitments and other transactions between material entities;

- Data to facilitate third-party valuation of assets and businesses, including risk metrics;

- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);

- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);

- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;

- Licenses and memberships to all exchanges and value transfer networks, including FMUs;

- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;

- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and

- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain robust arrangements to support the continuity of shared and outsourced services that support any identified critical operations or are material to the execution of the resolution strategy, including appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations

or are material to the execution of the resolution strategy. Examples may include personnel, facilities, systems, data warehouses, intellectual property, and counsel and consultants involved in the preparation for and filing of bankruptcy. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

The firm should: (A) maintain an identification of all shared services that support identified critical operations or are material to the execution of the resolution strategy; and (B) mitigate identified continuity risks through establishment of SLAs for all shared services supporting identified critical operations or are material to the execution of the resolution strategy. SLAs should fully describe the services provided and incorporate appropriate terms and conditions to: (A) prevent automatic termination upon certain resolution-related events; and (B) achieve continued provision of such services during resolution.

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the resolution strategy. Any of these services that cannot be promptly substituted should be identified in a firm's Plan. The firm should: (A) evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

VI. Legal Entity Rationalization

SPOE

Legal Entity Rationalization Criteria (LER Criteria). A firm should develop and implement legal entity rationalization criteria that support the firm's preferred resolution strategy and minimize risk to U.S. financial stability in the event of the firm's resolution. LER Criteria should consider the best alignment of legal entities and business lines to improve the firm's resolvability under different market conditions. LER Criteria should govern the firm's corporate structure and arrangements

between legal entities in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time. Specifically, application of the criteria should:

(A) Facilitate the recapitalization and liquidity support of material entities, as required by the firm's resolution strategy. Such criteria should include clean lines of ownership, minimal use of multiple intermediate holding companies, and clean funding pathways between the parent and material operating entities;

(B) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution of the firm, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(C) Adequately protect the subsidiary IDIs from risks arising from the activities of any nonbank subsidiaries of the firm (other than those that are subsidiaries of an IDI); and

(D) Minimize complexity that could impede an orderly resolution and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing its structure and operations on a continuous basis.

Finally, the Plan should include a description of the firm's legal entity rationalization governance process.

MPOE

Legal Entity Structure. A firm should maintain a legal entity structure that supports the firm's preferred resolution strategy and minimizes risk to U.S. financial stability in the event of the firm's failure. The firm should consider factors such as business activities; banking group structures and booking models and practices; and potential sales, transfers, or wind-downs during resolution. The Plan should describe how the firm's legal entity structure aligns core business lines and any identified critical operations with the firm's material entities to support the firm's resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI's subsidiary during resolution, including for the provision of shared services, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants.

The firm's corporate structure and arrangements among legal entities

should be considered and maintained in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

VII. Insured Depository Institution Resolution

MPOE

Least-cost requirement analysis. If the Plan includes a strategy that contemplates the separate resolution of a U.S. IDI that is a material entity, the Plan should explain how the resolution could be achieved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States while also complying with the statutory and regulatory requirements governing IDI resolution.

This explanation does not include an expectation that firms provide a complete least-cost analysis. A complete least-cost analysis would, for example, include a comparison of the preferred strategy for resolving an IDI that is a material entity against every other possible resolution method available for that IDI.

To explain how a firm's preferred strategy could potentially enable the FDIC to resolve the failed bank in a manner consistent with the FDIC's statutory least-cost requirement, the firm could instead compare the estimated costs to the DIF of the firm's preferred resolution strategy to a payout liquidation and, for strategies involving a BDI, explain how the inclusion or exclusion of uninsured deposits within the BDI would impact the estimated overall costs to the DIF.

Firms should address the following matters as applicable to their strategy:

- *Payout Liquidation:* If the Plan envisions a payout liquidation for the IDI, with or without use of a Deposit Insurance National Bank or a paying agent, the Plan should explain how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.

- *P&A Transaction:* If the Plan assumes a weekend P&A strategy, the plan should first demonstrate the ready availability of this option under severely adverse economic scenario, assuming that markets are functioning and competitors are in a position to take on business. The Plan may demonstrate a weekend P&A strategy is available by discussing evidence of several potential buyers supported by information

indicating that these potential buyers could reasonably be expected to have sufficient financial resources to complete the transaction in a severely adverse scenario and the expertise to incorporate the business of the failed bank. The plan should also address how such a merger can be completed with these potential acquirers considering any applicable approvals that would be required for the proposed transaction. Additionally, a P&A strategy should explain how it either (1) results in no loss to the DIF or (2) despite its resulting in a loss to the DIF, the loss is less than would be incurred through a payout liquidation.

- *All-Deposit BDI*: If the Plan contemplates a strategy involving an all-deposit BDI, the Plan should include an analysis that shows that the incremental estimated cost to the DIF of transferring all uninsured deposits to the BDI is offset by the preservation of franchise value and other benefits connected to the uninsured deposits (such as the franchise value derived from retaining full banking relationships).

- *BDI with Partial Uninsured Deposit Transfers*: A Plan may demonstrate the feasibility of a strategy involving a BDI that assumes (1) all insured deposits or (2) only a portion of uninsured deposits (e.g. an advance dividend to uninsured depositors for a portion of their deposit claim) by showing that the incremental estimated cost to the DIF of transferring the portion of uninsured deposits to the BDI is offset by the preservation of franchise value connected to those uninsured deposits (such as the franchise value derived from retaining full banking relationships).

In all cases, the Plan should discuss how the implementation of the Plan's resolution strategy, including the impact on any depositors whose accounts are not transferred in whole or in part to a BDI, would not be likely to create the risk of serious adverse effects on U.S. financial stability.

Valuation. Regardless of the strategy chosen, the Plan should demonstrate reasonable and well-supported assumptions that support the valuation of the failed IDI's assets and business franchise under the firm's preferred strategy that are drawn from comparable transactions or other inputs observable in the marketplace. A firm's franchise value is generally understood to be the value of the bank as an operating company relative to the value of the firm's individual assets minus its liabilities. In assessing the franchise value of the firm's business, the Plan could provide support through relevant inputs such as the revenue generated by the account relationships; the

efficiencies in administrative costs associated with servicing large deposits/ large relationships; the elimination of barriers to entry or the reduction in customer acquisition costs; growth history and prospects for the products or business activity; market trading or sales multiples; or any other factors the firm believes appropriate. Asset values should be representative of the bank's asset mix under the appropriate economic conditions and of sufficient distress as to result in failure.

Exit from BDI. A Plan should include a discussion of the eventual exit from the BDI. A Plan could support the feasibility of an exit strategy by, for example, describing an actionable process, based on historical precedent or otherwise supportable projections, that winds down certain businesses, includes the sale of assets and the transfer of deposits to one or multiple acquirers, or culminates in a capital markets transaction, such as an initial public offering or a private placement of securities.

VIII. Format and Structure of Plans; Assumptions

SPOE & MPOE

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for an orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative).

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other

informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.

2. The firm must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.²⁶ The firm should not submit a Plan that assumes the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act.

3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

4. The Plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which the Plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.

5. The resolution strategy may be based on an idiosyncratic event or action, including a series of compounding events. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

6. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (i.e., the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer.).

7. For a firm that adopts an MPOE resolution strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress.²⁷ In particular, the Plan should consider the likelihood that there would be a diminution of the firm's liquidity buffer in the stress

²⁶ 12 CFR 243.4(h)(2) and 381.4(h)(2).

²⁷ See Section 11(c)(5) of the FDI Act, codified at 11 U.S.C. 1821(c)(5), which details grounds for appointing the FDIC as conservator or receiver of an IDI.

period prior to filing for bankruptcy from high unexpected outflows of deposits and increased liquidity requirements from counterparties. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the covered company or its material legal entity subsidiaries prior to the final recognition of losses, the demonstration and description of material financial distress may also include depletion of capital. Therefore, the Plan should also consider the likelihood of the depletion of capital.

8. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

9. The Plan should support any assumptions that the firm will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy. To the extent the firm assumes use of the Discount Window, Federal Home Loan Banks, and/or other borrowings, the Plan should support that assumption with a discussion of the operational testing conducted to facilitate access in a stress environment, placement of collateral, and the amount of funding accessible to the firm. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections. The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the resolution strategy. It should also include statements of projected sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan should clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities. Material entities should encompass those entities, including foreign offices and branches, which are significant to the maintenance of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

1. Any U.S.-based or non-U.S. affiliates, including any branches, that are significant to the activities of an identified critical operation.

2. Subsidiaries or foreign offices whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

3. Subsidiaries or foreign offices that provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

4. Subsidiaries or foreign offices that are engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.

5. Subsidiaries or foreign offices engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

6. Subsidiaries or foreign offices holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the preferred strategy, and explain how the Plan addresses the actions and forbearances. The Plan should describe the consequences for the covered company's resolution strategy if specific actions in a non-U.S. jurisdiction were not taken, delayed, or forgone, as relevant.

IX. Public Section

SPOE & MPOE

The purpose of the public section is to inform the public's understanding of the firm's resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy).

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the agencies have identified in prior plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the Plan is not binding on a bankruptcy court or other resolution authority and that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.

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 August 9, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-18191 Filed 8-14-24; 8:45 am]

BILLING CODE 6210-01-P; 6714-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank

or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than August 30, 2024.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, NY 10045-0001. Comments can also be sent electronically to comments.applications@ny.frb.org:

1. *The D'Angelo Family Trust, with George D'Angelo and Dahlia D'Angelo, as trustees, all of Old Greenwich, Connecticut*; to acquire voting shares of First Greenwich Financial, Inc., and thereby indirectly acquire voting shares of First Bank of Greenwich, both of Cos Cob, Connecticut.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024-18309 Filed 8-14-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-3028]

Cubist Pharmaceuticals LLC; Withdrawal of Approval of a New Drug Application for ENTEREG (Alvimopan) Capsules, 12 Milligrams

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of a new drug application (NDA) for ENTEREG (alvimopan) Capsules, 12 milligrams (mg), held by Cubist Pharmaceuticals LLC, 126 East Lincoln Ave., Rahway, NJ 07065 (Cubist). Cubist notified the Agency in writing that the drug product was no longer marketed and requested that the approval of the application be withdrawn.

DATES: Approval is withdrawn as of September 16, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993-0002, 301-796-3137, Kimberly.Lehrfeld@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Cubist has informed FDA that ENTEREG (alvimopan) Capsules, 12 mg is no longer marketed and has requested that FDA withdraw approval of NDA 021775 under the process in § 314.150(c) (21 CFR 314.150(c)). Cubist has also, by its request, waived its opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Therefore, approval of NDA 021775, and all amendments and supplements thereto, is hereby withdrawn as of September 16, 2024. Approval of the entire application is withdrawn, including any strengths and dosage forms included in the application but inadvertently missing from this notice. Introduction or delivery for introduction into interstate commerce of ENTEREG (alvimopan) Capsules, 12 mg without an approved NDA violates sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)). Any ENTEREG (alvimopan) Capsules, 12 mg, that is in inventory on September 16, 2024 may continue to be dispensed until the inventories have been depleted or the drug products have

reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: August 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-18269 Filed 8-14-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-1090]

Ryan Stabile: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debaring Ryan Stabile for a period of 15 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Stabile was convicted of three felony counts under Federal law: one count of conspiracy and two counts of introduction of misbranded drugs with intent to defraud/mislead. The factual basis supporting Mr. Stabile's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Stabile was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of June 7, 2024 (30 days after receipt of the notice), Mr. Stabile had not responded. Mr. Stabile's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable August 15, 2024.

ADDRESSES: Any application by Mr. Stabile for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted at any time as follows:

Electronic Submissions

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on <https://www.regulations.gov>.

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

Written/Paper Submissions

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

Instructions: All applications must include the Docket No. FDA-2024-N-1090. Received applications 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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. 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 240-402-8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On February 14, 2024, Mr. Stabile was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the District of Massachusetts when the court accepted his plea of guilty and entered judgment against him for the offenses of conspiracy in violation of 18 U.S.C. 371, and two counts of introduction of misbranded drugs with intent to defraud/mislead in violation of 21 U.S.C 331(a) and 333(a)(2) (sections 301(a) and 303(a)(2) of the FD&C Act). The underlying facts supporting the conviction are as follows: As contained in the indictment and plea agreement, Mr. Stabile owned the companies Ultra Vulgar Media, LLC and Supplements for Work (S4W). S4W sold nootropics, a class of drugs and supplements claiming to enhance mood and cognitive functioning. Tianeptine, when sold as a mood enhancer or as a nootropic, or when otherwise intended to treat or mitigate a disease or to affect the structure or any function of the human body, is a drug within the meaning of section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)), and a prescription drug within the meaning of section 503(b)(1) of the FD&C Act (21 U.S.C. 353(b)(1)). A drug is misbranded under section 503(b)(1) of the FD&C Act if it is a prescription drug dispensed

without the prescription of a practitioner licensed by law to administer such drugs. A drug is also misbranded under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) if its labeling does not bear adequate directions for use.

Mr. Stabile and S4W operated several websites where Mr. Stabile knowingly sold various forms of tianeptine, which were not approved by the FDA. Although Mr. Stabile's websites displayed statements that the tianeptine being sold was for research purposes only, and not intended for human consumption, Mr. Stabile sold it to customers for those customers' personal use. Mr. Stabile sold tianeptine without requiring the prescription of a practitioner licensed by law to administer prescription drugs. In addition, the tianeptine Mr. Stabile sold was not labeled with adequate directions for use. Mr. Stabile and his coconspirators smuggled the tianeptine into the United States from a supplier in China and had the supplier send shipments to Mr. Stabile or his coconspirators at several post office boxes Mr. Stabile controlled. Mr. Stabile and his coconspirators gave his supplier in China instructions on steps they could take to mislabel packages of tianeptine in order to evade U.S. Customs and Border Protection (CBP) detection. Through Mr. Stabile's illegal smuggling and distribution of tianeptine, he earned at least \$1,833,922.13.

Beginning in December 2017, some of the packages of tianeptine Mr. Stabile and his coconspirators imported were intercepted and seized by CBP. In an effort to have CBP release the packages, Mr. Stabile and his coconspirators filed a petition to have a package of tianeptine released, which falsely represented that the package was mislabeled and that the tianeptine was for research and development only.

FDA sent Mr. Stabile, by certified mail, on May 3, 2024, a notice proposing to debar him for a 15-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Stabile's felony convictions under Federal law for conspiracy in violation of 18 U.S.C. 371, and two counts of introduction of misbranded drugs with intent to defraud/mislead in violation of sections 301(a) and 303(a)(2) of the FD&C Act, were for conduct relating to the importation of any drug or controlled substance into the United States because Mr. Stabile illegally imported tianeptine from China and then distributed tianeptine in

interstate commerce. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Stabile's offense and concluded that the offense warranted the imposition of a 15-year period of debarment.

The proposal informed Mr. Stabile of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Stabile received the proposal and notice of opportunity for a hearing on May 8, 2024. Mr. Stabile failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Ryan Stabile has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 15 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Stabile is debarred for a period of 15 years from importing or offering for import any drug into the United States, effective (see DATES). Pursuant to section 301(cc) of the FD&C Act, the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Stabile is a prohibited act.

Dated: August 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-18268 Filed 8-14-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2024-E-0187, FDA-2024-E-0188, FDA-2024-E-0189, FDA-2024-E-0190, and FDA-2024-E-0191]

Determination of Regulatory Review Period for Purposes of Patent Extension; MIEBO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for MIEBO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 15, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 11, 2025. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

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 October 15, 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 Nos. FDA-2024-E-0187, FDA-2024-E-0188, FDA-2024-E-0189, FDA-2024-E-0190, and FDA-2024-E-0191 for "Determination of Regulatory Review Period for Purposes of Patent Extension; MIEBO." 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, MIEBO (perfluorohexyloctane). MIEBO is indicated for treatment of the signs and symptoms of dry eye disease. Subsequent to this approval, the USPTO received patent term restoration applications for MIEBO (U.S. Patent Nos. 10,058,615; 10,369,117; 10,449,164; 10,576,154; 11,357,738) from Novaliq GmbH, and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of MIEBO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MIEBO is 2,018 days. Of this time, 1,693 days occurred during the testing phase of the regulatory review period, while 325 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 9, 2017. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on November 9, 2017.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 28, 2022. FDA has verified the applicant’s claim that the new drug application (NDA) for MIEBO (NDA 216675) was initially submitted on June 28, 2022.

3. *The date the application was approved:* May 18, 2023. FDA has verified the applicant’s claim that NDA 216675 was approved on May 18, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations

of the actual period for patent extension. In its applications for patent extension, this applicant seeks 231 days, 748 days, 814 days, 853 days, or 1,024 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-18265 Filed 8-14-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-0008]

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Science Board to the Food and Drug Administration. The Science Board provides advice to the Commissioner of Food and Drugs and other appropriate officials on specific, complex scientific

and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments, including in regulatory science, input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs. The meeting will be open to the public.

DATES: The meeting will be held virtually on October 7, 2024, from 9 a.m. to 2 p.m. Eastern Time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FOR FURTHER INFORMATION CONTACT:

Rakesh Raghuvanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993, 301-796-4769, rakesh.raghuvanshi@fda.hhs.gov; 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 Agency'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 coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The Science Board to FDA will receive an update from the New Alternative Methods subcommittee and will hear details about FDA's reorganization scheduled for implementation on October 1, 2024, that includes significant updates to the Office of the Chief Scientist and the creation of a unified Human Foods Program.

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 <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

The meeting will include slide presentations with audio components to allow the presentation of materials 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 committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before September 30, 2024, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 12 p.m. and 1 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, and an indication of the approximate time requested to make their presentation on or before September 20, 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. The contact person will notify interested persons regarding their request to speak by September 23, 2024.

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 Rakesh Raghuvanshi (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](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. 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 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-18263 Filed 8-14-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-3379]

Agency Information Collection Activities; Proposed Collection; Comment Request; Laboratory Accreditation for Analyses of Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's Laboratory Accreditation for Analyses of Foods (LAAF).

DATES: Either electronic or written comments on the collection of information must be submitted by October 15, 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 October 15, 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-3379 for "Laboratory Accreditation for Analyses of Food." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3794, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Laboratory Accreditation for Analysis of Foods—21 CFR Part 1, Subpart R

OMB Control Number 0910-0898—Extension

This information collection helps to support implementation of FDA's statutory and regulatory authority governing our laboratory accreditation for analysis of foods program under Section 422 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 350k) and 21 CFR part 1, subpart R. FDA has statutory authority to establish a program for the testing of food by accredited laboratories; to establish a publicly available registry of recognized accreditation bodies and laboratories recognized by an accreditation body; and to require reports of any changes that would affect the recognition of such accreditation body or the accreditation of such laboratory.

The regulations require respondents to maintain and electronically submit certain test results, reports, notifications, and other records to FDA. The submissions can be made through the FURLS Laboratory Accreditation for Analyses of Foods Program portal (FDA Industry Systems). User guides for the Accreditation Bodies and Accredited Laboratories can be found at the following links: <https://www.fda.gov/media/156097/download?attachment> and <https://www.fda.gov/media/161685/download?attachment>. The laboratory accreditation program helps fulfill

FDA's mandate to ensure the safety of the U.S. food supply and protect U.S. consumers by administering appropriate oversight of certain food testing that is of importance to public health. It also helps ensure that the testing is done in accordance with appropriate model standards, which will help produce consistently reliable and valid test results. You may access additional information about the laboratory accreditation program at: [https://](https://www.fda.gov/food/food-safety-modernization-act-fsma/fda-recognized-accreditation-bodies-laboratory-accreditation-analyses-foods-laaf-program)

www.fda.gov/food/food-safety-modernization-act-fsma/fda-recognized-accreditation-bodies-laboratory-accreditation-analyses-foods-laaf-program. The public registry is available at <https://datadashboard.fda.gov/ora/fd/laaf.htm>.

Respondents to the information collection are accreditation bodies seeking recognition from FDA, recognized accreditation bodies, laboratories seeking accreditation from

recognized accreditation bodies, and accredited laboratories. Participation in this program is voluntary for laboratories and accreditation bodies; however, only recognized accreditation bodies would be able to accredit laboratories to conduct food testing as specified in the regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN^{1 2}

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§§ 1.1113 and 1.1114; Accreditation bodies (ABs) application for recognition (one-time submission).	8	44	352	2.2068 (2 hours and 12 minutes).	776.8
§§ 1.1113 and 1.1114; ABs—application for renewal of recognition.					
§ 1.1123; ABs—reports, notifications, and documentation requirements.					
§ 1.1116(a) and (b); ABs—notices of intent to relinquish, records custodian.	1	3	3	3	9
§§ 1.1138 and 1.1139; laboratories—submission of application for LAAF-accreditation (one-time submission).	160	63.5	10,160	1.8051 (1 hour and 49 minutes).	18,340
§§ 1.1149(a) and 1.1152(c)(1), (2); laboratories—submission of sampling plan, sample collection report, and sampler qualifications.					
§§ 1.1152(d) and 1.1153(a); laboratories—qualification to submit abridged analytical reports (one-time submission).					
§ 1.1153; laboratories—abridged analytical reports submissions.					
§ 1.1149(c); laboratories—advance notice of sampling submissions.					
§ 1.1152(f); laboratories—immediate notification.					
§ 1.1140(a); laboratories—notices of intent to relinquish, records custodian.	2	3	6	1	6
§ 1.1152(c)(4) and (5); laboratories—validation and verification studies submissions.	50	5	250	1.5 (1 hour and 30 minutes)	375
§§ 1.1142; 1.1171; 1.1173; and 1.1174; requests in response to FDA action.	1	1	1	1	1
Total			10,772	.....	19,508

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Totals may not sum due to rounding.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN^{1 2}

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 1.1113; recordkeeping associated with ISO/IEC 17011:2017.	8	2	8	22	176
§ 1.1124; ABs—additional recordkeeping requirements a recognized accreditation body must maintain, for 5 years after the date of creation of the records, records created while it is recognized demonstrating its compliance with this subpart.					
§ 1.1138; laboratories—becoming accredited to ISO/IEC 17025:2017 (one-time); Laboratories adding ISO 17025 to become LAAF-accredited.	9	1	9	91.06 (91 hours and 4 minutes).	820

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ^{1 2}—Continued

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 1.1138; laboratories—maintaining ISO/IEC 17025: 2017 accreditation.	160	2	320	450.765 (450 hours and 46 minutes).	144,245
§ 1.1154; laboratories—additional record-keeping requirements; a LAAF-accredited laboratory must maintain, for 5 years after the date of creation, records created and received while it is LAAF-accredited that relate to compliance with this subpart.					
Total .....	.....	.....	345	.....	145,241

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Totals may not sum due to rounding.

The burden we attribute to reporting and recordkeeping activities is assumed to be distributed among the individual elements of the respective information collection activities. Although we have not received a notice of intent to relinquish records since the last approval of this information collection, we include one response for the purpose of estimating burden.

New information technology applications have more accurately calculated the number of food testing laboratories seeking accreditation and as a result the number of respondents to the information collection decreased (from 170 respondents in the currently approved collection to 160 respondents). Consequently, we have adjusted our burden estimate, which results in a decrease of 227 responses and 9,303 burden hours from the currently approved information collection.

Dated: August 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–18277 Filed 8–14–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Richard L. Eckert, Ph.D. (Respondent), who was a Professor, Chair of the Department of Biochemistry and Molecular Biology, and Deputy Director of the University of Maryland and Stewart Greenebaum Comprehensive Cancer Center, University of Maryland,

Baltimore (UMB). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Cancer Institute (NCI), National Institutes of Health (NIH), grants R01 CA211909, R01 CA184027, R01 CA131074, R01 CA131064, R01 CA092201, R01 CA109196, P30 CA134274, and P30 CA043703, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), NIH, grants R21 AR065266, R01 AR046494, R01 AR053851, R01 AR060388, P30 AR039750, R01 AR041456, R01 AR049713, and R01 AR045357, National Eye Institute (NEI), NIH, grants P30 EY011373 and T32 EY007157, and National Institute of General Medical Sciences (NIGMS), NIH, grant R01 GM043751. The questioned research was included in two (2) grant applications submitted for PHS funds, specifically R01 CA233450–01 and R01 CA233450–01A1 submitted to NCI, NIH. The administrative actions, including debarment for a period of eight (8) years, were implemented beginning on August 1, 2024, and are detailed below.

FOR FURTHER INFORMATION CONTACT:

Sheila Garrity, JD, MPH, MBA, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Richard L. Eckert, Ph.D., University of Maryland, Baltimore (UMB): Based on the report of an investigation conducted by UMB and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Richard L. Eckert (Respondent), former Professor, Chair of the Department of Biochemistry and Molecular Biology, and Deputy Director of the University of Maryland and Stewart Greenebaum

Comprehensive Cancer Center, UMB, engaged in research misconduct in research supported by PHS funds, specifically NCI, NIH, grants R01 CA211909, R01 CA184027, R01 CA131074, R01 CA131064, R01 CA092201, R01 CA109196, P30 CA134274, and P30 CA043703, NIAMS, NIH, grants R21 AR065266, R01 AR046494, R01 AR053851, R01 AR060388, P30 AR039750, R01 AR041456, R01 AR049713, and R01 AR045357, NEI, NIH, grants P30 EY011373 and T32 EY007157, and NIGMS, NIH, grant R01 GM043751. The questioned research was included in two (2) grant applications submitted for PHS funds, specifically R01 CA233450–01 and R01 CA233450–01A1 submitted to NCI, NIH.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly falsifying and/or fabricating data in the following thirteen (13) published papers and two (2) PHS grant applications:

- Inhibition of YAP function overcomes BRAF inhibitor resistance in melanoma cancer stem cells. *Oncotarget*. 2017 Nov 22; 8(66):110257–110272. doi: 10.18632/oncotarget.22628 (hereafter referred to as “*Oncotarget 2017*”).

- The Bmi-1 helix-turn and ring finger domains are required for Bmi-1 antagonism of (-) epigallocatechin-3-gallate suppression of skin cancer cell survival. *Cell Signal*. 2015 Jul;27(7):1336–44. doi: 10.1016/j.cellsig.2015.03.021 (hereafter referred to as “*Cell Signal 2015*”). Erratum in: *Cell Signal*. 2021 Jun;82:109952. doi: 10.1016/j.cellsig.2021.109952.

- P38δ regulates p53 to control p21Cip1 expression in human epidermal keratinocytes. *J Biol Chem*. 2014 Apr 18; 289(16):11443–11453. doi: 10.1074/jbc.M113.543165 (hereafter referred to as “*J Biol Chem. 2014*”).

- Methylosome protein 50 and PKC δ /p38 δ protein signaling control keratinocyte proliferation via opposing effects on p21Cip1 gene expression. *J Biol Chem.* 2015 May 22;290(21):13521–30. doi: 10.1074/jbc.M115.642868 (hereafter referred to as “*J Biol Chem.* 2015”).
 - Transamidase site-targeted agents alter the conformation of the transglutaminase cancer stem cell survival protein to reduce GTP binding activity and cancer stem cell survival. *Oncogene.* 2017 May 25;36(21):2981–2990. doi: 10.1038/onc.2016.452 (hereafter referred to as “*Oncogene* 2017”). Erratum in: *Oncogene.* 2021 Apr;40(13):2479–2481. doi: 10.1038/s41388–021–01709–5.
 - Suppression of AP1 transcription factor function in keratinocyte suppresses differentiation. *PLoS One.* 2012;7(5):e36941. doi: 10.1371/journal.pone.0036941 (hereafter referred to as “*PLoS One* 2012”). Retraction in: *PLoS One.* 2021 Feb 11;16(2):e0247222. doi: 10.1371/journal.pone.0247222.
 - Suppressing AP1 factor signaling in the suprabasal epidermis produces a keratoderma phenotype. *J Invest Dermatol.* 2015 Jan;135(1):170–180. doi: 10.1038/jid.2014.310 (hereafter referred to as “*J Invest Dermatol.* 2015”). Erratum in: *J Invest Dermatol.* 2021 Jul; 141(7):1862. doi: 10.1016/j.jid.2021.05.008.
 - Protein kinase C (PKC) delta suppresses keratinocyte proliferation by increasing p21(Cip1) level by a KLF4 transcription factor-dependent mechanism. *J Biol Chem.* 2011 Aug 19; 286(33):28772–28782. doi: 10.1074/jbc.M110.205245 (hereafter referred to as “*J Biol Chem.* 2011”).
 - The Bmi-1 polycomb protein antagonizes the (-)-epigallocatechin-3-gallate-dependent suppression of skin cancer cell survival. *Carcinogenesis.* 2010 Mar;31(3):496–503. doi: 10.1093/carcin/bgp314 (hereafter referred to as “*Carcinogenesis* 2010”).
 - PKC-delta and -eta, MEKK-1, MEK-6, MEK-3, and p38-delta are essential mediators of the response of normal human epidermal keratinocytes to differentiating agents. *J Invest Dermatol.* 2010 Aug;130(8):2017–30. doi: 10.1038/jid.2010.108 (hereafter referred to as “*J Invest Dermatol.* 2010”).
 - Sulforaphane suppresses PRMT5/MEP50 function in epidermal squamous cell carcinoma leading to reduced tumor formation. *Carcinogenesis.* 2017 Aug 1;38(8):827–836. doi: 10.1093/carcin/bgx044 (hereafter referred to as “*Carcinogenesis* 2017”). Erratum in: *Carcinogenesis.* 2023 Oct 20;44(7):626–627. doi: 10.1093/carcin/bgad044.
 - Localization of the TIG3 transglutaminase interaction domain and demonstration that the amino-terminal region is required for TIG3 function as a keratinocyte differentiation regulator. *J Invest Dermatol.* 2008 Mar;128(3):517–29. doi: 10.1038/sj.jid.5701035 (hereafter referred to as “*J Invest Dermatol.* 2008”).
 - Transglutaminase interaction with $\alpha 6/\beta 4$ -integrin stimulates YAP1-Dependent Δ Np63 α stabilization and leads to enhanced cancer stem cell survival and tumor formation. *Cancer Res.* 2016 Dec 15;76(24):7265–7276. doi: 10.1158/0008–5472.CAN–16–2032 (hereafter referred to as “*Cancer Res.* 2016”).
 - R01 CA233450–01, “Sulforaphane suppression of PRMT5 epigenetics to reduce cancer stem cell survival,” submitted to NCI, NIH, on 01/26/2018, administratively withdrawn by NCI on 07/01/2020
 - R01 CA233450–01A1, “Sulforaphane suppression of PRMT5 epigenetics to reduce cancer stem cell survival,” submitted to NCI, NIH, on 10/30/2018, administratively withdrawn by NCI on 03/01/2021
- Specifically, ORI found that Respondent intentionally, knowingly, or recklessly falsified and/or fabricated Western blot image data and microscopy image data by:
- using images representing unrelated experiments, with or without manipulating them, and falsely relabeling them as data representing different proteins and/or experimental results as follows:
 - In Figure 3F of *Oncotarget* 2017, the bands in rows 4 and 7 of the A375–PLX–R right-side panel, representing expression of TAZ–P (row 4) and ERK1/2 (row 7), are falsified and/or fabricated by using unrelated bands from a source image representing different proteins in an unrelated experiment
 - In Figure 2B of *J Biol Chem.* 2014, the bands in row 2 in the top panel, representing MEK3 expression in normal human keratinocytes (KERn) infected with Ad5–EV, Ad5–MEK3, and Ad5–PKC δ (from left to right), are falsified and/or fabricated by compiling unrelated bands from a source image representing p44 expression in an unrelated experiment
 - In Figure 2B of *J Biol Chem.* 2014, the bands in row 3 in the top panel, representing p38 δ expression in KERn infected with Ad5–EV, Ad5–MEK3, and Ad5–PKC δ (from left to right), are falsified and/or fabricated by compiling unrelated bands from a source image representing β -actin expression in an unrelated experiment
 - In Figure 1B of *J Biol Chem.* 2015, the bands in rows 1–3 in the upper panel, representing expression of MEP50 (row 1), FLAG (row 2), and β -actin (row 3), are falsified and/or fabricated by compiling different bands from source images representing expression of different proteins in unrelated experiments
 - In Figure 7C of *J Biol Chem.* 2011, the bands in row 2 in the right panel, representing p21^{Cip1} expression under treatments of Control-siRNA or hKLF4-siRNA, are falsified and/or fabricated by using unrelated bands from a source image representing p21 expression in cells treated with Ad5–EV or Ad5–PKC δ
 - In Figure 1B of *PLoS One* 2012, the bands in row 1, representing TAM67–FLAG expression, are falsified and/or fabricated by using unrelated bands from a source image representing CyclinA expression
 - In Figure 2C of *PLoS One* 2012, the bands in rows 3 and 4, representing negative expression of junB (row 3) and junD (row 4), are falsified and/or fabricated by using blank areas that were far from the target molecular weight in a source image
 - In Figure 6a of *J Invest Dermatol.* 2015, the bands 1–4 in the bottom row, representing β -Actin expression under treatments of Loricrin, TAM67-rTA, and/or Dox, are falsified and/or fabricated by:
 - > using 3 bands from a source image representing β -actin expression in an unrelated experiment for bands 1–3
 - > duplicating band 3 to create band 4
 - In Figure 1B of *Carcinogenesis* 2010, the bands in rows 1, 2, and 5 in the left panel, representing expression of Ezh2 (row 1), H3 K27–3M (row 2), and β -actin (row 5) in two different cell types treated with 60 μ M EGCG, are falsified and/or fabricated by using unrelated bands from a source image representing expression of the same proteins under an unrelated experiment
 - In *Carcinogenesis* 2010, the bands in row 3 in the right panel of Figure 1B and the bands 1–5 in row 3 in the upper panel of Figure 2A are falsified and/or fabricated by using unrelated bands from a source image. Specifically:
 - > the bands 1–4 in the upper panel of Figure 2A, representing Ezh2 expression treated with 0, 10, 20, and 40 μ M EGCG are used from the bands representing the same protein

- but treated with different doses of EGCG in the source image
- > the bands 1 and 5 in the upper panel of Figure 2A, representing Ezh2 expression, are reused and relabeled in the bands in Figure 1B, row 3 in the right panel to represent Suz12 expression
 - In Figure 4A of *Carcinogenesis* 2010, the bands in rows 6 and 7, representing expression of cyclin E (row 6) and cyclin A (row 7) in cells treated with 60 μ m EGCG plus other reagents, are falsified and/or fabricated by reusing and relabeling the bands from a source image representing cyclin E expression in cells treated with 150 μ m EGCG plus other reagents
 - In Figure 7a of *J Invest Dermatol.* 2008:
 - > bands 1 and 5 (including the empty lanes) in the COX4 panel, representing expression of COX4 treated with EV (band 1) and TIG3 1–134 (band 5), are falsified and/or fabricated by reusing a band labeled as TGI C377 sample 3 from the primary data
 - > band 8 (including the empty lanes) in the Cytochrome c panel, representing expression of Cytochrome c treated with TIG3 124–164, is falsified and/or fabricated by using an unrelated band from unknown source
 - reusing the same source images, with or without manipulating them to conceal their similarities, and falsely relabeling them as data representing different proteins or experimental results as follows:
 - In Figure 2 of *Cell Signal* 2015, two control samples in the bottom panel, representing cells in tAd5–FLAG–hBmiARF condition (left) and tAd5–FLAG–hBmi-1 Δ HT condition (right), are reused from different fields of a same source image
 - In *J Biol Chem.* 2014, Figure 2B, bands 2 and 3 in row 1 of 3rd panel, representing ATF2–P expression, and Figure 6C, bands 1 and 2 in row 2 of the 3rd panel, representing p38 α expression, are identical
 - In *J Biol Chem.* 2014, Figure 2C, bands 1 and 3 in row 3 of the upper panel, representing MEK3 expression, and Figure 6C, bands 1 and 2 in row 2 of the top panel, representing p38 α expression, are identical
 - In Figure 3C of *Oncogene* 2017, band 9, representing TG2 expression treated with total CP4d, is falsified and/or fabricated by reusing and relabeling band 3, representing TG2 expression treated with NC9 (total) in the same figure
 - In *Carcinogenesis* 2010, Figure 3C, the bands in row 2, representing β -actin expression, and Figure 4C, the bands in row 3, representing procaspase 9 expression, are identical
 - In Figure 7b of *J Invest Dermatol.* 2010, the bands in the upper panel, representing expression of MEKK1 and its β -Actin control, are falsified and/or fabricated by reusing and relabeling the bands in the middle panel, representing expression of MEK6 and its
 - β -Actin control in the same figure
 - In Figure 1D of *Carcinogenesis* 2017, Figure 5B of R01 CA233450–01 and Figure 3B of R01 CA233450–01A1, the bands in rows 3 in both the upper and bottom panels, representing H4 expression, are falsified and/or fabricated by reusing and relabeling the same source images that are used for the bands in row 2 in Figure 3J of *Carcinogenesis* 2017, representing PRMT5 expression
 - In Figure 1c of *J Invest Dermatol.* 2008, the background area between molecular weight 20–45 in the TIG3 (41–164) lanes of the right panel is falsified and/or fabricated by reusing and relabeling the background area of TIG3 WT group with flipping
 - In Figure 1c of *J Invest Dermatol.* 2008, the bands in lanes 7–8 of the left panel, representing expression of TIG3 monomer under TIG3 (100–164) condition, are falsified and/or fabricated by reusing and relabeling the bands in lanes 9–10 of the left panel, representing expression of TIG3 monomer under TIG3 (41–164) condition
 - In *Cancer Res.* 2016, bands 2–3 in the bottom row in Figure 3C, representing β -actin expression treated with Integrin α 6-siRNA (band 2) and Integrin β 4-siRNA (band 3), and bands 1–2 in the bottom row in Figure 3D, representing β -actin expression treated with Control-siRNA (band 1) and FAK-siRNA (band 2), are identical
 - manipulating the data to exclude the band from a source image to falsely show a favorable result in Figure 2C of *PLoS One* 2012 by erasing the band in the left lane of the top row to falsely represent a lack of TAM67–FLAG expression
 - Respondent entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed to the following:
 - (1) Respondent will exclude himself voluntarily for a period of eight (8) years beginning on August 1, 2024 (the “Exclusion Period”) from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement or procurement transactions referred to as “covered transactions” in 2 CFR parts 180 and 376 (collectively the “Debarment Regulations”).
 - (2) During the Exclusion Period, Respondent will not apply for, permit his name to be used on an application for, receive, or be supported by funds of the United States Government and its agencies made available through contracts, subcontracts, or covered transactions.
 - (3) During the Exclusion Period, Respondent will exclude himself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.
 - (4) Respondent will request that the following papers be corrected or retracted:
 - *Oncotarget* 2017 Nov 22;8(66):110257–110272. doi: 10.18632/oncotarget.22628.
 - *J Biol Chem.* 2014 Apr 18;289(16):11443–11453. doi: 10.1074/jbc.M113.543165.
 - *J Biol Chem.* 2015 May 22;290(21):13521–30. doi: 10.1074/jbc.M115.642868.
 - *J Biol Chem.* 2011 Aug 19;286(33):28772–28782. doi: 10.1074/jbc.M110.205245.
 - *Carcinogenesis* 2010 Mar;31(3):496–503. doi: 10.1093/carcin/bgp314.
 - *J Invest Dermatol.* 2008 Mar; 128(3):517–29. doi: 10.1038/sj.jid.5701035.
 - *J Invest Dermatol.* 2010 Aug;130(8):2017–30. doi: 10.1038/jid.2010.108.
 - *Cancer Res.* 2016 Dec 15;76(24):7265–7276. doi: 10.1158/0008-5472.CAN-16-2032.

Respondent will copy ORI and the Research Integrity Officer at UMB on the correspondence with the journals.

Dated: August 12, 2024.

Sheila Garrity,
 Director, Office of Research Integrity, Office of the Assistant Secretary for Health.
 [FR Doc. 2024–18289 Filed 8–14–24; 8:45 am]
BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Substance Abuse and Mental Health Services Administration****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: National Survey on Drug Use and Health (OMB No. 0930–0110)

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to provide estimates of substance use and mental illness at the national, state, and substate levels. NSDUH data also help to identify the extent of substance use and mental illness among different subgroups, estimate trends over time, and determine the need for treatment services. The results are used by SAMHSA, the Office of National Drug

Control Policy (ONDCP), Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2025 NSDUH, SAMHSA is proposing to change the name of the study to the National Household Survey on Behavioral Health (NHSBH) to emphasize the inclusion of the long-standing mental health-related survey elements and to clarify for key stakeholders the full content of the survey's questions and data. The proposed name change will facilitate participant, researcher, and public understanding that the NSDUH is focused on both drug use but also mental health. The current name of the survey does not specifically capture questionnaire items across substance use and mental health, both separately and as co-occurring conditions. In addition, the name change will better align the survey with SAMHSA's mission.

The survey's name is currently well recognized by those in the community, states, and academia, and this recognition comes from the quality of the established information provided. The continuing excellence of the information provided is anticipated to re-establish the recognition of the survey with the new name. It is anticipated that changing the name of

the survey will highlight, in addition to substance, mental health components.

SAMHSA is committed to addressing any concerns with a name change that may lead to confusion and/or misperception among some stakeholders and the general public, which could affect participation in the survey, misinterpretation of changes with the survey's content or purpose, or difficulty locating the pertinent information about the study's results. Nonetheless, these potential stakeholder responses and challenges will be addressed by emphasizing the significance of a name that reflects the complete content of the survey. A new name may also facilitate discussions on substance use and co-occurring mental health disorders.

Efforts will be made to promote, market, and educate about the well-established quality and applicability of the survey results. These efforts may spark enhanced interest in the survey and the uptake of the results in publications and reports.

As with all NSDUH/NHSDA¹ surveys conducted since 1999, the sample size of the NSDUH main study for 2025 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate for the NSDUH main study is shown below in Table 1.

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2025 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	285,894	1	285,894	0.083	23,729
Interview	67,507	1	67,507	1.008	68,047
Screening Verification	6,004	1	6,004	0.067	402
Interview Verification	7,088	1	7,088	0.067	475
Total	366,493	.....	366,493	.....	92,653

Mental Illness Calibration Study

In addition, the Mental Illness Calibration Study (MICS) will continue to be embedded within the NSDUH main study for the remainder of 2024 to recalibrate the estimates of serious mental illness (SMI) for the NSDUH using the Diagnostic and Statistical Manual of Mental Disorders (DSM), fifth edition (DSM–5) criteria published by the American Psychiatric Association (APA). The 2023 and 2024 MICS will be sampled from the main study NSDUH

using completed mental health items as screeners.

During MICS data collection from January 2023 through December 2024, approximately 17,180 NSDUH adult main study interview respondents (aged 18+) will be selected for a follow-up clinical interview at the end of the main study interview in order to produce a final sample size of at least 4,000 adult MICS follow-up clinical interviews (2,000 interviews per year). These follow-up clinical interviews will be conducted virtually via Zoom (video and/or phone) within four weeks

following the NSDUH main study interview using the NetSCID, a computerized version of the Structured Clinical Interview for DSM–5 (SCID) that calculates skip logic in real-time based on responses.

Many of the procedures and protocols in the MICS are based upon those previously employed as part of the 2008–2012 NSDUH Mental Health Surveillance Study (approved as an add-on to NSDUH under OMB No. 0930–0110). The total annual burden for the 2023 and 2024 MICS was approved

¹ Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse (NHSDA).

under previous NSDUH ICRs (OMB No. 0930–0110).

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.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–18250 Filed 8–14–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, SAMHSA will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including leveraging automated data collection techniques or other forms of information technology.

Proposed Project: Revision to the Community Mental Health Services Block Grant and Substance Use Prevention, Treatment, and Recovery Services Block Grant FY 2026–2027 Plan and Report Guide (OMB No. 0930–0168)

SAMHSA is requesting approval from the Office of Management and Budget (OMB) for a revision of the 2026–2027 Community Mental Health Services Block Grant (MHBG) and Substance Use

Prevention, Treatment, and Recovery Services Block Grant (SUPTRS) Application Plan and Report Guide.

Currently, the SUPTRS BG and the MHBG differ on a number of their practices (e.g., data collection at individual or aggregate levels) and statutory authorities (e.g., method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these block grants have had different approaches to application requirements and reporting. To compound this variation, states have different structures for accepting, planning, and accounting for the block grants and the prevention set aside within the SUPTRS BG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by block grant and by State.

SAMHSA has conveyed that block grant funds must be directed toward four purposes: (1) to fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare, or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and indicated prevention activities and services that align with SAMHSA's six prevention strategies; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis.

States will need help to meet future challenges associated with the implementation and management of an integrated physical health, mental health, and addiction service system. SAMHSA has established standards and expectations that will lead to an improved system of care for individuals with or at risk of mental and substance use disorders. Therefore, this application package continues to fully exercise SAMHSA's existing authority regarding states, U.S. territories, freely associated states, and the Red Lake Band of Chippewa Indians' (subsequently referred to as “states”) use of block grant funds as they fully integrate behavioral health services into the broader health care continuum.

Consistent with previous applications, the FY 2026–2027 application has required sections and

other sections where additional information is requested. The FY 2026–2027 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, an executive summary, and funding agreements and certifications. In addition, SAMHSA is requesting information on key areas that are critical to the states' success in addressing health care equity. Therefore, as part of this block grant planning process, states should identify promising or effective strategies as well as technical assistance needed to implement the strategies identified in their plans for FYs 2026 and 2027.

SAMHSA has made changes to the Block Grant Plan and Report requirements for FFY 2026 and 2027. These changes are necessary to ensure that funds are spent in an appropriate and timely manner. Adjustments were made to pre-existing tables in the plan and report.

Proposed revisions for substance use disorder treatment services in the FY 26–27 SUPTRS BG Plan and Report include revisions related to removal of stigmatizing language, with the deletion of the term ‘*abuse*’, and replacement with the term ‘*use*’, per the Consolidated Appropriations Act, 2023. The Plan and Report also include the universal adoption of ‘*Recovery Support Services*’ as a stand-alone category for SUPTRS BG Plan and Report tables. These changes affect Plan Tables 1, 2b, 4b, and 6b, and Report Tables 1, 2, 4, 6, 7.

Editorial and minor stylistic changes have been made to tables and language. Footnotes have been revised that define the COVID–19 and ARP Supplemental Funding expenditure periods, including the addition of explicit instructions on the second No Cost Extension (NCE) for the COVID–19 funding, and the expiration date for the ARP funding. Finally, the SUPTRS BG Report Table 11c has been revised to reflect the Number of Persons Admitted to Treatment by Sexual Orientation and Race/Ethnicity, in a reporting format that is compatible with the format and content of the comparable CMHS table for the MHBG.

Proposed revisions for prevention services in the FY 26–27 SUPTRS BG Plan include those revisions that are related to a more intentional use of language, with strengthened statements with the addition of statistics, and added language to reinforce the interrelatedness between mental health and substance use. There is also reinforcement of SUPTRS BG primary prevention set-aside funds to support

universal, selective, and/or indicated substance use prevention strategies.

Updated tables ensure consistency in Tables 5a–5c for both Plans and Reports, and updated language for substances in Table 5c. The term ‘abstinence’ has been removed from the Prevention National Outcome Measures (NOMs) to better reflect current terminology. Report Tables 31 and 32 have been combined into a new Report Table 31, which reduces burden for grantees and removes redundant, obsolete reporting requirements. Gender categories in Table 31 have been updated to align with CSAT gender categories.

On the MHBG portion of the Plan, the changes are the addition of one planning table—MHBG Plan Table 4a: *State Agency Planned Budget for MHBG* and the addition of a new section to the

Environmental Factors and Plan section—Uniform Reporting System and Mental Client-Level Data (MH–CLD)/Mental Health Treatment Episode Data Set (MH–TEDS). Minor revisions were made for clarification to other sections.

On the MHBG report, the only changes are the addition of one new table (Table 4B) and the addition of data definitions in the appendix. The additional tables should not require excessive effort as all data will already be collected by the states for the additional funding efforts.

While the statutory deadlines and block grant award periods remain unchanged, SAMHSA encourages states to turn in their application as early as possible to allow for a full discussion and review by SAMHSA. Applications for the MHBG-only are due no later than

September 1, 2025. The application for SUPTRS BG-only is due no later than October 1, 2025. A single application for MHBG and SUPTRS BG combined is due no later than September 1, 2025.

Estimates of Annualized Hour Burden

The estimated annualized burden for the uniform application will remain 33,493 hours since most revisions have been made for clarification and the combining of tables will not change the burden. Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the recordkeeping and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

	Authorizing legislation SUPTRS BG	Authorizing legislation MHBG	Implementing regulation	Number of respondents	Number of responses per year	Number of hours per response	Total hours
Substance Use Prevention, Treatment, and Recovery Services (SUPTRS BG) and Community Mental Health Services (MHBG) Block Grant							
Reporting:	Standard Form and Content. 42 U.S.C. 300x–32(a).	.....	.....	.....	.....	.....	.....
SUPTRS BG	Annual Report ... 42 U.S.C. 300x–52(a).	.....	45 CFR 96.122(f).	60	1	.....	11,190
	42 U.S.C. 300x–30–b.	.....	.....	5	1	.....	.....
	42 U.S.C. 300x–30(d)(2).	.....	45 CFR 96.134(d).	60	1	.....	.....
MHBG	Annual Report ...	.....	.....	.....	.....	.....	11,003
	 42 USC § 300x–6(a).	.....	.....	59	1	.....	.....
	 42 U.S.C. 300x–52(a).	.....	.....	.....	.....	.....	.....
	 42 U.S.C. 300x–4(b)(3)B.	.....	.....	59	1	.....	.....
SUPTRS BG elements.	State Plan (Covers 2 years). 42 U.S.C. 300x–22(b).	.....	45 CFR 96.124(c)(1).	60	1	.....	.....
	42 U.S.C. 300x–23.	.....	45 CFR 96.126(f).	60	1	.....	.....
	42 U.S.C. 300x–27.	.....	45 CFR 96.131(f).	60	1	.....	.....
	42 U.S.C. 300x–32(b).	.....	45 CFR 96.122(g).	60	1	120	7,230
MHBG elements	.....	42 U.S.C. 300x–1(b).	.....	59	1	120	7,109
	.....	42 U.S.C. 300x–1(b)(2).	.....	59	1	.....	.....
	.....	42 U.S.C. 300x–2(a).	.....	59	1	.....	.....
	Waivers .....	.....	.....	.....	.....	.....	3,240
	42 U.S.C. 300x–24(b)(5)(B).	.....	.....	20	1	.....	.....
	42 U.S.C. 300x–28(d).	.....	45 CFR 96.132(d).	5	1	.....	.....
	42 U.S.C. 300x–30(c).	.....	45 CFR 96.134(b).	10	1	.....	.....
	42 U.S.C. 300x–31(c).	.....	.....	1	1	.....	.....

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1—Continued

	Authorizing legislation SUPTRS BG	Authorizing legislation MHBG	Implementing regulation	Number of respondents	Number of responses per year	Number of hours per response	Total hours
Recordkeeping ...	42 U.S.C. 300x–32(c).	.....	.....	7	1	.....	.....
	.....	42 U.S.C. 300x–32(e).	.....	10	.....	.....	.....
	.....	42 U.S.C. 300x–2(a)(2).	.....	10	.....	.....	.....
	.....	42 U.S.C 300x–4(b)(3).	.....	10	.....	.....	.....
	.....	42 U.S.C 300x–6(b).	.....	7	.....	.....	.....
	42 U.S.C. 300x–23.	42 U.S.C. 300x–3.	45 CFR 96.126(c).	60/59	1	20	1,200
	42 U.S.C. 300x–25.	.....	45 CFR 96.129(a)(13).	10	1	20	200
Combined Burden.	42 U.S.C 300x–65.	.....	42 CFR Part 54	60	1	20	1,200
	.....	.....	.....	.....	.....	.....	42,373

Report

300x–52(a)—Requirement of Reports and Audits by States—Report
 300x–30(b)—Maintenance of Effort (MOE) Regarding State Expenditures—Exclusion of Certain Funds (SUPTRS BG)
 300x–30(d)(2)—MOE—Noncompliance—Submission of Information to Secretary (SUPTRS BG)
 State Plan—SUPTRS BG
 300x–22(b)—Allocations for Women
 300x–23—Intravenous Substance Abuse
 300x–27—Priority in Admissions to Treatment
 300x–29—Statewide Assessment of Need

300x–32(b)—State Plan
 State Plan—MHBG
 42 U.S.C. 300x–1(b)—Criteria for Plan
 42 U.S.C. 300x–1(b)(2)—State Plan for Comprehensive Community Mental Health Services for Certain Individuals—Criteria for Plan—Mental Health System Data and Epidemiology
 42 U.S.C. 300x–2(a)—Certain Agreements—Allocations for Systems Integrated Services for Children
 Waivers—SUPTRS BG
 300x–24(b)(5)(B)—Human Immunodeficiency Virus—Requirement regarding Rural Areas
 300x–28(d)—Additional Agreements
 300x–30(c)—MOE

300x–31(c)—Restrictions on Expenditure of Grant—Waiver Regarding Construction of Facilities
 300x–32(c)—Certain Territories
 300x–32(e)—Waiver amendment for 1922, 1923, 1924 and 1927
 Waivers—MHBG
 300x–2(a)(2)—Allocations for Systems Integrated Services for Children
 300x–6(b)—Waiver for Certain Territories
Recordkeeping
 300x–23—Waiting list
 300x–25—Group Homes for Persons in Recovery from Substance Use Disorders
 300x–65—Charitable Choice

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting:				
SUPTRS BG	60	1	187	11,220
MHBG	59	1	187	11,033
Recordkeeping	60/59	1	40	2,360
Combined Burden .....	.....	.....	.....	24,613

The total annualized burden for the application and reporting is 33,493

hours (42,373 + 24,613 = 66,986/2 years = 33,493).

Link for the application: <http://www.samhsa.gov/grants/block-grants>.

Send comments to SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E45, Rockville, MD 20852 OR email him a copy at samhsapra@samhsa.hhs.gov. Written comments should be received by October 15, 2024.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–18192 Filed 8–14–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: SAMHSA Certified Community Behavioral Health Clinic—Expansion (CCBHC-E) Grant Program Evaluation (OMB No. 0930–XXXX)—New Collection

In FY 2022, SAMHSA awarded two new cohorts of its CCBHC-Expansion program, one for clinics interested in becoming CCBHCs that need planning and support to come into compliance with CCBHC Certification Criteria, and another for established CCBHCs seeking to expand, improve, and advance their services. The purpose of the CCBHC-E grants is to address problems of access,

coordination, and quality of behavioral health care by establishing a standard definition and criteria for organizations certified as CCBHCs to ensure that all service recipients have access to a common set of comprehensive, coordinated services, with the ultimate goal of decreasing disparities in care and outcomes across communities.

SAMHSA is requesting clearance for eleven data collection instruments and forms related to the implementation and impact studies to be conducted as part of an evaluation of these cohorts. Data collected in this evaluation will help SAMHSA assess the degree to which activities at the clinic level and systems level affect the development, implementation, and sustainment of CCBHCs consistent with the certification criteria and the impacts of model adoption on client outcomes.

1. SAMHSA has developed a grantee web survey that will be administered twice to all 298 grant project directors, once during a first option year and again during a third option year. The survey consists of 76 questions the first time it is administered and 68 questions the second time it is administered. The survey includes mostly binary or multiple-choice response options and a limited number of open-ended questions. The survey will enable respondents to complete the data collection instrument at a location and time of their choice, and its built-in editing checks and programmed skips will reduce response errors. SAMHSA estimates the web survey will take no more than 45 minutes to complete and expects a 100 percent response rate, for a total of 298 completed grantee surveys at each time of administration. Grantees will provide valuable insights into their experience with the CCBHC model; if they are not conducted, SAMHSA will not have adequate information to evaluate the extent to which Planning, Development, and Implementation (PDI) grantees come into full compliance with the certification criteria and Improvement and Advancement (IA) grantees sustain the model in a manner that is consistent with the CCBHC certification criteria.

2. SAMHSA has developed a protocol for annual interviews with all 26 grantee Government Project Officers (GPOs) during three option years. Interviews will last approximately one hour and focus on the types of support grantees need to successfully implement the model in the future and identify specific components of the certification criteria that were challenging for grantees to implement. SAMHSA will offer to conduct individual interviews or meet

with groups of GPOs during regularly scheduled meetings. GPOs will provide valuable insights into CCBHC model implementation and factors that facilitate or impede implementation; if they are not conducted, SAMHSA will not glean essential insights into contextual factors that affect implementation of the CCBHC model, including adaptations grantees make to the model to align with their local service delivery system, grantee characteristics that might contribute to successful implementation, and the types of support grantees need to successfully implement the model in the future and the specific components of the certification criteria that were challenging for grantees to implement.

3. SAMHSA has developed a protocol for interviews with representatives from 50 organizations that support adults, youth, and family members with lived experience over the course of the first three option years. Interviews will last approximately one hour. State consumer, youth, and family member organizations will provide valuable insights into their own involvement in the planning and development of the model in respective states, and the perspectives of adults and youth who received CCBHC services and their families on various aspects of the CCBHC model; if they are not conducted, SAMHSA will not adequately understand how these organizations contributed to the planning and development of the model, how CCBHCs tailored services to the diverse needs of communities, and how people with lived experience might refine the model to fill gaps in care.

4. SAMHSA has developed a protocol for interviews with a sample of 120 grantee project directors during option years 1 and 3 (*i.e.*, approximately 60 interviews in each year). Interviews will last approximately one hour. Grantees will provide valuable insights into CCBHC model implementation nuances that cannot be captured via the grantee survey alone; if they are not conducted, SAMHSA will not adequately understand how grantees initially plan to use funding to develop or improve CCBHC program-specific activities in response to the community needs assessment, and successes and challenges expanding services and increasing access to care, and how they eventually progress toward meeting the goals of Continuous Quality Improvement (CQI) efforts and plans for sustainability.

5. SAMHSA has developed a protocol for interviews with clinic leadership from a sample of 50 strategically selected grantees for site visits during the first three option years. Positions of leadership include project directors, medical directors, and/or quality improvement directors. Interviews will last approximately one hour. Clinic leaders will provide valuable insights into understanding their experiences and perspectives as they implement the CCBHC model; if they are not conducted, SAMHSA will not adequately understand the more granular, on-the-ground impacts of model implementation.

6. SAMHSA has developed a protocol for interviews with frontline clinic staff from a sample of 50 strategically selected grantees for site visits. Clinic staff positions include mental health and substance use providers, case managers, and peer mentors/support personnel. Interviews will last approximately one hour. Clinic staff will provide valuable insights into understanding their experiences and perspectives as the site implements the CCBHC model; if they are not conducted, SAMHSA will not adequately understand the impacts of model implementation from the perspective of the clinic staff.

7. SAMHSA has developed a protocol for interviews with representatives of CCBHC partners from a sample of 50 strategically selected grantees for site visits, including designated collaborating organizations (DCOs) and

Opioid Treatment Programs (OTPs). Interviews will last approximately one hour. Clinic partner organizations will provide valuable insights into understanding their experiences and perspectives; if they are not conducted, SAMHSA will not adequately understand how partnerships with DCOs and OTPs function, how care is coordinated between entities, and how CCBHCs maintain clinical responsibility for DCO services.

8. SAMHSA has developed a protocol for focus groups with people 18 and older who receive CCBHC services from a sample of 50 strategically selected grantees for site visits. Focus groups will last approximately one hour and consist of 8–10 adult clients, who will provide valuable insights into understanding their experience of CCBHC services; if they are not conducted, SAMHSA will not be able to adequately synthesize and present similar or different perspectives among diverse stakeholders from a common clinic.

9. SAMHSA has developed a protocol for focus groups with people under 18 who receive CCBHC services. Focus groups will last approximately one hour and consist of 8–10 youth clients, who will provide valuable insights into understanding their experience of CCBHC services; if they are not conducted, SAMHSA will not be able to adequately synthesize and present similar or different perspectives among diverse stakeholders from a common clinic.

10. SAMHSA has developed a protocol for focus groups with parents and caregivers of youth who receive CCBHC services. Focus groups will last approximately one hour and consist of 8–10 parents and caregivers of youth clients, who will provide valuable insights into understanding their experience of CCBHC services; if they are not conducted, SAMHSA will not be able to adequately synthesize and present similar or different perspectives among diverse stakeholders from a common clinic.

11. SAMHSA has developed a protocol for in-person interviews with a sample of clients who receive CCBHC services. The interview consists of 33 questions and will take place on no more than three occasions at the same time as National Outcome Measures (NOMs) data collection. Interviews will last approximately 15 minutes. If they are not conducted, the evaluation team will not have adequate information to evaluate longitudinal changes in client-level outcomes pertaining to substance use, mental health symptomology and functioning, and recovery, as these dimensions are not captured in the NOMs data with sufficient sensitivity to detect change over time. It is essential to obtain information directly from the clients of CCBHC services to understand how implementation of the model affects their access to care and experiences with care.

The estimated response burden is as follows:

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours	Average hourly wage	Total hour cost burden ^a
Grantee survey	298	2	0.75	447	\$59.07	\$26,404.29
GPO interviews	26	3	1	78	45.85	3,576.30
Consumer & family member organization interviews	50	1	1	50	29.14	1,457.00
Grantee phone/virtual interviews	120	1	1	120	59.07	7,088.40
Clinic leadership interviews	^b 150	1	1	150	59.07	8,860.50
Clinic staff interviews	^c 250	1	1	250	49.19	12,297.50
Clinic partner interviews	^d 150	1	1	150	61.26	9,189.00
Adult client focus groups	^e 500	1	1	500	22.26	11,130.00
Youth client focus groups	^f 400	1	1	400	N/A	N/A
Parents/caregivers of youth clients focus groups	^g 400	1	1	400	22.26	8,904.00
Client interview	45,700	3	0.25	34,275	22.26	762,961.50
Total	^h 47,999	.....	.....	36,820	.....	851,868.50

^a Total respondent cost is calculated as number of respondents × number of responses per respondent × average burden per response in hours × average hourly wage.

^b 3 respondents per site × 50 site visits = 150 total respondents.

^c 5 respondents per site × 50 site visits = 250 total respondents.

^d 3 respondents per site × 50 site visits = 150 total respondents.

^e 10 respondents per site × 50 site visits = 500 total respondents.

^f 8 respondents per site × 50 site visits = 400 total respondents.

^g 8 respondents per site × 50 site visits = 400 total respondents.

^h Estimated number of total unique respondents; some respondents, such as project directors, will overlap across the data collection activities.

Send comments to SAMHSA Reports Clearance Officer, Room 15E-57A, 5600 Fishers Lane, Rockville, MD 20857 OR email a copy to samhsapra@samhsa.hhs.gov. Written comments should be received by October 15, 2024.

Alicia Broadus,

Public Health Advisor.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, email the SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov. Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: SAMHSA Unified Client-Level Performance Reporting Tool (SUPRT)—(OMB No. 0930-NEW)

The Substance Abuse and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA is seeking approval for the new SAMHSA Unified Client-level Performance Reporting Tool (SUPRT) to modify the existing Center for Substance Abuse Treatment (CSAT) and Center for Mental Health Services (CMHS) Client-Level Performance Instruments into a

streamlined, multi-component SAMHSA Client-Level Performance Tool. Currently, over 7,500 grantees across a range of prevention, harm reduction, treatment, and recovery support discretionary grant programs report program performance data into SAMHSA's Performance Accountability and Reporting System (SPARS) that serves as a central data repository. SPARS also functions as a performance management system that captures information on the substance use and mental health services delivered via the range of SAMHSA's discretionary grants. SAMHSA has historically required grantees to collect much of the client-level information in SPARS using a prescribed series of questions in long complex instruments. This is not the totality of data tools SAMHSA uses, however, to collect performance data on its discretionary grant programs. SAMHSA uses data collected, depending on the grant program, at the client-level, but also through aggregate program performance tools, required narrative performance progress reports, or a combination of these. This notice informs the public of SAMHSA's intent to develop and implement a new streamlined client-level performance tool that will allow SAMHSA to continue to meet Government Performance and Results Modernization Act (GPRAMA) of 2010 reporting requirements, reduce the scope and associated burden of questions requiring responses directly from clients, and limit the amount of client-level detail reported by grantees.

The proposed new client-level performance tool will involve streamlining questions from the currently used client-level performance reporting tools, as well as incorporating select new measures/questions into a multi-component client-level tool. With this change, SAMHSA will provide guidance specifying which items SAMHSA expects grantees to ask directly of clients and those for which grantees may use alternate data sources for gathering and reporting client-level data. This new, streamlined client-level performance tool will reduce client and grantee reporting burden and enhance consistency of the collected performance data. This tool also reflects diverse stakeholder feedback SAMHSA obtained through multiple listening sessions conducted with key stakeholders and will incorporate findings of cognitive testing to improve clarity of the measures. This performance tool will align with, and strengthen, SAMHSA's complementary evaluation activities of its discretionary

grant programs providing client services.

SAMHSA will use the data collected through the new streamlined client-level performance tool for both annual reporting required by GPRAMA, grantee monitoring, and continuous improvement of its discretionary grant programs. The information collected through this process will allow SAMHSA to (1) monitor and report on implementation and overall performance of the associated grant programs; (2) advance SAMHSA's proposed performance goals; and (3) assess the accountability and performance of its discretionary grant programs, focused on efforts that promote mental health, prevent substance use, and provide treatments and supports to foster recovery.

Through the proposed new, streamlined single client-level performance tool, SAMHSA seeks to (1) improve the utility of client-level performance tools while decreasing burden; (2) standardize and utilize tested questions across programs wherever possible; and, (3) elicit programmatic information that helps inform the impact of discretionary grant programs on the achievement of SAMHSA's Strategic Priority Area goals and objectives (<https://www.samhsa.gov/about-us/strategic-plan>). Furthermore, this effort is designed to align performance reporting requirements with the measurement activities of other federal agencies (e.g., the Centers for Medicare & Medicaid Services; the Centers for Disease Control and Prevention; the U.S. Census Bureau; the Office of Management and Budget; etc.) to the extent possible. To meet these goals, data from the new client-level performance tool for SAMHSA's discretionary grants can be used to delineate who is served, how they are served, what services they receive, and how the program impacts the progress of clients in terms of mental health and substance use issues. The tool reflects SAMHSA's goals to elicit pertinent program data that can be used to inform current and future programs and practices and respond to stakeholders, congressional, and other agency inquiries.

The proposed structure of the new tool will be one that is streamlined and multi-component with client-level information collected and reported at varying frequencies. The first component will be composed of standardized questions about demographic information (asked directly of clients at baseline only) and social determinants of health (asked directly of clients at baseline and

annually as instructed by SAMHSA); the second component will contain standardized recovery, quality of life, and client goal measures as impacted by services received (also asked of clients at baseline and reassessment during the first year of a grant, then annually as instructed by SAMHSA); and the third component will consist of a streamlined set of questions describing clients' behavioral health history, screening and diagnosis items, and services provided to clients (as reported at the client-level by the grantee using alternate data sources that already may be in use for other purposes, for example an electronic health or medical record). Question(s) about services provided to the client will only be required at reassessment and annually for some programs as instructed by SAMHSA.

Currently, the tool and final burden table are still under development and will be available as part of the 30-Day FRN. However, SAMHSA expects that use of the multi-component tool will result in a significant decrease in burden for client and grantee annualized reporting, not only because of the streamlining of questions, but also because not all items will be required at every data collection time point. For example, SAMHSA anticipates that the services provided item will not be required to report at baseline, only reassessment and, for some programs, annually. SAMHSA is also finalizing a revised policy on when reassessments are expected to occur, recognizing that a one-size fits all approach may not be appropriate for all client-focused grant programs. SAMHSA is conducting testing to establish a better estimate of the time it will take to complete the information collection given the varying degree of direct client involvement across the new tool's components and grantee use of alternate data sources for a portion of the tool. At this point, SAMHSA estimates that approximately 1500 client-focused grantees annually will use the tool and with a burden hour estimate per assessment that ranges from 0.13 to 0.27 for each of the three tool components. SAMHSA's goal is to develop a new performance tool that is streamlined and will significantly reduce burden compared to the current performance tools.

Send comments to the SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E45, Rockville, Maryland 20857, OR email a copy to samhsapra@samhsa.hhs.gov.

samhsa.hhs.gov. Written comments should be received by October 15, 2024.

Alicia Broadus,

Public Health Advisor.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6481-N-02]

Notice of HUD Vacant Loan Sales (HVLS 2025-1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice announces HUD's intention to competitively offer approximately 2,700 home equity conversion mortgages (HECM, or reverse mortgage loans) secured by vacant properties with an updated loan balance of approximately \$746 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. The Secretary will prioritize up to 50 percent of the offered assets for award to nonprofit organizations or governmental entity bidders with a documented housing mission. This notice also generally describes the bidding process for the sale and certain entities who are ineligible to bid. This is the thirteenth sale offering of its type and will be held on October 16, 2024.

DATES: For this sale action, the Bidder's Information Package (BIP) will be made available to qualified bidders on or about September 11, 2024. Bids for the HVLS 2025-1 sale will be accepted on the Bid Date of October 16, 2024 prior to 1:00 p.m. ET (Bid Date). HUD anticipates that award(s) will be made on or about October 21, 2024 (the Award Date).

ADDRESSES: To become an eligible bidder and receive the BIP for the October sale, prospective bidders must complete, execute, and submit a Confidentiality Agreement and Qualification Statement acceptable to HUD. The documents will be available in preview form with free login on the Transaction Specialist (TS), Falcon Capital Advisors, website: <http://www.falconassetsales.com>. This website

contains information and links to register for the sale and electronically complete and submit documents.

If you cannot submit electronically, please submit executed documents via mail or facsimile to Falcon Capital Advisors: Falcon Capital Advisors, 427 N Lee Street, Alexandria, VA 22314, Attention: Glenn Ervin, HUD HVLS Loan Sale Coordinator eFax: 1-202-393-4125.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Office of Asset Sales, Room 9216, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-8000; telephone 202-708-2625, extension 3927 (this is not a toll-free number) or at john.w.lucey@hud.gov. 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 announces HUD's intention to sell due and payable Secretary-held reverse mortgage loans in HVLS 2025-1. HUD is offering approximately 2,700 reverse mortgage notes with an updated loan balance of approximately \$746 million. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

A listing of the mortgage loans will be included in the due diligence materials made available to eligible bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer eligible bidders an opportunity to bid competitively on the mortgage loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in HVLS 2025-1. The BIP also includes the applicable standardized non-negotiable Conveyance, Assignment and Assumption Agreements for HVLS 2025-1 (CAAs). The CAAs will contain first look requirements and mission outcome goals.

HUD will evaluate the bids submitted and determine the successful bids, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, it will be required to submit a deposit which will be calculated based upon the total dollar value of the bidder's potential award.

Award will be contingent on receiving the deposit in the timeframe outlined in the bid deposit confirmation. The deposit amount will be applied to the sale price on the settlement date.

This notice provides some of the basic terms of sale. The CAAs will be released in the BIP or BIP Supplement, as applicable. These documents provide comprehensive contractual terms and conditions to which eligible bidders will acknowledge and agree. To ensure a competitive bidding process, the terms of the bidding process and the CAAs are not subject to negotiation.

Due Diligence Review

The BIP describes how eligible bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from a sale at any time prior to the Award Date and the settlement date for the mortgage loans. HUD also reserves the right to reject any and all bids, in whole or in part, and include any unsold reverse mortgage loans from the HVLS 2025–1 sale in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer no later than 60 days after the Award Date.

The reverse mortgage loans offered for sale were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to HUD's authority in section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the reverse mortgage loans for this specific sale transaction. For the HVLS 2025–1 sale, HUD has determined that this method of sale optimizes HUD's return on the sale of these reverse mortgage loans, affords the greatest opportunity for all eligible bidders to bid on the reverse mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the due and payable reverse mortgage loans.

Bidder Ineligibility

In order to bid in HVLS 2025–1 as an eligible bidder, a prospective bidder must complete, execute, and submit a Confidentiality Agreement, a Qualification Statement (HUD–9611), and an Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable that is acceptable to HUD. Eligible bidders seeking to be awarded loans on a

priority basis must submit the Confidentiality Agreement, Qualification Statement (HUD–9611), and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification, that is acceptable to HUD. The Confidentiality Agreement, Qualification Statement (HUD Form 9611), Qualification Statement Addendum for Nonprofit and Government Pools and Sub-Pools (HUD Form 9612), Housing Mission Supplemental Certification, if applicable, collectively are the “Qualification Statement Documents.” In the Qualification Statement, the prospective bidder must disclose its key employees, including officers, directors and other decision makers and provide certain representations and warranties regarding the prospective bidder, including (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or subcontractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the “Related Entities”), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2025–1 if the prospective bidder, its Related Entities, or its repurchase lenders, are any of the following, unless other exceptions apply as provided for in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred, or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state, or local government agency, division, or department;

4. An entity that has had its right to act as a Government National Mortgage Association (“Ginnie Mae”) issuer terminated and its interest in mortgages

backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed a past sale;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor, and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

10. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans.

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) Is any principal of any entity or individual described in the preceding sentence;

(c) Any employee or subcontractor of such entity or individual during that six-month period; or

(d) Any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

In addition, for those eligible bidders seeking to be awarded mortgage loans on a priority basis and signing the Housing Mission Supplemental Certification, each prospective bidder must provide documentation and certify that its charitable or government purpose has a qualifying housing mission and that its participation in the sale is a furtherance of that housing mission.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2025–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the mortgage loans. Even if HUD elects not to publicly disclose any information relating to HVLS 2025–1, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2025–1 and does not establish HUD's policy for the sale of other mortgage loans.

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2024–18204 Filed 8–14–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS–HQ–OC–2024–N038;
FVWF97820900000–XXX–FF09W13000 and
FVWF54200900000–XXX–FF09W13000;
OMB Control Number 1018–0088]**

Agency Information Collection Activities; Submission to the Office of Management and Budget; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), we, the U.S. Fish and Wildlife Service (Service), are proposing to revise a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before September 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference “1018–0088” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358–2503. 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 <https://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork

Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How 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.

On January 3, 2024, we published in the **Federal Register** (89 FR 384) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on March 4, 2024. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on [Regulations.gov](https://www.regulations.gov) (Docket FWS–HQ–WSFR–2023–0231) to provide the public with an additional method to submit comments (in addition to the typical U.S. mail submission method). We received the following comments in response to that notice:

Comment 1: Electronic comment received 01/03/2024, via [Regulations.gov](https://www.regulations.gov) (FWS–HQ–WSFR–2023–0231–0002) from Jean Publie, who

stated this is a propaganda survey and hunting is insane.

Agency Response to Comment 1: This comment did not address the information collection requirements; therefore, no response is required.

Comment 2: Electronic comment received 01/03/2024, via *Regulations.gov* (FWS-HQ-WSFR-2023-0231-0003) from Holly Huchko, Sport Fish Restoration Coordinator/ESA Specialist, Oregon Department of Fish and Wildlife. Ms. Huchko stated information should be collected both by mail and digital format, and the freshwater/saltwater fishing split for coastal States needs to continue to be collected.

Agency Response to Comment 2: The methodology for the 2027 FHWAR is responsive to the needs identified in this comment. Oregon and other coastal States will continue to receive data on the number of freshwater/saltwater anglers within their respective State, free of cost.

Comment 3: Anonymous comment received 03/03/2024, via *Regulations.gov* (FWS-HQ-WSFR-2023-0231-0004) stating that hunting and fishing should not be encouraged, and that animal lives should be spared.

Agency Response to Comment 3: This comment did not address the information collection requirements; therefore, no response is required.

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: The information collected for the National Survey of Fishing, Hunting and Wildlife-Associated Recreation (FHWAR, or National Survey) assists the Fish and Wildlife Service in administering the Wildlife and Sport Fish Restoration grant programs. The FHWAR, conducted about every 5 years since 1955, is a comprehensive survey of anglers, hunters, and wildlife watchers and includes information on their participation and how much they spend on these activities in the United States. The FHWAR provides up-to-date information on the uses and demands for wildlife-related recreation resources and a basis for developing and

evaluating programs and projects to meet existing and future needs.

We collect the information in conjunction with carrying out our responsibilities under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777–777m) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669–669i). Under these Acts, we provide approximately \$1 billion in grants annually to States for projects that support sport fish and wildlife management and restoration, including:

- Improvement of fish and wildlife habitats,
- Fishing and boating access,
- Fish stocking, and
- Hunting and fishing opportunities.

We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation. We conduct the survey about every 5 years. The 2027 FHWAR survey will be the 15th conducted since 1955. We coordinate the survey at the States' request, which is made through the Association of Fish and Wildlife Agencies. We will contract with a data collector to collect the information using internet, telephone, or mail-in paper-and-pencil instrument (PAPI).

Respondents are invited to take the survey with a mailed letter. The data collector will select a sample of sportspersons and wildlife watchers from a household screen and conduct three detailed interviews during the survey year. The survey collects information on the number of days of participation, and expenditures for trips and equipment. Information on the characteristics of participants includes age, income, sex, education, race, and State of residence. The Freshwater/Saltwater Ratio Questionnaire is designed to get freshwater and saltwater fishing data for coastal States. The Service's Wildlife and Sportfish Restoration Program is required to divide fishing management funds according to the ratio of freshwater and saltwater anglers in each coastal State.

Federal and State agencies use information from the survey to make policy decisions related to fish and wildlife restoration and management. Participation patterns and trend information help identify present and future needs and demands. Land management agencies use the data on expenditures and participation to assess the value of wildlife-related recreational uses of natural resources. Wildlife-related recreation expenditure

information is used to estimate the impact on the economy and to support the dedication of tax revenues for fish and wildlife restoration programs.

Proposed Revision

Pre-test: Cognitive Interviews—We anticipate the need to conduct web-based cognitive interviews prior to the next FHWAR. The cognitive interviews will enable the research team to identify problems with survey items and with the organization and order of items in the instrument. We expect the data from the cognitive interviews to reveal potential sources of response error in the National Survey and to inform the redesign efforts. The objective of the cognitive interviews is to test and refine the proposed instruments from the full survey, with particular focus on the revised questions on bounding, expenditure reporting, and 5-year recall of activities. We will use the results of this research to refine the survey instruments in preparation for fielding the next National Survey (likely to be held in 2027 or 2028). Respondents will have the option to pause/resume the pretest as they work through the questionnaire.

We anticipate a maximum of 70 respondents will participate in the web-based study. Respondents will be individuals who have participated in fishing, hunting, and wildlife-watching activities in within 1 year of the cognitive interviews. Respondents will be adults ages 18 and over and children ages 16 and 17 who participate with the consent of a parent or guardian. The participants will represent a range of demographic characteristics (*e.g.*, age, gender, education level, State of residence).

We plan to recruit a non-probability sample of respondents for this research. The Association of Fish & Wildlife Agencies will work with State fish and wildlife directors to obtain lists of license holders. The data collector will send an invitation via email or text message to invite license holders to participate in a survey. Further, the data collector will place advertisements on Facebook in selected geographies in order to recruit individuals interested in being interviewed and will disseminate information about the study through word of mouth. People responding to an invitation to participate in the research will complete a brief eligibility screening to determine whether they have recently participated in fishing, hunting, or wildlife watching activities and to collect household composition and demographic information.

Potential participants will also be asked whether other household

members would be interested in participating in the study. Adult participants for screener interviews will be household members who would likely complete a screener questionnaire, such as a head of household or adult sportsperson or wildlife watcher. We plan to request that a screener respondent (a respondent who finished the screen interview), or another household member aged 16 and up who participates in fishing, hunting, or wildlife watching activities, complete

the wave questionnaires. In addition, two to three respondents who do not participate in the relevant activities will be recruited for interviews in order to test the functioning of the instruments with non-participants.

Title of Collection: National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

OMB Control Number: 1018-0088.

Form Number: None.

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

Respondents/Affected Public: Individuals/households.

Respondent's Obligation: Voluntary.

Frequency of Collection: We estimate the pre-test/cognitive interviews to begin in 2025 or 2026. The results will be used to inform the next full survey estimated to be conducted in 2027, or possibly 2028.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated number of household responses	Median completion time per response (minutes)	Estimated burden hours *
Screener Survey:			
Screener: Web	27,639	9	4,146
Screener: Phone	1,000	15	250
Screener: PAPI	31,361	10	5,227
Wave 1 Survey:			
Wave Questionnaires: Web	43,068	13	9,331
Wave Questionnaires: Phone	833	22	305
Wave Questionnaires: PAPI	6,972	14	1,627
Wave 2 Survey:			
Wave Questionnaires: Web	32,173	13	6,971
Wave Questionnaires: Phone	833	22	305
Wave Questionnaires: PAPI	3,645	14	851
Wave 3 Survey:			
Wave Questionnaires: Web	46,773	13	10,134
Wave Questionnaires: Phone	950	22	348
Wave Questionnaires: PAPI	11,811	14	2,756
Wave 3 Coastal Freshwater/Saltwater Ratio Questionnaire	13,500	3	675
Pre-test/Cognitive Interviews (NEW)	70	70	82
Grand Total:	220,628	.....	43,008

* Rounded.

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.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2024-18208 Filed 8-14-24; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[220D2641EA; DS61800000;
DEA100000.000000. DX61801; OMB Control
Number 1093-0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Application Requirements for States and Tribes To Apply for Orphaned Well Site Plugging, Remediation, and Restoration Funding Consideration, and Ongoing State and Tribal Reporting Requirements for Funding Recipients

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Office of the Secretary of the Interior (Interior), through the Orphaned Wells Program Office (OWPO), proposes

to revise an OMB-approved information collection.

DATES: Interested parties are invited to submit comments on or before September 16, 2024.

ADDRESSES: Written comments for the proposed information collection should be submitted to www.reginfo.gov/public/do/PRAMain. This particular information collection can be found by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please provide a copy of any submitted comments to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240, or by email to DOI-PRA@ios.doi.gov. Please reference "OMB Control Number 1093-0012 Orphaned Wells Program Office" in the subject line of any comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this proposed information collection, please contact Ron Lev, Management

and Program Analyst, OWPO, by email at orphanedwells@ios.doi.gov, or by phone at (771) 233-5722. 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. The information request can also be viewed at www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.10, Interior is again providing the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps Interior assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand Interior's information collection requirements and provide the requested data in the desired format.

1. Prior 60-Day Public Comment Period That Ran Through July 1, 2024

A **Federal Register** notice was published on May 2, 2024, which solicited comments on this proposed information collection. See 89 FR 35849. Interested parties were invited to submit comments on or before July 1, 2024. One Tribal Nation stated it did not have concerns with the proposed information collection. A total of 13 other parties jointly submitted comments, which are discussed immediately below.

2. Comments Submitted by the 13 Parties and Interior's Response

Public comments: The commenters recommended that the Consolidated Workplan be expanded to request more information on States' definitions of orphaned well, and processes for recouping remediation costs and redeeming financial assurances. The commenters reasoned that this is necessary because, for State and private lands, Interior did not provide a standardized definition of the term orphaned well. The commenters also stated that "This absence of a standardized definition has created opportunities for states—intentionally or otherwise—to use federal grant funds to plug wells for which there is a solvent, financially responsible party."

Interior's Response: As part of their applications or technical reports, States generally submit the information discussed by the commenters. States are

also required to maintain records that support the contents of their applications, including showing that the actions are consistent with the State's submitted certifications concerning the use of available financial assurance to cover plugging, reclamation, and restoration costs. States are also required to maintain records that demonstrate that the uses of awarded federal funds are consistent with the BIL and other federal law and authorities.

The term orphaned well is defined in Section 40601(a)(5) of the BIL. For State or private lands, the statutory definition of orphaned wells adopts the applicable definition under state law. Interior's approach is consistent with the text of the BIL.

While Interior defers to State law as to what constitutes an orphaned well, States that use awarded federal funds to plug non-orphaned wells may be subject to negative consequences. Similarly, States failing to use available financial assurance to cover the cost of plugging, remediation, and/or reclamation may also be subject to negative consequences.

Public comments: The commenters requested that Interior collect additional information concerning costs of plugging wells, contracting processes, qualifications of contractors, and the actual well plugging practices.

Interior's Response: Interior receives relevant information concerning State law and other authorities that concern well-plugging practices. Interior requires that a State with established and documented well plugging standards and regulations require their contractors to meet those standards and regulations. For States that do not have established well plugging standards, Interior requires that the work meet or exceed the plugging standards in either 43 CFR 3172.12, for onshore wells, or 30 CFR part 250, for offshore wells. Interior also monitors awarded funds, consistent with 2 CFR part 200 and other federal law and authorities, and samples wells to verify that contractors adhered to the relevant plugging standards.

Interior intends to collect well plugging standards and procedures and reward States for strengthening those standards and procedures. Interior may also collect State program information that concerns orphaned wells, including contracting procedures, the qualification of contractors, and the costs of plugging, reclamation, and/or restoration.

Public comments: For Plugging Standards RIG applications, the commenters suggested that Interior collect additional information that concerns State documentation of plug

quality and integrity. Similarly, for Program Standards RIG applications, the commenters suggested that Interior collect additional information with respect to State financial assurance requirements.

Interior's Response: Interior proposes to collect State requirements for plug quality and integrity as part of its Plugging Standards RIG program. Interior also proposes to collect information on whether a State adopts full-cost well financial assurance requirements, and information on whether a State's financial assurance requirements account for field or area risks, technical risks, financial risks, and/or aggregate risks associated with multiple-well assurance for Program Standards RIGs.

Public comments: In addition to the information discussed in the previous comments, the commenters suggest that Interior collect information that concerns State plugging and idling triggers and requirements of well transfers. The commenters also suggested additional items for the two Scoresheets.

Interior's Response: In 2021, the Interstate Oil and Gas Compact Commission (IOGCC) published *Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies*. The 2021 IOGCC report stated that "the primary purpose of this report is to help states and provinces evaluate their idle and orphan-well programs and identify useful regulatory tools and strategies from other jurisdictions." The 2021 IOGCC report updated a 2019 report, which the IOGCC stated "served as a useful reference in the development of federal legislation."

On October 20, 2023, Request for Information to Inform the Orphaned Wells Program Office's Development of Regulatory Improvement Grants Under the Bipartisan Infrastructure Law was published in the **Federal Register** (RFI). See 88 FR 72528. A total of 20 parties submitted responses to the RFI, including the IOGCC, 13 states, 5 environmental groups, and 1 anonymous party.

Interior utilized comments it received in response to the RFI, the 2021 IOGCC report, and other IOGCC reports to develop the two RIG programs. Consequently, Interior considers the categories and subcategories under which States are evaluated as part of the two programs to be comprehensive.

Public comments: For the Consolidated Workplan, the 13 commenters supported the remaining 22 items, which are not discussed above. The commenters also supported the remaining 9 Plugging Standards RIG and

7 Program Standards RIG items that Interior proposes to collect.

Interior's Response: Interior appreciates the commenters' support of Interior's efforts to develop and administer financial assistance programs to create a legacy of environmental stewardship.

3. 30-Day Public Comment Period

As part of Interior's continuing effort to reduce paperwork and respondent burdens, it is again soliciting comments from the public and other federal agencies on the proposed information collection request that is described below. Interior is 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 Interior's 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 Interior 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 submitted in response to this notice are a matter of public record. Before including any address, phone number, email address, or other personal identifying information in a comment, a commenter should be aware that the entire comment—including any personal identifying information—may be made publicly available at any time. While a commenter can request the withholding of personal identifying information from public review, Interior cannot guarantee that it will be able to do so.

Abstract: Infrastructure Investment and Jobs Act (Pub. L. 117–58) (November 15, 2021), which is also known as the Bipartisan Infrastructure Law (BIL), Section 40601, “*Orphaned well site plugging, remediation, and restoration,*” amends Section 349 of the Energy Policy Act of 2005 (42 U.S.C. 15907). Section 40601 designates Interior as the key agency responsible for implementing grant and other financial assistance programs for applicable government entities to fund plugging, remediation, and reclamation of orphaned wells and well sites located

on lands covered by the BIL. The associated investments will rebuild America's critical infrastructure, tackle the climate crisis, advance environmental justice, and drive the creation of good-paying union jobs.

Interior will issue financial assistance through grant awards to State and Tribal governments under Assistance Listing (CFDA) program 15.018 Energy Community Revitalization Program (ECRP). With respect to Tribal In Lieu of Grant Assistance, OWPO will coordinate with the Bureau of Indian Affairs. The authority for the above assistance is the Infrastructure Investment and Jobs Act, Division D, Title VI, Section 40601.

The types of assistance contained in Section 40601 are as follows:

1. Initial Grants to States
2. Formula Grants to States
3. Performance Grants to States, which includes:
 - Regulatory Improvement Grants to States
 - Matching Grants to States
4. Grants to Tribes and Tribal In Lieu of Grant Assistance

The BIL requires Interior to collect information necessary to ensure that awarded grant and other funds authorized by this legislation are used in accordance with the BIL, Office of Management and Budget Guidance for Grants and Agreements (*i.e.*, 2 CFR part 200) and other applicable federal law and authorities. Interior anticipates that information will be collected by the OWPO, which has and will issue guidance concerning the above assistance programs. Interior seeks OMB approval of the proposed information collection to manage and monitor financial assistance applications and awards to ensure that States and Tribes comply with the BIL, 2 CFR part 200, and other applicable federal law and authorities.

Consolidated Workplan

Interior proposes to collect the following from all State and Tribal grant applicants, unless noted otherwise, as part of each entity's consolidated workplan:

(a) An applicant's process for determining a well has been orphaned, including what efforts will be made to redeem financial assurances or otherwise recoup remediation costs from any responsible parties;

(b) A description of an applicant's plugging standards, including the witnessing requirements (*e.g.*, qualifications of witness, documentation);

(c) An applicant's prioritization process for evaluating and ranking

orphan wells and associated surface reclamation, including criteria, weighting, and how such prioritization will address resource and financial risk, public health and safety, potential environmental harm (including methane emissions where applicable), and other land use priorities;

(d) If no prioritization process currently exists, an applicant's description of its plans to develop and implement a prioritization process;

(e) Details of how a State applicant will identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on disadvantaged communities, low-income communities, and Tribal and indigenous communities;

(f) How applicants will identify and incorporate into their work plans health, safety, habitat, and environmental benefits of plugging, remediating, or reclamation of orphaned wells (Proposed revision);

(g) The methodology to be used by the applicant to measure and track methane and other gases associated with orphaned wells, including how the applicant will confirm the effectiveness of plugging activities in reducing or eliminating such emissions;

(h) The methodology to be used by the applicant to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the applicant will confirm the effectiveness of plugging activities in reducing or eliminating such contamination;

(i) The methodology to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure;

(j) Methods the applicant will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the applicant will use to solicit feedback on the program from local officials and the public;

(k) Latitude/Longitude and all other data elements and associated units of measure as indicated in State and Tribal data reporting templates. *See the Data Associated with Wells Plugged Using Federal BIL Funds* portion of this proposed information collection;

(l) How the applicant will use funding to locate currently undocumented orphaned wells;

(m) Plans the applicant has to engage third parties in partnerships around well plugging and site remediation, or

any existing similar partnerships the applicant currently belongs to;

(n) Training programs, registered apprenticeships, and local and economic hire agreements for workers the applicant intends to conduct or fund in well plugging or site remediation;

(o) Plans the applicant has to support opportunities for all workers, including workers underrepresented in well plugging or site remediation, to be trained and placed in good-paying jobs directly related to the project;

(p) For State applicants, plans the State applicant has to incorporate equity for underserved communities into their planning, including supporting the expansion of high-quality, good paying jobs through workforce development programs and incorporating workforce strategy into project development;

(q) Procedures the applicant will use to coordinate with federal, State, or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across lands covered by the BIL;

(r) The applicant's authorities to enter private property, or an applicant's procedures to obtain landowner consent to enter private property, in the event that any wells to be plugged will be accessed from privately owned surface;

(s) A work schedule covering the period of performance for the grant;

(t) If applicable, a federally approved Indirect Cost Rate Agreement or statement regarding applicant's intention to negotiate or utilize the de minimis rate;

(u) How an applicant will assist Interior to ensure that activities funded by the grant it applied for will comply with relevant federal law and authorities, such as the Endangered Species Act of 1973, as amended (ESA), and the National Historic Preservation Act, as amended (NHPA) (Proposed revision);

(v) For Performance Grants, how a State applicant will place a higher priority on the use of the federal funds to lower unemployment in the State, including workforce development activities related to orphaned well plugging, remediation, and reclamation (Proposed revision); and

(w) For Performance Grants, how a State applicant will place a higher priority on the use of the federal funds to improve economic conditions in economically distressed areas of the State, provided that the use of the funds is related to orphaned well plugging, remediation, and reclamation (Proposed revision).

Regulatory Improvement Grants—State Applicants Only (Proposed Revision)

Under Section 40601(c)(5)(E)(i), a Regulatory Improvement Grant (RIG) may be awarded to an eligible State if either: (1) “The State has strengthened plugging standards and procedures designed to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment” (Plugging Standards RIG); or (2) “The State has made improvements to State programs designed to reduce future orphaned well burdens, such as financial assurance reform, alternative funding mechanisms for orphaned well programs, and reforms to programs relating to well transfer or temporary abandonment” (Program Standards RIG). In addition to a consolidated workplan, and other information required from RIG applicants that is discussed in this proposed information collection, Interior proposes to collect the following from applicants.

For Plugging Standards RIGs: Interior proposes to collect from Plugging Standards RIG applicants information pertaining to their statutes, regulations, policies, and procedures, which were implemented during the 10-year period specified in the BIL, that demonstrate the “State has strengthened plugging standards and procedures designed to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.” The list, (a) through (j), below, are examples of information Interior proposes to collect. In determining whether a “State has strengthened plugging standards and procedures,” Interior may request additional types of information.

(a) Drilling well construction, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(b) Allowable well control equipment to manage actions of perforating, cutting/pulling of casing, or retrieving seal assemblies, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(c) Allowable barrier types, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(d) Allowable barrier placement locations, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(e) Allowable barrier placement techniques, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(f) Wellbore integrity and barrier verification, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(g) Spacer medium between well barriers, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(h) Wellbore capping requirements, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

(i) Plugging procedure approval requirements, plugging procedure changes, plugging operations notification requirements, post-plugging reporting requirements, alternative materials or methods, and the resulting actual or anticipated positive effects of these changes, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that

protects groundwater and other natural resources, public health and safety, and the environment.

(j) Internal inspection and oversight, and long-term monitoring of plugged wells processes, and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to ensure that wells located in the State are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment.

For Program Standards RIGs: Interior proposes to collect from Program Standards RIG applicants information pertaining to their statutes, regulations, policies, and procedures, which were implemented during the 10-year period specified in the BIL, that demonstrate the "State has made improvements to State programs designed to reduce future orphaned well burdens, such as financial assurance reform, alternative funding mechanisms for orphaned well programs, and reforms to programs relating to well transfer or temporary abandonment." The list, (a) through (g), below, are examples of information Interior proposes to collect. In determining whether a "State has made improvements to State programs designed to reduce future orphaned well burdens," Interior may request additional types of information.

(a) Liable parties, scope of liability, and state access (e.g., non-operator liable parties, predecessor in interest liability, and state targeting of liable parties through increased or enhanced enforcement), and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to reduce future orphaned well burdens.

(b) Transfers of interest (e.g., notice of transfer to state from transferor and transferee, state assessment of transferor and/or transferee, and transferor maintenance of assurance), and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to reduce future orphaned well burdens.

(c) Financial Assurance (e.g., bonding adjusted for field, well, or operator risks), and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to reduce future orphaned well burdens, including considerations for idle, marginal, and producing wells.

(d) Non-assurance State financial protections and plugging incentives (e.g., fees, taxes, penalties (including increased or enhanced enforcement), and incentives), and the resulting actual or anticipated positive effects, or

documentation, that demonstrate the State's intent to reduce future orphaned well burdens, including considerations for idle, marginal, and producing wells.

(e) Reporting and public notice of orphaned or potentially orphaned wells (e.g., reporting mechanisms, for responsible parties, online notice of aggregate financial assurance, and online notice of marginal, orphaned, and all other wells by responsible party), and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to reduce future orphaned well burdens, including considerations for idle, marginal, and producing wells.

(f) Consideration for air, groundwater, and other natural resources, as well as public safety and environmental justice (e.g., considerations for surface and groundwater or soil, including hazardous materials or other contamination, special considerations for oil and gas wells converted to water wells, and considerations for public safety and environmental justice), and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to reduce future orphaned well burdens, including considerations for idle, marginal, and producing wells.

(g) Orphaned-wells-related internal and external workforce development (e.g., State internal workforce enhancements, State contracting process, and oversight of State vendors, including certificate programs), and the resulting actual or anticipated positive effects, or documentation, that demonstrate the State's intent to reduce future orphaned well burdens.

For both Plugging Standards and Program Standards Applications: For all Plugging Standards and Program Standards RIG applicants, Interior also proposes to collect the following:

Scoring Template: A list of questions related to the specific type of RIG they are applying for in a scoring template (e.g., "Yes" or "No"). Applicants will also need to provide support for the scoring template that they submit.

Interior will use the requested information to determine grant eligibility, including eligible amount, and to ensure that program objectives are being met, evaluate the applicant's readiness to obligate grant funds, and evaluate the applicant's approach to execute grant objectives and the grant-funded work that will be monitored by Interior.

Grant Applications

Interior proposes to collect the following additional elements from applicants:

- *Standard forms (SF) from the SF-424 Series:* Applicants must submit the following SF-424 series of forms:

- SF-424, Application for Federal Assistance;
- SF-424A, Budget Information for Non-Construction Programs or SF-424C, Budget Information for Construction Programs;
- SF-424B, Assurances for Non-Construction Programs, or SF-424D, Assurances for Construction Programs;
- SF-428, Tangible Personal Property Report; and
- SF-LLL, Disclosure of Lobbying Activities, when applicable.

- *Indirect Cost Statement:* If requesting reimbursement for indirect costs, all applicants must include in their application a statement regarding how they anticipate charging indirect costs.

- *Budget Narrative and/or Template:* Applicants must provide a narrative and/or template that describes and justifies, with sufficient detail, the requested budget items and costs, and provides a description of how the applicant determined its totals by cost category in their application (Proposed revision).

- *Negotiated Indirect Cost Rate Agreement (NICRA):* When applicable, a copy of the applicant's current federal-agency-approved Negotiated Indirect Cost Rate Agreement is required.

- *Single Audit Reporting Statement:* All U.S. governmental entities and non-profit applicants must submit a statement regarding their single audit reporting status.

- *Conflict of Interest Disclosures:* Applicants must notify the Interior in writing of any actual or potential conflicts of interest known at the time of application or that may arise during the life of this award, in the event the Interior makes an award to the entity.

- *Certification Statement:* State applicants for the Initial Grant part of this program must provide a signed State Certification statement consistent with Section 40601(c)(3)(A)(ii)(III) or 40601(c)(3)(A)(i)(II) of the BIL. State and Tribal Applicants may also be required to submit other certifications for other grant programs, consistent with guidance issued by the OWPO.

Tribal in Lieu of Grant Assistance Requests—Tribal Applicants Only (Proposed Revision)

Tribes, in lieu of grant assistance, may request that Interior administer and carry out plugging, remediation, and reclamation activities related to eligible orphaned wells on behalf of the Tribe. Interior proposes to collect the

following information to evaluate and administer such requests:

- A letter of request for assistance, from the Tribe, bearing the signature of the authorized representative of the Tribe's governing body;
- A description of activities (e.g., plugging and abandonment, remediation, and/or reclamation) for which the Tribe is requesting assistance;
- A brief description of the Tribe's territories, including the number and locations of known orphan wells; and
- A summary of known supporting data or information, including existing inventories and assessments and environmental compliance documents.

Amendments

For many budget and program plan revisions, 2 CFR part 200 requires recipients submit revision requests to the federal awarding agency in writing for prior approval. Interior reviews such requests received to determine the eligibility and allowability of new or revised activities and costs and approves certain items of cost.

Reporting/Recordkeeping Requirements

To ensure that activities funded by Section 40601 are consistent with the BIL, 2 CFR part 200, and other federal law and authorities, Interior proposes to collect the following information from all grant and other funding recipients:

- **Financial Reports:** Recipients are required to submit all financial reports on the Standard Form 425, Federal Financial Report. Recipients must submit financial reports in accordance with 2 CFR part 200. The frequency of submission may vary but will typically be annually or semi-annually. Interior, however, may require submission of financial reports more frequently in certain circumstances, such as where more frequent reporting is necessary for the effective monitoring of the federal award or could significantly affect program outcomes (Frequency is proposed revision).
- **Performance Reports:** Recipients must submit performance reports in accordance with 2 CFR part 200. This information is necessary for Interior to track accomplishments and performance-related data. Interior uses these reports to ensure that the recipient is accomplishing its work on schedule, and to identify any problems that the recipient may be experiencing in accomplishing the work. While the frequency of performance reporting may vary, recipients typically will be required to submit their performance reports annually or semi-annually. Interior, however, may require the submission of these reports more

frequently in certain circumstance, such as where more frequent reporting is necessary for the effective monitoring of the federal award or could significantly affect program outcomes (Frequency is proposed revision). Performance reports must include:

- A comparison of actual accomplishments to the goals and objectives established for the reporting period, the results/findings, or both;
- If the goals and objectives were not met, the reasons why, including analysis and explanation of cost overruns or high unit costs compared to the benefit received to reach an objective;
- Performance trend data and analysis to be used by the awarding program to monitor and assess recipient and federal awarding program performance;
- Consolidated long-term work plan and accomplishments updates, when award is part of a large scale or long-term effort funded under multiple awards over time; and
- Other information that Interior requires to track State and Tribal accomplishments, collect performance-related data, identify and risks and failure to achieve certain milestones, and is otherwise necessary to ensure that the State's or Tribe's actions comply with the relevant guidance issued by the OWPO (Proposed revision).

• **Final 15-month Report for State Initial Grants:** As required in the BIL, State recipients under the Initial Grants part of the program must submit a report no later than 15 months after the date on which the State receives the funds, describing the means by which the State used the funds in accordance with its application and certification, and including the reporting parameters described in this guidance.

• **Recordkeeping Requirements:** Recipients must retain financial records, supporting documents, statistical records, and all other records pertinent to a federal award, per 2 CFR part 200 requirements.

• **Data Associated with Wells Plugged Using Federal BIL Funds:** Recipients must periodically provide data, which upon Interior's request, may include pictures, video, or other media, for any well plugged with BIL funds. This may include data associated with reclamation or restoration of land or infrastructure associated with a well (Proposed revision).

Upon request, but no more frequently than annually, recipients must submit requested information related to aggregate orphaned-well data (e.g., the total number of documented orphaned

wells located in a State, and the rationale for why the orphaned well inventory has increased or decreased during a certain time period). Interior will use this information to evaluate the effectiveness of the programs funded by the BIL.

• **Information Concerning State or Tribal Unmet Needs:** When requested, States and Tribes must submit requested information related to unmet needs for orphaned well plugging, the decommission or removal of the associated infrastructure, and the restoration and reclamation of the lands, surface water, ground water, or other natural resources that are impacted or potentially impacted. States or Tribes may also be required to provide information regarding employment and economically distressed areas, or environmental justice (Proposed revision).

• **Compliance with Environmental and Other Statutes:** Recipients must submit information to Interior to allow Interior to ensure that federal BIL funds are utilized in a manner that is consistent applicable federal law, such as the ESA and NHPA, and other authorities and policy (Proposed revision).

• **Change in RIG Eligibility (Scoring Template):** During the ten-year period that begins on the date of receipt of the grant funds, each RIG recipient must periodically (e.g., annually) submit an updated Scoring Template. This submission will allow Interior to ensure that the State recipient is not required to reimburse Interior for all or a portion of its RIG for "failure to maintain protections," under Section 40601(c)(5)(E)(iii). Recipients will also be required to submit documentation that supports any changes between the submitted Scoring Template and the one that was previously submitted (Proposed revision).

Interior also proposes to rename the information collection from *Application Requirement for States to Apply for Orphaned Well Site Plugging, Remediation, and Restoration Grant Consideration to Application Requirements for States and Tribes to Apply for Orphaned Well Site Plugging, Remediation, and Restoration Funding Consideration, and Ongoing State and Tribal Reporting Requirements for Funding Recipients* (Proposed revision).

Title of Collection: Application Requirements for States and Tribes to Apply for Orphaned Well Site Plugging, Remediation, and Restoration Funding Consideration, and Ongoing State and Tribal Reporting Requirements for Funding Recipients.

OMB Control Number: 1093–0012.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Up to 92 (27 State and 65 Tribal governments).

Total Estimated Number of Annual Responses: 524 (relating to 9 different activities).

Total Estimated Number of Annual Responses: 1,011 (relating to 9 different activities).

Estimated Completion Time per Annual Response: Varies from 1 to 40 hours, depending on activity.

Total Estimated Number of One-Time Responses: 54 (relating to 2 different activities).

Total Estimated Number of One-time Responses: 108 (relating to 2 different activities).

Estimated Completion Time per One-time Response: Varies from 1 to 24 hours, depending on activity.

Total Estimated Number of Tribal In Lieu of Grant Respondents: 3.

Total Estimated Number of Tribal In Lieu of Grant Responses: 3.

Estimated Completion Time per One-time Response: 8 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the PRA and 5 CFR 1320.10.

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-18278 Filed 8-14-24; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO#4500179583]

Notice of Application for Withdrawal Extension for Base Camp and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Air Force (USAF) has filed an application requesting that the Secretary of the Interior extend the withdrawal established by Public Land Order (PLO) No. 7634 for an additional 20-year period. PLO No. 7634 withdrew 1,979

acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws, subject to valid existing rights, for a period of 20 years and reserved the land for use by the USAF to protect support facilities for the safe and secure operation of national defense activities at the Nevada Test and Training Range (NTTR). This notice advises the public of a 90-day opportunity to comment on the withdrawal extension application and to request a public meeting.

DATES: Comments and request for a public meeting must be received by November 13, 2024.

ADDRESSES: All comments and meeting requests should be sent to the Bureau of Land Management (BLM) Nevada State Office, 1340 Financial Blvd., Reno, NV 89502. Also, comments will be available for public review at the Tonopah Field Office, P.O. Box 911 (1553 South Main Street), Tonopah, NV 89049, during regular business hours 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Edison Garcia, Land Law Examiner, Nevada State Office, at (775) 861-6530, email: egarcia@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 Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The withdrawal established by PLO No. 7634 on May 6, 2005 (70 FR 24114) will expire on May 5, 2025. The purpose of the withdrawal and reservation is for the USAF to protect support facilities for the safe and secure operation of national defense activities at the NTTR. The purpose for this withdrawal warrants its extension.

The legal land description and acreage figure described in PLO No. 7634 is revised herein to reflect the BLM Cadastral Survey's Specification for Descriptions of Land. The revised land description does not change the footprint of the lands originally withdrawn by PLO No. 7634.

The 1,979 acres of public lands are located in central Nye County, approximately 60 miles east of Tonopah, Nevada. Public access to these lands has been restricted since the 1960s. Recreation, mining, and other uses are open on public lands

surrounding the 1,979 acres. The 1,979 acres withdrawn by PLO No. 7634 are legally described as:

Mount Diablo Meridian, Nevada

A parcel of land situated in T. 5 N., R. 50 E., partially unsurveyed, T. 5 N., R. 51 E., and T. 6 N., R. 51 E., and being more particularly described as follows:

From the northwest corner of section 12, T.

5 N., R. 50 E.,

Proceed southeast 1,874.10 feet on a bearing of 155°48'00" to starting point; Thence southeast 5,551.20 feet on a bearing of 122°54'00";

Thence northeast 15,530.30 feet on a bearing of 33°18'00";

Thence northwest 5,551.20 feet on a bearing of 302°54'00";

Thence southwest 15,530.30 feet on a bearing of 213°18'00" to the starting point, excepting Tybo Road.

The area described contains approximately 1,979 acres.

There is no suitable alternative site.

No water rights would be needed to fulfill the purpose of this withdrawal extension.

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 personally identifiable information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the application for withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the USAF application must submit a written request to the State Director, BLM Nevada State Office, at the address in the **ADDRESSES** section, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register**, local newspapers, and on the BLM website at www.blm.gov at least 30 days before the scheduled date of the meeting.

This withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.4)

Jon K. Raby,
State Director.

[FR Doc. 2024-18314 Filed 8-14-24; 8:45 am]

BILLING CODE 4331-21-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_NV_FRN_MO#4500179582]****Notice of Application for Withdrawal Extension for Halligan Mesa and Opportunity for Public Meeting; Nevada****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The United States Air Force (Air Force) has filed an application requesting the Secretary of the Interior extend the withdrawal at Halligan Mesa for an additional 20 years. In 1985, Public Land Order (PLO) No. 6591 withdrew approximately 600 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not the mineral leasing laws, subject to valid existing rights for a period of 20 years, and reserved the land for the use of the Air Force for a communication site and support facilities. In 2005, PLO No. 7360 extended the withdrawal as related to approximately 264 of those acres for an additional 20 years. This notice advises the public of a 90-day opportunity to comment on the withdrawal extension application and to request a public meeting.

DATES: Comments and request for a public meeting must be received by November 13, 2024.

ADDRESSES: All comments and meeting requests should be sent to the Bureau of Land Management (BLM) Nevada State Office, 1340 Financial Blvd. Reno NV 89502. Also, comments will be available for public review at the Tonopah Field Office, P.O. Box 911 (1553 South Main Street), Tonopah, NV 89049, during regular business hours 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Edison Garcia, BLM Nevada State Office, at (775) 861-6530, email: egarcia@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 Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The withdrawal of Parcel "B," which was withdrawn by PLO No. 6591 (50 FR 10965-10966, March 19, 1985) and extended by PLO No. 7630 (70 FR 18424, April 11, 2005), and serialized as N-35951, expires on April 11, 2025, unless the withdrawal is extended. The purpose of the withdrawal is to protect a communications site and support facilities. Fulfillment of the purpose of this withdrawal requires that it be extended.

The legal land description and acreage described in PLO No. 6591, Parcel B, extended by PLO No. 7630, is revised to reflect the BLM Cadastral Survey's Specification for Descriptions of Land. The revised land description does not change the footprint of the Parcel B lands originally withdrawn by PLO No. 6591; however, the number of acres included in the boundary of the Parcel B lands originally withdrawn has been computed to total approximately 264 acres.

The approximately 264 acres of public lands withdrawn and reserved for Air Force use at Parcel B are located in central Nye County, approximately 77 miles east of Tonopah, on Halligan Mesa, Nevada. Public access to these lands has been restricted since the 1960s; however, public lands surrounding these 264 acres are open to recreation, mining, and other uses. The 264 acres are legally described as:

Mount Diablo Meridian, Nevada

Tps. 7 and 8 N., R. 52 E., unsurveyed,

Parcel 1

Commencing at the northeast corner section 36, T. 8 N., R. 51 E.,
Thence, east, a distance of 8,580 feet;
Thence south, a distance of 2,640 feet to the POINT OF BEGINNING;
Thence west, a distance of 660 feet;
Thence south, a distance of 660 feet;
Thence west, a distance of 660 feet;
Thence south, a distance of 2,640 feet;
Thence west, a distance of 660 feet;
Thence south, a distance of 3,300 feet;
Thence east, a distance of 1,980 feet;
Thence north, a distance of 6,600 feet to the POINT OF BEGINNING.

Parcel 2

From a point beginning 1.5 miles from junction with Highway 6, 5,254 lineal feet of northerly access road to include a 100-foot width on both sides of centerline of said road which extends to the south boundary of Parcel B. (Passes through T. 7 N., R. 52 E., Sections 5 and 8).

The area described contains approximately 264 acres, as computed from the metes and bounds description and the dimensions of the access road.

This legal description differs from the legal description in PLO No. 7630, which was altered from the original description in PLO No. 6591. See PLO No. 6591 for a detailed metes and bounds description for Parcel B (Note: The withdrawal for Parcel A is not included in this notice).

The purpose of the withdrawal extension is to continue the reservation of lands for the Air Force for a communications site and support facilities.

There is no suitable alternative site.

No water rights would be needed to fulfill the purpose of this withdrawal extension.

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 personally identifiable information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the application for withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the application for withdrawal extension must submit a written request to the State Director, Nevada State Office, at the address in the **ADDRESSES** section, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register**, local newspapers, and on the BLM website at www.blm.gov at least 30 days before the scheduled date of the meeting.

This withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.4)

Jon K. Raby,
State Director.

[FR Doc. 2024-18312 Filed 8-14-24; 8:45 am]

BILLING CODE 4331-21-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1396]

Certain Medical Programmers With Printed Circuit Boards, Components Thereof, and Products and Systems for Use With the Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 11) of the presiding administrative law judge (“ALJ”) granting complainants’ motion to amend the complaint to correct a typographical error on the cover page and the notice of investigation (“NOI”) to change the plain language description of the accused products in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 3, 2024, based on a complaint filed by Medtronic, Inc., Medtronic Logistics, LLC, and Medtronic USA, Inc., all of Minneapolis, Minnesota, and Medtronic Puerto Rico Operations Co. of Juncos, Puerto Rico (collectively, “Medtronic”). 89 FR 23043–44 (Apr. 3, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain medical programmers with

printed circuit boards, components thereof, and products and systems for use with the same by reason of the infringement of certain claims of U.S. Patent Nos. 8,712,540 and 9,174,059. *Id.* at 23043. The complaint further alleges that a domestic industry exists. *Id.* The NOI named one respondent: Axonics, Inc. (“Axonics”) of Irvine, California. *Id.* at 23044. The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

On June 25, 2024, Medtronic filed a motion to amend the complaint and NOI to (i) correct a typographical error on the cover page of the complaint by substituting “UNITED” in place of “MUNITED,” and (ii) change the NOI’s plain language description of the accused products—which presently reads “sacral neuromodulation systems to control neurostimulators surgically implanted into a human patient, incorporating medical programmers and printed circuit boards used in same”—by substituting “components thereof, and” in place of “incorporating.” On July 5, 2024, Axonics filed a response to the motion opposing the amendment to the NOI, but not opposing the amendment to the complaint. Also on July 5, 2024, OUII filed a response in support of the motion.

On July 11, 2024, the ALJ issued the subject ID granting the motion. The ID finds that, in accordance with Commission Rule 210.14(b) (19 CFR 210.14(b)), good cause exists for amending the complaint and NOI as requested by Medtronic and neither the parties nor the public interest will be prejudiced. ID at 1, 3. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The complaint is amended to substitute “UNITED” in place of “MUNITED,” and the NOI is amended so that the plain language description of the accused products reads “sacral neuromodulation systems to control neurostimulators surgically implanted into a human patient, components thereof, and medical programmers and printed circuit boards used in same.”

The Commission vote for this determination took place on August 12, 2024.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–18313 Filed 8–14–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Legends Hospitality Parent Holdings, LLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States of America v. Legends Hospitality Parent Holdings, LLC*, Civil Action No. 1:24–cv–05927–JPC (S.D.N.Y.). On August 5, 2024, the United States filed a Complaint alleging that Legends violated section 7A of the Clayton Act, 15 U.S.C. 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (“section 7A” or “HSR Act”) in connection with its proposed acquisition of ASM Global, Inc. The Complaint alleges Legends assumed unlawful control of ASM Global, Inc. prior to the expiration of the mandatory waiting period imposed by the HSR Act, and that Legends was continually in violation of the HSR Act each day beginning at least on December 7, 2023, until the waiting period ended on May 29, 2024.

The proposed Final Judgment, filed at the same time as the Complaint, requires Legends Hospitality to pay a \$3.5 million civil penalty for violation of the HSR Act and bars recurrence of the challenged conduct on penalty of contempt. It additionally requires Legends to appoint an antitrust compliance officer at its expense, to conduct compliance training, to certify compliance with the Final Judgment, to maintain a whistleblower protection policy, and to provide the United States inspection and interview rights to assess compliance with the Final Judgment.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division’s website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the Southern District of New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of

the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Owen Kendler, Chief, Financial Services, FinTech, and Banking Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (email address: owen.kendler@usdoj.gov).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

United States District Court Southern District of New York

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street NW, Washington, DC 20530, Plaintiff, v. *Legends Hospitality Parent Holdings, LLC*, 61 Broadway, 24th Floor, New York, New York 10006, Defendant.

Case No. 1:24-cv-5927-JPC

Complaint

The United States of America brings this civil action to obtain equitable and monetary relief in the form of civil penalties against the Defendant, Legends Hospitality Parent Holdings, LLC ("Legends") for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), and alleges as follows:

I. Introduction

1. The HSR Act, 15 U.S.C. 18a, is an essential part of modern antitrust enforcement. It requires the buyer and seller of voting securities or assets in excess of a certain value to notify the Department of Justice and the Federal Trade Commission *prior* to consummating the acquisition, and to observe a suspensory waiting period after the notification is filed. A buyer could "acquire" assets without taking formal legal title, for instance by exerting operational control over the assets or otherwise obtaining "beneficial ownership." The HSR Act's advance notice and waiting period requirements ensure that the parties to a proposed transaction continue to operate separately and independently during review, preventing anticompetitive acquisitions from harming consumers before the United States has had the opportunity to review them according to the procedures established by Congress

in the Clayton Act. A buyer that prematurely takes beneficial ownership of assets, sometimes referred to as "gun jumping," is subject to statutory penalties for each day it is in violation.

II. Jurisdiction, Venue, and Interstate Commerce

2. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. 18a, added by Title II of the HSR Act, to recover civil penalties for violations of that section and other relief.

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and pursuant to 28 U.S.C. 1331, 1337(a), 1345 and 1355.

4. The Defendant has consented to personal jurisdiction and venue in the United States District Court for the Southern District of New York for purposes of this action.

5. Legends is engaged in commerce, or in activities affecting commerce, within the meaning of Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1).

III. The Defendant

6. Defendant Legends is a global venue services company headquartered in New York, New York. It is majority-owned by Sixth Street Partners, its minority owners include the New York Yankees and the Dallas Cowboys, and it has a strategic partnership with The Kroenke Group. Legends focuses predominantly on food and beverage services, feasibility studies, project development, and sales.

IV. Waiting Period Requirements of the HSR Act

7. The HSR Act requires certain acquiring persons, and certain persons whose voting securities are acquired, to file notifications with the Department of Justice and Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a (a) and (b). Of relevance here, the notice and waiting requirements apply if, as a result of the acquisition, the acquiring person will "hold" assets or voting securities above the HSR Act's size of transaction threshold.

8. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), the Federal Trade Commission promulgated rules to carry out the purpose of the HSR Act. 16 CFR 801–803.

9. Section 801. 1(c) of the HSR Rules, 16 CFR 801.1(c) defines "hold" to mean "beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means."

10. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), states that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which the person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 89 FR 1,445 (Jan. 10, 2024), the maximum amount of civil penalty relevant to this Complaint is \$51,744 per day.

V. The Acquisition and the Defendant's Unlawful Conduct

11. Legends and ASM Global, Inc. ("ASM") began acquisition discussions in January 2023. ASM is a venue services company primarily focused on venue management, *i.e.* providing services related to the day-to-day operations of a venue like event booking, operations, sanitation, and security among other services. On November 3, 2023, Legends agreed to purchase ASM for \$2.325 billion ("Acquisition"). On November 6, 2023, Legends filed its HSR notice with the Department of Justice.

12. The Acquisition exceeded thresholds established by the HSR Act and did not qualify for any of the HSR Act's exemptions. Consequently, the Acquisition was subject to the premerger and notification requirements of the HSR Act. The applicable waiting period, which was extended by the issuance of requests for additional information on January 8, 2024, expired on May 29, 2024.¹ During this statutory waiting period, the HSR Act² required Legends and ASM to continue to operate as separate and independent entities while the Antitrust Division of the Department of Justice conducted a pre-consummation antitrust review of the Acquisition. Legends, however, failed to adhere to its statutory obligation and assumed unlawful control of ASM prior to the expiration of the HSR waiting period.

13. In May 2023, Legends won the right to manage a city-owned arena in California upon the expiration of ASM's management lease on July 31, 2024. ASM also competed for this opportunity. As part of its bid for the California arena, Legends submitted a

¹ Legends and ASM agreed to not close the Acquisition during the pendency of the Department of Justice's investigation.

² Other antitrust laws also can apply to pre-closing conduct of transaction parties.

detailed transition plan that included key milestone dates for booking, operations, human resources, engineering, sanitation, production, security, event staffing and other services. Absent the Acquisition, Legends was planning to provide those services itself to the arena.

14. Due to the Acquisition with ASM, however, Legends decided to have ASM provide those services instead. After submitting its HSR filing, but before the expiration of the HSR waiting period, Legends decided that ASM would continue to operate the California arena. For example, on December 7, 2023, Legends and ASM signed an initial agreement whereby ASM would book third-party events for the California arena instead of Legends. Further, on April 9, 2024, Legends decided that ASM would continue providing venue management services for the California arena instead of transitioning the arena to Legends.

15. The purpose and intent of Legends' pre-closing conduct in connection with the California arena also are informed by aspects of Legends' course of conduct in connection with ASM, including conduct before and after submitting the HSR filing.

16. For example, while Legends and ASM were in discussions around the Acquisition, but before the HSR filing, Legends sought to discuss competitive bidding strategies with ASM. In August 2023, Legends learned that a city in North Carolina was planning to issue an RFP for management of an existing entertainment complex, including an arena and other venues. A senior Legends executive emailed Legends' then-CEO noting, "I assume we would rather have ASM chase this?" The then-CEO informed another executive, "we will find out if ASM is bidding as don't want to both be bidding," and set a calendar reminder for himself to speak with a senior ASM executive about the North Carolina RFP.

17. In addition, in early 2023, Legends and ASM learned that a university was planning to develop a new arena. Both Legends and ASM initially took steps to form separate, independent bids for the new arena. However, after Legends and ASM were in discussions around the Acquisition, their posture changed, such that in May 2023 they decided that they would instead try to bid together. While constructing their joint bid, Legends and ASM exchanged competitively sensitive information surrounding the arena development project.

18. Legends and ASM engaged in similar behavior for a different proposed university arena. Prior to Acquisition negotiations, Legends and ASM were

pursuing independent actions to try to win the development of the new arena. This posture changed in 2024, when, during the HSR waiting period, Legends and ASM pursued plans to submit a joint bid and exchange related information.

VI. Violation of Section 7A of the Clayton Act

19. Plaintiff alleges and incorporates paragraphs 1 through 18 as if set forth fully herein.

20. Legends' acquisition of ASM was subject to Section 7A premerger notification and waiting-period requirements.

21. Legends obtained beneficial ownership of ASM prior to observing the applicable waiting period in violation of Section 7A.

22. Accordingly, Defendant was continuously in violation of the requirements of the HSR Act each day beginning at least on December 7, 2023, until the waiting period was terminated on May 29, 2024.

VII. Request for Relief

Wherefore, Plaintiff requests:

(a) that the Court adjudge and decree that Defendant violated the HSR Act and was in violation during the period of 175 days beginning on December 7, 2023, and ending on May 29, 2024;

(b) order that Defendant pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. 18(a)(g)(1), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 701 (further amending the Federal Civil Penalties Inflation Adjustment act of 1990, 28 U.S.C. 2461 note), and 16 CFR 1.98(a);

(c) that the Court enjoin Defendant from any future violations of the HSR Act;

(d) that the Court award the Plaintiff its costs of this suit; and,

(e) that the Court order such other and further relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to dissipate their anticompetitive effects.

Dated this 5th day of August, 2024.

Respectfully submitted,

For Plaintiff United States of America

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Attorneys for the United States

United States District Court Southern District of New York

*United States of America, Plaintiff, v.
Legends Hospitality Parent Holdings, LLC,
Defendant.*

Case No. 1:24-cv-5927

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on August 5, 2024, alleging that Defendant Legends Hospitality Parent Holdings, LLC violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act");

And whereas, the United States and Defendant have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, Defendant agrees to undertake certain actions and refrain from certain conduct for the purpose of resolving the claims alleged in the Complaint;

And whereas, Defendant represents that the relief required by this Final Judgment can and will be made and that Defendant will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, it is ordered, adjudged, and decreed:

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7A of the Clayton Act (15 U.S.C. 18a).

II. Definitions

As used in this Final Judgment:

A. “Legends” or “Defendant” means Defendant Legends Hospitality Parent Holdings, LLC, a Delaware corporation with its headquarters in New York, New York, its successors and assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and officers, managers, and employees. For the avoidance of doubt: (1) “Legends” shall include ASM Global Parent, Inc., following its acquisition by Legends Hospitality Parent Holdings, LLC; and (2) this provision applies only to subsidiaries, partnerships, or joint ventures in which Legends has a partial (more than 50%) or total ownership or control. Any ownership or control interest held jointly by Legends and any parent or owner of Legends shall be attributed to Legends and aggregated with Legends’ ownership or control.

B. “Agreement” means any agreement, contract, or mutual understanding, whether formal or informal, written, or unwritten.

C. “Bid” or “Bidding” means any offer or response to a Request for Proposal, Request for Submission, Request for Information, Request for Qualifications, or any other similar request, relating to a contract or other arrangement (including extensions or renewals of any existing contract or other arrangement) to provide services to an existing or potential venue.

D. “Collaboration Agreement” means any Agreement by and among Defendant and any Competitor to collaborate or team in offering or providing Venue Development Services or to act as the Venue Manager. “Collaboration Agreement” does not include contracting for services where Legends is acting as the agent of a client or acting pursuant to a contract with a client.

E. “Communicate” or “Communicating” and “Communication(s)” means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written or recorded means of any kind, including electronic communications, emails, chats or other ephemeral messages, facsimiles, telephone communications, voicemails, text messages, audio

recordings, meetings, interviews, correspondence, exchange of written or recorded information, face-to-face meetings, or social media.

F. “Competitively Sensitive Information” means any non-public information of Defendant or any Competitor, including information relating to negotiating positions, tactics, or strategy; pricing or pricing strategies; Bids or Bidding strategies; intentions to Bid or not to Bid; decisions to Bid; whether a Bid was or was not submitted; and costs, revenues, profits, or margins.

G. “Competitor” means any Person (other than Defendant) engaged in, or that Defendant’s executives or senior managers know is considering engaging in, any of Defendant’s present or future lines of business, including food and beverage or hospitality services, venue management, project management, sponsorship, and/or sales of premium seating.

H. “Covered Person” means: (i) any employee or agent of Defendant whose principal job responsibilities include the sales, client outreach, or the negotiation of terms or development of Bids or proposals for services to Venues (other than employees or agents whose responsibilities are entirely clerical or limited to document preparation); (ii) all General Managers of any Venue managed by Defendant (iii) Defendant’s Chief Executive Officer and each of his or her direct reports; (iv) members of Defendant’s Board of Directors; and (v) designated Board observers.

I. “Including” means including, but not limited to.

J. “Negotiation and Interim Period” means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned.

K. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, sole proprietorship, agency, board, authority, commission, office, institution, university, municipality, governmental entity, or other business or legal entity, whether private or governmental.

L. “Transaction” means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any Person where such Agreement is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

M. “Venue” means a facility that hosts publicly ticketed live events, including stadiums, arenas, convention centers, amphitheaters, clubs, and theaters.

N. “Venue Development Services” means managing, investing, or financing the development, construction, or renovation of venues. “Venue Development Services” does not include feasibility or market studies.

O. “Venue Manager” means the primary entity that manages a venue, including by providing services necessary to operate the venue, such as administration, operations, concert and live event booking, finance and accounting, marketing, human resources, housekeeping, security, parking, and/or production services.

III. Applicability

This Final Judgment applies to Defendant, as defined above, and all other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment.

IV. Civil Penalty Under Section 7A of the Clayton Act

A. Within thirty (30) days of entry of this Final Judgment, Defendant must pay a civil penalty in the amount of \$3,500,000. Payment of the civil penalty must be made by wire transfer of funds or cashier’s check. Prior to making a wire transfer, Defendant must contact the Budget and Fiscal Section of the Antitrust Division’s Executive Office at ATR.EXO-Fiscal-Inquiries@usdoj.gov for instructions. A payment made by cashier’s check, must be made payable to the United States Department of Justice—Antitrust Division and delivered to: Chief, Budget & Fiscal Section Executive Office, Antitrust Division United States Department of Justice Liberty Square Building, 450 5th Street NW, Room 3016, Washington, DC 20530.

B. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum will accrue from the date of the default to the date of payment.

V. Prohibited Conduct

A. Defendant may not, directly or indirectly, during any Negotiation and Interim Period of a Transaction or in connection with an actual or potential Collaboration Agreement:

1. Share Competitively Sensitive Information with any Competitor;
2. Communicate with any Competitor concerning any Competitively Sensitive Information relating to a Bid or Bidding, including whether to Bid or not to Bid;

3. Agree with any Competitor to participate in any joint Bid, collaborative Bid, cooperative Bid, or shared Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or

4. Agree with any Competitor that Defendant or any Competitor will not Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

B. The prohibitions in Paragraph V.A. apply to Defendant's Communicating, Agreeing, or sharing through any third-party agent or third-party consultant working at Defendant's instruction, direction, or request.

Notwithstanding the foregoing, nothing in this Final Judgment prohibits Defendant from engaging in conduct in Paragraphs V.A.1–4 above in connection with a Collaboration Agreement if Defendant first secures advice of antitrust counsel and consults with the Antitrust Compliance Officer, *see infra* Section VI, and obtains advanced written permission from Defendant's Chief Executive Officer or General Counsel. For avoidance of doubt, nothing in the Final Judgment, including compliance with this Paragraph V.C., precludes the United States from investigating or, if appropriate, bringing action against Defendant or any other person for violations of any antitrust law.

VI. Required Conduct

A. Within ten (10) days of entry of this Final Judgment, Defendant must appoint or employ an Antitrust Compliance Officer, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in Defendant's Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address.

Defendant's initial and replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion. Defendant is responsible for all costs and expenses related to the Antitrust Compliance Officer.

B. Notwithstanding the foregoing, for the first 120 days following entry of the Final Judgment, Defendant may retain outside counsel as an Antitrust Compliance Officer, subject to the approval of the United States in its sole discretion.

C. Unless otherwise agreed by the United States, the Antitrust Compliance Officer must have the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and
2. at least five years' experience in legal matters, including at least five years' experience with antitrust matters.

D. Defendant may appoint or retain one or more Reserve Antitrust Compliance Officers meeting the qualifications set forth in VI.C to perform duties of the Antitrust Compliance Officer when the Antitrust Compliance Officer is not available. Defendant's initial and replacement appointment of a Reserve Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion.

E. The Antitrust Compliance Officer must, directly or through employees or counsel working at the Antitrust Compliance Officer's direction:

1. within thirty (30) days of entry of this Final Judgment, furnish to each Covered Person a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and an explanatory cover letter prepared by Defendant providing reasonable notice of the meaning and requirements of this Final Judgment, with notice provided to the United States;

2. brief and distribute a copy of this Final Judgment and the Competitive Impact Statement to any Person who succeeds to a position of a Covered Person, and provide reasonable notice of the meaning and requirements of this Final Judgment and the antitrust laws, within sixty (60) days of such succession;

obtain from each Covered Person, within thirty (30) days of that Person's receipt of this Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of this Final Judgment that has not been reported to the Antitrust Compliance Officer; and (iii) understands that any Person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against Defendant and/or any Person who violates this Final Judgment;

3. provide an Annual Antitrust Compliance Training to all Covered Persons and members of Defendant's Board of Directors on the meaning and requirements of this Final Judgment, the

antitrust laws, and guidelines governing:

- i. Sharing of Competitively Sensitive Information with any Competitor;

- ii. Communication with any Competitor concerning any Competitively Sensitive Information relating to a Bid or Bidding, including whether to Bid or not to Bid;

- iii. Agreeing with any Competitor to participate in any joint Bid, collaborative Bid, cooperative Bid, or shared Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or

- iv. Agreeing with any Competitor that Defendant or any Competitor will not Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

Successors to Covered Persons must be provided an Annual Antitrust Compliance Training within sixty (60) days of such succession.

4. obtain from each Covered Person or successor, within thirty (30) days of that person's Annual Antitrust Compliance Training, a certification that he or she

- (i) attended the training and reviewed the training materials, and (ii) is not aware of any violation of this Final Judgment that has not been reported to the Antitrust Compliance Officer;

5. maintain until four years following the expiration of this Final Judgment and furnish to the United States within ten days if requested to do so:

- i. a list identifying all employees having received the notices and compliance training required under Paragraphs VI.E.2, VI.E.3, and VI.E.5, and the dates on which the employees received the notices and training;

- ii. copies of all Annual Antitrust Compliance Training materials; and

- iii. copies of all certifications and other materials required to be issued under Paragraph VI.E;

- iv. a record of certifications received pursuant to this Section;

- v. a copy of Defendant's whistleblower policy; and

- vi. a record of all reports received pursuant to Paragraph VI.F. and VI.G.

6. annually communicate to all Covered Persons and all other employees that they must disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws; and

7. by not later than ninety (90) calendar days after entry of this Final Judgment and annually thereafter, file written reports with the United States affirming that Defendant is in compliance with its obligations under this Final Judgment, including the

training requirements under Paragraph VI.E.5;

F. If an officer, director, or executive of Defendant or a member of its Board of Directors learns of a potential violation of this Final Judgment or the antitrust laws by Defendant, he or she must promptly notify the Antitrust Compliance Officer.

G. Immediately upon the Antitrust Compliance Officer's learning of any violation or potential violation of any of the terms of this Final Judgment or the antitrust laws, Defendant must investigate and, in the event of a violation, must cease or modify the activity to comply with this Final Judgment and the antitrust laws. Defendant must maintain all documents as kept in the ordinary course discussed with, provided to, reviewed, or requested by the Antitrust Compliance Officer in connection with any reported violation or potential violation of this Final Judgment or in connection with any violation or potential violation of the antitrust laws reported to the Antitrust Compliance Officer pursuant to Paragraph VI.F. for four years following the expiration of this Final Judgment.

H. Within thirty (30) calendar days of the Antitrust Compliance Officer's learning of any potential violation of any of the terms of this Final Judgment, Defendant must file with the United States a statement describing the potential violation, including a description of all steps taken by Defendant to remedy the potential violation.

I. Defendant must have its Chief Executive Officer and its General Counsel certify in writing to the United States, no later than ninety (90) calendar days after this Final Judgment is entered and then annually on the anniversary of the date of the entry of this Final Judgment, that Defendant has complied with the provisions of this Final Judgment.

J. Defendant must maintain a whistleblower protection policy that provides any employee may disclose, without reprisal or adverse consequences for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by Defendant of this Final Judgment or the antitrust laws.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders such as the Stipulation and Order, or of determining whether this Final Judgment should be modified or vacated, upon written request of an

authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendant, Defendant must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, or depose Defendant's officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendant must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

VIII. Public Disclosure

A. No information or documents obtained pursuant to any provision of this Final Judgment may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendant submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, "unless the submitter requests and provides justification for a longer designation period." See 28 CFR 16.7(b).

C. If at the time that Defendant furnishes information or documents to the United States pursuant to any provision of this Final Judgment, Defendant represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give Defendant 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

IX. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. Enforcement of Final Judgement

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws, including Section 7A of the Clayton Act, and to restore the competition the United States alleges was harmed by Defendant. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for

an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that Defendant violated this Final Judgment before it expired, the United States may file an action against Defendant in this Court requesting that the Court order:

(1) Defendant to comply with the terms of this Final Judgment for an additional term to be determined by the Court; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section X.

XI. Expiration of Final Judgement

Unless the Court grants an extension, this Final Judgment will expire seven (7) years from the date of its entry if Defendant has paid the civil penalty in full, except that if Defendant is found to violate this Final Judgment, either by the Court or by stipulation of the parties, the United States may move to extend the Final Judgment.

XII. Reservation of Rights

This Final Judgment addresses only the claims stated in the Complaint against Defendant, which solely alleges violations of 7A of the Clayton Act (15 U.S.C. 18a). The United States reserves all rights for any other claims against the Defendant. This Final Judgment thus does not in any way affect or address any other charges or claims that may be filed by the United States.

XIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the

Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

Hon. John P. Cronan,
United States District Judge.

United States District Court Southern District of New York

United States of America, Plaintiff, v.
Legends Hospitality Parent Holdings, LLC,
Defendant.

Case No. 1:24-cv-5927-JPC

Competitive Impact Statement

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- United States v. Alex. Brown & Sons, Inc.*, 963 F. Supp. 235 (S.D.N.Y. 1997)
- United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982)
- United States v. Apple, Inc.*, 889 F. Supp. 2d 623 (S.D.N.Y. 2012)
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- United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016)
- United States v. Keyspan*, 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011)
- United States v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995)

- United States v. Morgan Stanley*, 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012)
- United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007)
- United States v. US Airways Grp., Inc.*, 38 F. Supp. 3d 69 (D.D.C. 2014)

Other Authorities

- 119 Cong. Rec. 24, 598 (1973) (statement of Sen. Tunney)

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the “APPA” or “Tunney Act”), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 3, 2023, defendant Legends Hospitality Parent Holdings, LLC (“Legends”) announced it had agreed to acquire ASM Global, Inc. (“ASM”) for \$2.35 billion (“Acquisition”). The transaction exceeded the thresholds established by Section 7A of the Clayton Act, 15 U.S.C. § 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (“Section 7A” or “HSR Act”), and therefore required Legends and ASM to notify the federal antitrust agencies of the Acquisition and observe a waiting period before Legends could take control of ASM’s business. The HSR Act³ required Legends and ASM to continue operating separately and independently during the post-notification waiting period while the Antitrust Division of the Department of Justice conducted a pre-consummation antitrust review of the Acquisition. The waiting period did not expire until May 29, 2024.⁴

Instead of preserving ASM as an independent business, however, the Complaint alleges that Legends engaged in “gun-jumping” by assuming unlawful control of ASM prior to the expiration of the HSR waiting period, in violation of 15 U.S.C. 18a, and that Legends was continually in violation of the HSR Act each day beginning at least on December 7, 2023, until the waiting period ended on May 29, 2024.

The United States and the defendant have reached a proposed settlement that eliminates the need for a trial in this case. To resolve the HSR Act violation, the proposed Final Judgment requires Legends to pay a civil penalty of \$3.5 million. The proposed Final Judgment also enjoins Legends from engaging in certain behavior and requires Legends to

³ Other antitrust laws also can apply to pre-closing conduct of transaction parties.

⁴ Legends and ASM agreed to not close the Acquisition during the pendency of the Department of Justice’s investigation.

implement behavioral changes to deter future HSR Act violations.

The United States and Legends have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Background

Legends is headquartered in New York, New York and primarily focuses on providing food and beverage services, feasibility studies, project development, and sales services to venues. ASM, in turn, primarily provides venue management services (*i.e.* a bundle of related services necessary to operate a venue)⁵ to venues that outsource management responsibilities to a third party. While Legends and ASM's core offerings are different, certain lines of business overlap. Both Legends and ASM conduct business throughout the United States and globally.

Venue owners (or owners of planned venues) often issue bid solicitations when seeking vendors or managers to develop, provide services to, or operate the venue. Vendors (including ASM and Legends) respond to these solicitations, creating a competitive bidding process.

Depending on the nature of the services solicited, vendors submitting bids in response to an RFP or similar solicitation may respond either individually or as part of a team whose members offer complementary products necessary to fulfill the RFP. For example, architects, developers, venue managers and others may create a team to provide a comprehensive response to an RFP seeking both development and management services. Competition between individual firms or teams leads to increased revenue, lower costs, and higher quality services for venues.

B. Legends' Alleged Unlawful Conduct

In May 2023, Legends won the rights to provide venue management services to a city-owned arena in California. Legends' work would begin after the July 31, 2024, expiration of incumbent ASM's management lease. ASM also competed for this opportunity. Legends'

winning bid contained a detailed transition plan outlining key milestone dates for tasks necessary to effectuate the management shift. Absent the Acquisition, Legends was planning to provide those services itself to the arena. Due to the Acquisition of ASM, however, Legends decided to have ASM provide those services instead. After submitting its HSR filing, but before the expiration of the HSR waiting period, Legends decided that ASM would continue to operate the California arena. Accordingly, on December 7, 2023, Legends and ASM signed an initial agreement whereby ASM would book third-party events for the arena. Further, on April 9, 2024, Legends decided that ASM would continue providing venue management services for the California arena instead of transitioning the arena to Legends.

The purpose and intent of Legends' pre-closing conduct in connection with the California arena also are informed by aspects of Legends' course of conduct in connection with ASM, including conduct before and after submitting the HSR filing.

For example, while Legends and ASM were in discussions around the Acquisition but before the HSR filing, Legends sought to discuss competitive bidding strategies with ASM. In August 2023, Legends learned that a city in North Carolina was planning to issue an RFP for management of an existing entertainment complex, including an arena and other venues. A senior Legends executive emailed Legends' then-CEO noting, "I assume we would rather have ASM chase this?" The then-CEO informed another executive, "we will find out if ASM is bidding as don't want to both be bidding," and set a calendar reminder for himself to speak with a senior ASM executive about the North Carolina RFP.

In addition, in early 2023, Legends and ASM learned that a university was planning to develop a new arena. Both Legends and ASM initially took steps to form separate independent bids for the new arena. However, after Legends and ASM were in discussions around the Acquisition, their posture changed, such that in May 2023 they decided that they would instead try to bid together. While constructing their joint bid, Legends and ASM exchanged competitively sensitive information surrounding the arena development project.

Legends and ASM engaged in similar behavior in 2024 for a different proposed university arena. Prior to the Acquisition negotiations, Legends and ASM took independent actions to win the development of the new arena. This posture changed in 2024, when, during

the HSR waiting period, Legends and ASM pursued plans to submit a joint bid and exchange related information.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will appropriately address the violation alleged in the Complaint, penalize Legends, and deter others from violating the HSR Act. The proposed Final Judgment imposes a civil penalty for violation of the HSR Act and bars recurrence of the challenged conduct on penalty of contempt. It additionally requires Legends to appoint an antitrust compliance officer at its expense, to conduct compliance training, to certify compliance with the Final Judgment, to maintain a whistleblower protection policy, and to provide the United States inspection and interview rights to assess compliance with the Final Judgment.

A. Civil Penalty

Under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the HSR Act is liable to the United States for a civil penalty of not more than \$51,744 for each day that person is in violation of the act.⁶ The Complaint alleges that defendant was in violation of the HSR Act beginning at least on December 7, 2023, until the expiration of the statutory waiting period on May 29, 2024. The United States accepted \$3.5 million—an amount that is less than the maximum penalty permitted under the HSR Act—as an appropriate civil penalty for settlement purposes. A lower penalty is appropriate because of Legends' demonstrated willingness to take corrective internal action and because it is willing to resolve the matter by the proposed Final Judgment, thereby avoiding the risks and costs associated with a prolonged investigation and litigation.

B. Prohibited Conduct

Paragraphs V(A) & V(B) of the Final Judgment are designed to prevent future violations of the antitrust laws during a pending transaction. Under these provisions, Legends is prohibited from, during any negotiation and interim

⁵ Core venue management services include concert and live event booking, finance and accounting, marketing, human resources, housekeeping, security, parking, event services, production services, and technology services.

⁶ Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 89 FR 1,445 (Jan. 10, 2024) (increasing maximum penalty to \$51,744 per day).

period⁷ of a transaction⁸ or in connection with an actual or potential collaboration agreement,⁹ and except as otherwise permitted by the Final Judgment:

- Sharing competitively sensitive information with any competitor;
- Communicating with any competitor concerning any competitively sensitive information relating to a bid or bidding, including whether to bid or not to bid;
- Agreeing with any competitor to participate in any joint bid, collaborative bid, cooperative bid, or shared bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or
- Agreeing with any competitor that Legends or any competitor will not bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

Paragraphs V(A) & V(B) apply to communicating, agreeing, or sharing directly, indirectly, and through any third-party agent or consultant working at Legends' instruction, direction, or request.

Paragraph V(C) provides a limited exception permitting Legends to engage in the conduct prohibited by Paragraph V(A) in connection with a collaboration agreement, provided that Legends first secures advice of antitrust counsel, consults with the antitrust compliance officer (*see* § III(C), *infra*), and obtains advance written permission from its CEO or General Counsel. Although certain communications in connection with a collaboration agreement may be permissible under certain circumstances, this internal review and approval provision ensures that, in light of Defendant's conduct, it will not take future actions that may reduce competition without first conducting a thorough antitrust review. Finally, Paragraph V(C) explains that nothing in

the proposed Final Judgment precludes the United States from investigating or, if appropriate, bringing action against Legends or anyone else for violating the antitrust laws.

C. Required Conduct

Under Paragraphs VI(A)–VI(D) of the proposed Final Judgment, Legends must appoint or employ, at its expense, an experienced antitrust lawyer to serve as Legends' antitrust compliance officer. Legends will identify its proposed antitrust compliance officer or any replacement officer to the United States, which will have sole discretion to approve or disapprove the designation. Paragraphs VI(E)–VI(H) outline the antitrust compliance officer's required duties, which include providing all covered persons¹⁰ with copies of the Final Judgment (as entered) and of this Competitive Impact Statement; ensuring that all covered persons receive training on the requirements of the Final Judgment and certify that they have done so; filing written reports affirming Legends' compliance with the Final Judgment; and disclosing to the United States any violations of the Final Judgment or of the antitrust laws and the steps Legends took to remedy the potential violation.

In addition, Paragraph VI(J) of the Final Judgment obligates Legends to maintain an antitrust whistleblower program through which employees may identify potential violations of the Final Judgment or of the antitrust laws without fear of reprisal.

To ensure compliance, Paragraph VI(I) requires both Legends' CEO and its General Counsel to annually certify Legends' compliance with the Final Judgment. Paragraph VII(A) grants authorized personnel from the United States the right to access Legends' files and interview its personnel upon request.

D. Enforcement of Final Judgment

The proposed Final Judgment also contains provisions designed to make enforcement of the Final Judgment as effective as possible. Paragraph X(A) provides that the United States retains and reserves all rights to enforce the

Final Judgment, including the right to seek an order of contempt from the Court, and Section IX retains this Court's jurisdiction over any enforcement proceedings. Under the terms of Paragraph X(A), Legends has agreed that, in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Legends has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph X(D) entitles the United States to file an enforcement action up to four years after the expiration of the Final Judgment (if, for example, the United States discovers a violation after the Final Judgment's expiration). In addition, to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph X(C) obligates Legends to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any successful enforcement effort, including enforcement efforts resolved before litigation.

To further aid enforcement, Paragraph X(B) underscores that the proposed Final Judgment is intended to remedy the loss of competition the United States alleges was harmed by Legends' conduct. Legends agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Finally, Section XI of the proposed Final Judgment provides that the Final Judgment will expire seven years from the date of its entry if Legends has paid the civil penalty in full, but also authorizes the United States to move to extend the Final Judgment's term if Legends is found by the Court to have violated the Final Judgment (or stipulates that it has done so).

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover

⁷ "Negotiation and Interim Period" means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned. Final Judgment, ¶ II(J).

⁸ "Transaction" means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any Person where such Agreement is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Final Judgment, ¶ II(L).

⁹ "Collaboration Agreement" means any Agreement by and among Defendant and any Competitor to collaborate or team in offering or providing Venue Development Services or to act as the Venue Manager. "Collaboration Agreement" does not include contracting for services where Legends is acting as the agent of a client or acting pursuant to a contract with a client. Final Judgment, ¶ II(D).

¹⁰ Paragraph II(H) of the Final Judgment defines covered persons as "(i) any employee or agent of Defendant whose principal job responsibilities include the sales, client outreach, or the negotiation of terms or development of Bids or proposals for services to Venues (other than employees or agents whose responsibilities are entirely clerical or limited to document preparation); (ii) all General Managers of any Venue managed by Defendant (iii) Defendant's Chief Executive Officer and each of his or her direct reports; (iv) members of Defendant's Board of Directors; and (v) designated Board observers."

three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Legends have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. See Stipulation and Proposed Order, ¶ II(A). The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or within 60 days of the first date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Owen M. Kendler, Chief, Financial Services, Fintech & Banking Section, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 4000, Washington, DC 20530.

Section IX of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for

the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits involving the alleged HSR Act violation against Defendant. The United States is satisfied, however, that the relief required by the proposed Final Judgment is important and meaningful while also avoiding the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or "consent decrees," in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1); see also *United States v. Int'l Bus. Mach. Corp.*, 163 F.3d 737, 740 (2d Cir. 1998). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); see generally *United States v. Keyspan*, 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (discussing Tunney Act standards). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); accord *United States v. Alex. Brown & Sons, Inc.*, 963 F. Supp. 235, 238 (S.D.N.Y. 1997), *aff'd sub nom. United States v. Bleznak*, 153 F.3d 16 (2d Cir. 1998) (citing *Microsoft*, 56 F.3d

at 1460); *Keyspan*, 763 F. Supp. 2d at 637 (same).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, "[t]he Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will best serve society, but only to ensure that the resulting settlement is 'within the reaches of the public interest.'" *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012) (citing *Alex. Brown & Sons*, 963 F. Supp. at 238) (internal quotations omitted) (emphasis in original). In making this determination, "[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable." *Morgan Stanley*, 881 F. Supp. 2d at 567 (citing *United States v. Abitibi-Consolidated Inc.*, 584 F. Supp. 2d 162, 165 (D.D.C. 2008)); see also *United States v. Apple, Inc.*, 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012); *Alex. Brown & Sons*, 963 F. Supp. at 238.¹¹ The government's predictions about the efficacy of its remedies are entitled to deference. *Apple*, 889 F. Supp. 2d at 631 (citation omitted); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. ArcherDaniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the

¹¹ See also *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) ("The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General."); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” (internal quotations omitted).

“[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982); *Apple*, 889 F. Supp. 2d at 637 n.10; *see also United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 74 (D.D.C. 2014) (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *Morgan Stanley*, 881 F. Supp. 2d at 568 (approving the consent decree even though the court may have imposed a greater remedy). To meet this standard, “it is necessary only that the submissions provide an ample ‘factual foundation for the government’s decisions such that its conclusions regarding the proposed settlement are reasonable.’” *Apple*, 889 F. Supp. 2d at 639 (citing *Keyspan*, 763 F. Supp. 2d at 637–38).

Moreover, a court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint and the APPA does not authorize a court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also Morgan Stanley*, 881 F. Supp. 2d at 567 (“A court must limit its review to the issues in the complaint and give ‘due respect to the [Government’s] perception of . . . its case.’”) (citing *Microsoft*, 56 F.3d at 1461); *United States v. InBev N.V./S.A.*, No. 08–1965, 2009 U.S. Dist. LEXIS 84787, at *20 (D.D.C. Aug. 11, 2009) (“[T]he ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. Courts cannot look beyond the

complaint in making the public interest determination unless the complaint underlying the decree is drafted so narrowly such that its entry would appear “‘to make a mockery of judicial power.’” *Apple*, 889 F. Supp. 2d at 631 (citing *United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1, 14 (D.D.C. 2007)).

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2); *see also Apple*, 889 F. Supp. 2d at 633 (declining to hold evidentiary hearing and finding “[a] hearing would serve only to delay the proceedings unnecessarily.”); *U.S. Airways*, 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24, 598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11; *see also Apple*, 889 F. Supp. 2d at 632 (“[P]rosecutorial functions vested solely in the executive branch could be undermined by the improper use of the APPA as an antitrust oversight provision.”) (citation omitted). A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *Apple*, 889 F. Supp. 2d at 633; *U.S. Airways*, 38 F. Supp. 3d at 75.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 9, 2024

Respectfully submitted,

Collier T. Kelley
Meagan K. Bellshaw
Michael G. McLellan

U.S. Department of Justice, Antitrust Division, 450 5th St. NW, Suite 4000, Washington, DC 20530, Telephone: (202) 445–9737, Email: Collier.Kelley@usdoj.gov.

[FR Doc. 2024–18240 Filed 8–14–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respiratory Protection Program at Coal Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The purpose of this information collection is to collect four types of information from coal mine operators: revised standard operating procedures (SOPs), American Society for Testing and Materials (ASTM) recordkeeping, fit test records, and emergency respirator inspection records. The mine operator uses the information to properly issue respiratory protection to coal miners who need to use personal protective equipment where accepted engineering controls measures have not been developed or when necessary, by the nature of work involved (for example, while establishing controls or occasional entry into hazardous

atmospheres to perform maintenance or investigation). Fit-testing records are used to ensure that a respirator worn by an individual is the same brand, model, and size respirator that was worn when that individual successfully passed a fit-test. Records of emergency respirator inspection are used to ensure that respirators are in proper working order when needed.

MSHA uses the information to determine compliance with the standard specified in 30 CFR 72.710. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 1, 2024 (89 FR 35250).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

Agency: DOL-MSHA.

Title of Collection: Respiratory Protection Program at Coal Mines.

OMB Control Number: 1219-0NEW.

Affected Public: Businesses or other for-profits.

Number of Respondents: 1,106.

Frequency: Annual.

Number of Responses: 19,908.

Annual Burden Hours: 11,060 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D)).

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-18182 Filed 8-14-24; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0096]

Proposed Extension of Information Collection; Underground Retorts

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Underground Retorts.

DATES: All comments must be received on or before October 15, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2024-0013.

- *Mail/Hand Delivery:* DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977, as amended (Mine Act), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal, and nonmetal mines.

In order to fulfill the statutory mandates to promote miners' health and safety, MSHA requires the collection of information entitled Underground Retorts. The information collection addressed by this notice is intended to ensure that combustible gases at underground oil shale mines are kept at acceptable levels and do not expose miners to explosive or other hazardous conditions.

Title 30 CFR 57.22401 sets forth safety requirements for using a retort to extract oil from shale in underground metal and nonmetal I-A and I-B mines (mines that operate in a combustible ore and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located). Prior to ignition of underground retorts, mine operators must submit a written ignition operation plan to the MSHA District Manager for the area where the mine is located. The ignition operation plan must contain site-specific safeguards and safety procedures for the underground areas of the mine which are affected by the retorts. The required contents listed in 30 CFR 57.22401(b) include:

- (1) Acceptable levels of combustible gases and oxygen in retort off-gases during start-up and during burning; levels at which corrective action will be initiated; levels at which personnel will be removed from the retort areas, from the mine, and from endangered surface areas; and the conditions for reentering the mine;

- (2) Specifications and locations of off-gas monitoring procedures and equipment;

- (3) Specifications for construction of retort bulkheads and seals, and their locations;

- (4) Procedures for ignition of a retort and for reignition following a shutdown; and

- (5) Details of area monitoring and alarm systems for hazardous gases and

actions to be taken to ensure safety of personnel.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Underground Retorts. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL-MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Underground Retorts. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0096.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 1.

Frequency: On occasion.

Number of Annual Responses: 1.

Annual Time Burden: 160 hours.

Annual Other Burden Costs: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024-18184 Filed 8-14-24; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0103]

Proposed Extension of Information Collection; Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres.

DATES: All comments must be received on or before October 15, 2024.

ADDRESSES: Comments concerning the information collection requirements of

this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

• *Federal E-Rulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2024-0016.

• *Mail/Hand Delivery:* DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

• MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S.

Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977, as amended (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal and nonmetal mines.

In order to fulfil the statutory mandates to protect miners' health and safety, MSHA requires the collection of information entitled Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres. The information collection addressed by this notice is intended to ensure that all underground mines, and the surface mills of Subcategory I-C mines (gilsonite), protect miners against the hazards of methane and dusts containing volatile matter.

Methane is a flammable gas found in underground mines in the United States. Although methane is often associated with underground coal mines, it also occurs in some metal and nonmetal (MNM) mines. Under 30 CFR

57.22003, underground MNM mines are categorized according to the potential to liberate methane. Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces the oxygen content by dilution when mixed with air and, consequently, can act as an asphyxiant when present in large quantities. Methane may enter the mining environment from a variety of sources including fractures, faults, or shear zones overlying or underlying the strata that surround the ore body, or from the ore body itself. It may occur as an occluded gas within the ore body. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present at room temperature. The presence of dust containing volatile matter in the mine atmosphere may further elevate the explosive potential of methane in a mine. Section 103(i) of the Mine Act, 30 U.S.C. 813(i), requires additional inspections to be conducted at mines depending on the amount of methane liberated from a mine.

i. Notifications to MSHA

Under 30 CFR 57.22004(c), mine operators of underground MNM mines must notify MSHA as soon as possible if any of the following events occur: (a) there is an outburst that results in 0.25 percent or more methane in the mine atmosphere, (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere, (c) there is an ignition of methane, or (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a I–B, I–C, II–B, V–B, or Category VI mine.

Under 30 CFR 57.22231 and 57.22239, mine operators must notify MSHA immediately if methane reaches 2.0 percent in a Category IV mine or if methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, or VI mine as defined in section 57.22003. Under 30 CFR 57.22231, underground MNM mine operators are required to make changes to improve ventilation if methane reaches 0.25 percent in the mine atmosphere. Under 30 CFR 57.22239, if methane reaches 2.0 percent in the mine atmosphere, mine operators are required to withdraw all persons, other than competent persons necessary to make ventilation changes, from the mine until methane is reduced to less than 0.5 percent in a Category IV mine. Although the standards do not specify how MSHA is to be notified, MSHA anticipates that

the notifications would be made by telephone.

ii. Records of Weekly Certification

Under 30 CFR 57.22229(a) and 57.22230(a), the mine atmosphere must be tested for methane and/or carbon dioxide at least once every seven days by a competent person or atmospheric monitoring system, or a combination of both. Under 30 CFR 57.2229, underground MNM mines categorized as I–A, III, and V–A mines are required to test the atmosphere for both methane and carbon dioxide. Under 30 CFR 57.22230, underground MNM mines categorized as II–A mines are required to test the atmosphere for methane. Under 30 CFR 57.22229(d) and 57.22230(c), the person performing the tests must certify by signature and date that the tests have been conducted. Certifications of examinations shall be kept for at least one year and made available to authorized representatives of the Secretary.

iii. Informing All Affected Miners

Under 30 CFR 57.22229(c) and 57.22230(b), mine operators must inform affected miners and take corrective actions when examinations disclose hazardous conditions.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any

information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0103.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 4.

Frequency: On occasion.

Number of Annual Responses: 213.

Annual Time Burden: 18 hours.

Annual Other Burden Costs: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–18181 Filed 8–14–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. OSHA–2011–0185]

Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts). The purpose of the requirements is to reduce workers' risk of death or serious injury by ensuring that aerial lifts are in safe operating condition.

DATES: Comments must be submitted (postmarked, sent, or received) by October 15, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0185) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the “Public

Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION. FOR FURTHER INFORMATION CONTACT:** Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:**I. Background**

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. Manufacturer's Certification of Modifications (§ 1910.67(b)(2)). The Standard requires that when aerial lifts are “field modified” for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers upon request. This record provides assurance to employers, workers, and compliance officers that the modified aerial lift is safe for use, thereby preventing failure while workers are being elevated. The

certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts). There are no adjustment or program changes associated with this package. OSHA is requesting that the burden hours remain the same.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts).

OMB Control Number: 1218–0230.

Affected Public: Business or other for-profits.

Number of Respondents: 1,000.

Number of Responses: 1,000.

Frequency of Responses: On occasion.

Average Time per Response: One minute.

Estimated Total Burden Hours: 20.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer

than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2011-0185). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Signed at Washington, DC, on July 29, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024-18323 Filed 8-14-24; 8:45 am]

BILLING CODE 4510-26-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006611; NRC-2024-0139]

Perma-Fix Northwest Richland, Inc.; Export License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering issuing an export license

(XW033), requested by Perma-Fix Northwest Richland, Inc (PFNW) by application dated June 18, 2024. The application seeks the NRC's approval to return residual radioactive waste to the country of origin, Mexico. The NRC is providing notice of the opportunity to comment, request a hearing, and petition to intervene on PFWN's application.

DATES: Submit comments by September 16, 2024. A request for a hearing or petition for leave to intervene must be filed by September 16, 2024.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0139. 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.

- *Email comments to:* Hearing.Docket@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.

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: Andrea Jones, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 404-997-4443; email: Andrea.Jones2@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC-2024-0139 or Docket No. 11006611 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0139.

- *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 export license application is available in ADAMS under Accession No. ML24205A240.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include NRC-2024-0139 or Docket No. 11006611 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On June 18, 2024, PFWN submitted an application to the NRC for a license to export treated radioactive waste of Mexican origin. The source of the waste is the Comisión Federal de Electricidad (CFE) Laguna Verde Nuclear Power Plant (CFE LVNPP), located in Veracruz, Mexico. PFWN intends to receive shipment of incoming waste consisting

of liquid, solids, contaminated personal protective equipment, paper, plastic, glass, and combustible waste generated by the research projects at the power plant. PFNW will treat the waste by thermal processing, stabilization, and solidification. Residual ash, residual metal, and noncombustible material would then be exported back to Mexico for disposal. Resultant contaminants to be exported will include cobalt 60 (Co-60), cesium-137 (Cs-137), tritium (H-3), manganese-54 (Mn-54), zinc-65 (Zn-65), cobalt-58 (Co-58), carbon-14 (C-14), iron-55 (Fe-55), nickel-63 (Ni-63), strontium-90 (Sr-90), technetium-99 (Tc-99), plutonium-241 (Pu-241), and americium-241 (Am 241) in the form of residual ash and residual metal or non-combustible material, not to exceed 0.119 terabecquerels (TBq). PFNW requests an expiration date of December 1, 2030.

In accordance with paragraph 110.70(b) of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the receipt of the

application; providing the opportunity to submit written comments concerning the application; and providing the opportunity to request a hearing or petition for leave to intervene, for a period of 30 days after publication of this notice in the **Federal Register**.

A hearing request or petition for leave to intervene must include the information specified in 10 CFR 110.82(b). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89(a), either by delivery, by mail, or filed with the NRC electronically in accordance with the NRC’s E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). 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 hearing in this proceeding if the Secretary has not already established an electronic docket.

The information concerning this application for an export license is as follows.

NRC EXPORT LICENSE APPLICATION

Application Information	
Name of Applicant	Perma-Fix Northwest Richland, Inc.
Date of Application	June 18, 2024.
Date Received	July 24, 2024.
Application No	XW033.
Docket No	11006611.
ADAMS Accession No	ML24205A240.
Description of Material	
Material Type	Low-level radioactive waste contaminated with Co-60, Cs-137, H-3, Mn-54, Zn-65, Co-58, C-14, Fe-55, Ni-63, Sr-90, Tc-99, Pu-241, and Am 241 in the form of residual ash and residual metal or non-combustible material. The incoming material will include liquid, solids, contaminated personal protective equipment, paper, plastic, glass, and combustible waste generated by the Laguna Verde Nuclear Power Plant, located in Veracruz, Mexico.
Total Quantity	Not to exceed 0.119 TBq.
End Use	Storage and ultimate disposal of low-level radioactive waste.
Country of Destination	Mexico.

Dated: August 9, 2024.

For the Nuclear Regulatory Commission.

David L. Skeen,
Director, Office of International Programs.

[FR Doc. 2024–18209 Filed 8–14–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–488 and CP2024–495; MC2024–489 and CP2024–496; MC2024–490 and CP2024–497; MC2024–491 and CP2024–498; MC2024–492 and CP2024–499]

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 16, 2024.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)
- I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the

Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2024–488 and CP2024–495; *Filing Title*: USPS Request to Add Parcel Select Contract 61 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 8, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Almaroo Agoro; *Comments Due*: August 16, 2024.

2. *Docket No(s)*: MC2024–489 and CP2024–496; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 296 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 8, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Almaroo Agoro; *Comments Due*: August 16, 2024.

3. *Docket No(s)*: MC2024–490 and CP2024–497; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 297 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance*

Date: August 8, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: August 16, 2024.

4. *Docket No(s)*: MC2024–491 and CP2024–498; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 207 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 8, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: August 16, 2024.

5. *Docket No(s)*: MC2024–492 and CP2024–499; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 208 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 8, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: August 16, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–18252 Filed 8–14–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 299 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–497, CP2024–504.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–18235 Filed 8–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 208 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–492, CP2024–499.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–18228 Filed 8–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

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).

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 297 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–490, CP2024–497.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18217 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 213 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–500, CP2024–507.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18233 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 202 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–483, CP2024–490.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18222 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 212 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–499, CP2024–506.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18232 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 204 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–485, CP2024–492.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18224 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 61 to Competitive Product List*. Documents are available at

www.prc.gov, Docket Nos. MC2024–488, CP2024–495.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18215 Filed 8–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 205 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–486, CP2024–493.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18225 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 207 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–491, CP2024–498.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18227 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 210 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–494, CP2024–501.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18230 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 791 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–495, CP2024–502.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18236 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 198 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–478, CP2024–485.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18218 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 200 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-480, CP2024-487.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18220 Filed 8-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 298 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-496, CP2024-503.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18234 Filed 8-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 209 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-493, CP2024-500.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18229 Filed 8-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 203 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024-484, CP2024-491.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18223 Filed 8-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 296 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-489, CP2024-496.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18216 Filed 8-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 211 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–498, CP2024–505.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18231 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 205 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–487, CP2024–494.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18226 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 199 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–479, CP2024–486.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18219 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 201 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–481, CP2024–488.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18221 Filed 8–14–24; 8:45 am]
BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100687; File No. SR–PEARL–2024–31]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

August 9, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 31, 2024, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (“Fee Schedule”).

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings> at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the exchange grouping of options exchanges within the routing fee table in Section

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

(1)(b) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to reflect the recent addition of a new national securities exchange, MIAX Sapphire, LLC (“MIAX Sapphire”)³, to be listed in the routing fee table. The Exchange proposes to implement the fee change effective August 1, 2024.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program⁴ (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes); and (iii) to which away market it is

being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX Options”) and MIAX Emerald, LLC (“MIAX Emerald”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order’s origin type and whether it is a Penny or Non-Penny class.⁵

As a result of the anticipated launch of MIAX Sapphire in the third quarter of 2024, the Exchange has determined to

amend the exchange groupings of options exchanges within the routing fee table to include MIAX Sapphire and the anticipated associated costs of routing customer orders to MIAX Sapphire for execution.

The impact of this proposed change will be increased routing options for Members.⁶ The Exchange notes that routing through the Exchange is optional and that Members will continue to be able to choose where to route applicable Member orders. Under this proposed change, the Exchange will not amend the fees associated with the exchange groupings. This proposal merely seeks to add MIAX Sapphire to the exchange groupings as described in the routing fee table below.

According, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX (except SPY), Nasdaq MRX, MIAX Sapphire	\$0.15
Routed, Priority Customer, Penny Program, to: BOX	0.30
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Emerald, Nasdaq BX Options, MEMX	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX, Nasdaq MRX, MIAX Sapphire	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, NOM, MIAX Emerald, Nasdaq BX Options, Nasdaq ISE, MEMX	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX Emerald, MIAX, NOM, Nasdaq PHLX, Nasdaq BX Options, MEMX, MIAX Sapphire	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE American, MIAX, Cboe, Nasdaq PHLX, Cboe EDGX Options, NOM	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, MIAX Sapphire	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Emerald, MEMX	1.25
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, Nasdaq ISE, Nasdaq BX Options	1.40

In determining to amend its routing fee table to determine which category MIAX Sapphire belongs to the Exchange took into account anticipated transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange’s clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar

to the Exchange’s affiliates, MIAX Options and MIAX Emerald, but is also comparable to the structure in place on at least one other competing options exchange, Cboe BZX Options.⁷ The Exchange’s routing fee structure approximates the Exchange’s costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange’s all-in cost (plus an additional, non-material amount)⁸ to execute that corresponding contract at that corresponding exchange.

The Exchange notes that in determining whether to adjust certain

groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange’s affiliates, MIAX Options and MIAX Emerald, the Exchange’s Members will be assessed routing fees in a similar manner. The Exchange notes that its affiliates, MIAX Options and MIAX Emerald, will file to

³ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order approving application of MIAX Sapphire, LLC for registration as a national securities exchange).

⁴ See Exchange Rule 510(c).

⁵ See Cboe U.S. Options Fee Schedules, BZX Options, effective July 15, 2024, “Fee Codes and Associated Fees,” at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

⁶ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁷ The Cboe BZX Options fee schedule is similar to the Exchange’s Fee Schedule in that it has exchange groupings, whereby several exchanges are grouped into the same category. See *supra* note 5.

⁸ This amount is to cover de minimis differences/changes to away market fees (*i.e.*, minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange’s goal regarding routing fees and expenses is to be as close as possible to net neutral.

make the same proposed routing fee changes contained herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹¹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to add MIAX Sapphire to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to add MIAX Sapphire to the routing fee table of exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that will be incurred by the Exchange when routing customer orders to MIAX Sapphire on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed addition of MIAX Sapphire to the exchange groupings would increase the routing options available to Members. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to

execute the corresponding contract at the corresponding exchange.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' orders in Penny classes and Non-Penny classes routed to MIAX Sapphire will be uniformly assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to add MIAX Sapphire to the routing fee table will impose any burden on intramarket competition. Rather, the Exchange believes that the proposal will promote competition by increasing the available away markets to which Members can route orders to.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-PEARL-2024-31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2024-31 and should be submitted on or before September 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-18195 Filed 8-14-24; 8:45 am]

BILLING CODE 8011-01-P

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–126, OMB Control No. 3235–0287]

Proposed Collection; Comment Request; Extension: Form 4—Statement of Changes in Beneficial Ownership of Securities

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 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under Section 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or who is a director or an officer of the issuer of such security (collectively “insiders”), must file a statement with the Commission reporting their ownership. Form 4 is a statement to disclose changes in an insider’s ownership of securities. The information is used for the purpose of disclosing the equity holdings of insiders of reporting companies. Approximately 186,052 insiders file Form 4 annually and it takes approximately 0.5 hours to prepare for a total of 93,026 annual burden hours (0.5 hours per response × 186,052 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 15, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Maailbox@sec.gov.

Dated: August 9, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–18198 Filed 8–14–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–659, OMB Control No. 3235–0723]

Proposed Collection; Comment Request; Extension: Form 1–Z

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 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 1–Z (17 CFR 239.94) is used to report terminated or completed offerings or to suspend the duty to file ongoing reports under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of the Form 1–Z is to collect empirical data for the Commission on offerings conducted under Regulation A that have terminated or completed, to indicate to the Commission that issuers that have conducted Tier 2 offering are suspending their duty to file reports under Regulation A and to provide such information to the investing public. We estimate that approximately 51 issuers file Form 1–Z annually. We estimate that Form 1–Z takes approximately 1.5 hours to prepare. We estimate that 100% of the 1.5 hours per response is prepared by the company for a total annual burden of 77 hours (1.5 hours per response × 51 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 15, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: August 9, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–18167 Filed 8–14–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–563, OMB Control No. 3235–0693]

Submission for OMB Review; Comment Request; Extension: Rules 17g–8 and 17g–9

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 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit an extension for this current collection of information to the Office of Management and Budget for approval.

Rules 17g–8 and 17g–9 (17 CFR 240.17g–8 and 17 CFR 240.17g–9) set forth collection of information requirements. Rule 17g–8 requires nationally recognized statistical rating

organizations (“NRSROs”) to establish, maintain, enforce, and document policies and procedures that are reasonably designed to achieve the objectives articulated in the rule. Generally, these policies and procedures pertain to (i) the procedures and methodologies NRSROs use to determine credit ratings, and (ii) the symbols, numbers, or scores NRSROs use to denote credit ratings.¹ Rule 17g–8 also requires that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Securities Exchange Act of 1934 must, at a minimum, include policies and procedures reasonably designed to achieve the objectives articulated in the rule.² Rule 17g–9 requires each NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings that are reasonably designed to achieve the objective that the NRSRO produces accurate credit ratings.³

Based on Commission staff’s experience, it is estimated that the total annual burden for NRSROs to comply with Rule 17g–8 and Rule 17g–9 is 1,450 hours and 34,658 hours, respectively. The Commission further estimates that these annual hour burdens will result in a total annual cost with respect to Rule 17g–8 of \$539,400 and with respect to Rule 17g–9 of \$12,951,746. These costs are attributable to costs NRSROs may incur in completing updates and other activities relating to the policies and procedures adopted pursuant to Rule 17g–8 and the standards adopted pursuant to Rule 17g–9, and in conducting the periodic testing of credit analysts pursuant to standards adopted under Rule 17g–9.

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 within 30 days of publication of this notice by September 16, 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 9, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–18170 Filed 8–14–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100683; File No. SR–SAPPHIRE–2024–13]

Self-Regulatory Organizations; MIAX Sapphire LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Fee Schedule

August 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 6, 2024, MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to establish a Fee Schedule (the “Fee Schedule”) for fees and rebates applicable to participants trading options on and/or using services provided by MIAX Sapphire. MIAX Sapphire will commence operations as a national securities exchange registered under Section 6 of the Act³ on August 12, 2024.⁴

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 12, 2024.

The text of the proposed rule change is available on the Exchange’s website at

<https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Definitions

The Exchange has included a Definitions section at the beginning of its Fee Schedule. The purpose of the Definitions section is to streamline the Fee Schedule by placing many of the defined terms used in the Fee Schedule in one location at the beginning of the Fee Schedule. Many of the defined terms are also defined in the Exchange Rules, particularly in Exchange Rule 100. Any defined terms that are also defined or otherwise explained in the Exchange Rules contain a cross reference to the relevant Exchange Rule. The Exchange notes that other exchanges have Definitions sections in their respective fee schedules,⁵ and the Exchange believes that including a Definitions section in the front of the Exchange’s Fee Schedule makes the Fee Schedule more user-friendly. The Exchange notes that the proposed definitions to be included in the Definitions section of the Exchange’s Fee Schedule are substantially similar to those definitions found in the Fee Schedule of the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), with the following few exceptions.

The MIAX Sapphire term “Full Service MEO Port” is defined in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78f.

⁴ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240) (order approving application of MIAX Sapphire, LLC for registration as a national securities exchange).

⁵ See Securities Exchange Act Release Nos. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013)(SR–Topaz–2013–10); 76453 (November 17, 2015), 80 FR 72999 (November 23, 2015)(SR–EDGX–2015–56); 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017)(SR–PEARL–2017–10); and 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019)(SR–EMERALD–2019–15).

¹ See 240.17g–8(a) and (b).

² See 240.17g–8(c).

³ See 240.17g–9.

same fashion as the term “Full Service MEO Port—Bulk” is defined in the Definitions section of the MIAX Pearl Options Fee Schedule.

The MIAX Sapphire term “‘Dedicated’ cross-connect” is integrated into the definition of “cross connect” in the Definitions section of the MIAX Sapphire Fee Schedule and is identical to the definition of “‘Dedicated’ cross-connect” used in the Definitions section of the Fee Schedule of the Exchange’s affiliate, MIAX Emerald, LLC (“MIAX Emerald”).

The MIAX Sapphire term “MENI” described in the Definitions section of the MIAX Sapphire Fee Schedule provides a more fulsome description of

the MIAX Express Network Interconnect than the definition provided in the MIAX Pearl Options Fee Schedule.

The MIAX Sapphire term “Purge Ports” is defined in the same fashion as the term “MEO Purge Ports” is defined in the Definitions section of the MIAX Pearl Options Fee Schedule.

These minor deviations from the established definitions of like terms in the MIAX Pearl Options Fee Schedule are de minimis in nature and not reflective of new functionality being introduced on the MIAX Sapphire Exchange.

Routing Fees

MIAX Sapphire proposes to assess Routing Fees in order to recoup costs incurred by MIAX Sapphire when routing orders to various away markets. The Exchange notes that the proposed fees are substantially similar to those of the Exchange’s affiliates, Miami International Securities Exchange LLC (“MIAX”), MIAX Pearl, and MIAX Emerald.⁶ The amount of the applicable fee is based upon (i) the Origin type of the order, (ii) whether it is an order for an option in a Penny or Non-Penny class (or other explicitly identified classes) and (iii) to which away market it is being routed, according to the following table:⁷

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX (except SPY), Nasdaq MRX	\$0.15
Routed, Priority Customer, Penny Program, to: BOX	0.30
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Pearl, MIAX Emerald, Nasdaq BX Options, MEMX	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX, Nasdaq MRX	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, NOM, MIAX Pearl, MIAX Emerald, Nasdaq BX Options, Nasdaq ISE, MEMX	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX, MIAX Pearl, MIAX Emerald, NOM, Nasdaq PHLX, Nasdaq BX Options, MEMX	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE American, MIAX, Cboe, Nasdaq PHLX, Cboe EDGX Options, NOM	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Pearl, MIAX Emerald, MEMX	1.25
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, Nasdaq ISE, Nasdaq BX Options	1.40

In determining its proposed Routing Fees, the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange’s clearing, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule. These fees are substantially similar to the Exchange’s affiliates.⁸ Additionally, this Routing Fees structure is substantially similar to the Exchange’s affiliates as well,⁹ and is also comparable to the fee structure in place on at least one other options exchange, Cboe BZX Options.¹⁰

The Exchange is proposing to have ten different exchange groupings, based on the exchange, order type, and option class. The Exchange believes that having these groupings will allow the Exchange to approximate its costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange’s all-in cost (plus an additional, non-material amount) to execute that corresponding contract at that corresponding exchange. For example, to execute a Priority Customer order in a Penny Pilot symbol at NYSE American costs the Exchange approximately \$0.15 a contract. Since this is also the approximate cost to execute that same order at Cboe, the Exchange is able to group NYSE American and Cboe together in the same grouping. The Exchange notes that in

determining the appropriate groupings, the Exchange considered the transaction fees and rebates assessed by away markets, and grouped exchanges together that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the proposed Routing Fees table. By utilizing the same structure that is utilized by the Exchange’s affiliates, MIAX, MIAX Pearl, and MIAX Emerald, those members which are also Members¹¹ of the Exchange, will be assessed Routing Fees in the same amount and manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the four exchanges. The Exchange notes that this proposal is identical to the structure of the routing

⁶ See MIAX Fee Schedule, Section (1) (c), Fees for Customer Orders Routed to Another Options Exchange, MIAX Pearl Options Fee Schedule, Section (1) (b), Fees for Customer Orders Routed to Another Options Exchange, and MIAX Emerald Options Fee Schedule, Section (1) (b), Fees for Customer Orders Routed to Another Options Exchange.

⁷ This is similar to the methodologies utilized by the Exchange’s affiliates, MIAX, MIAX Pearl, and MIAX Emerald in assessing Routing Fees. *See id.*

⁸ *See supra* note 6.

⁹ *See supra* note 7.

¹⁰ *See* Cboe U.S. Options Fee Schedules, BZX Options, Fee Codes and Associated Fees, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Cboe BZX fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order’s Origin type and whether it is a Penny or Non-Penny Pilot class. For example, Cboe BZX fee code RQ covers routed customer orders in Penny

classes to NYSE Arca Options, Cboe C2, Nasdaq ISE, Nasdaq GEMX, MIAX Emerald, MIAX Pearl, NOM or MEMX, with a single fee of \$0.85 per contract.

¹¹ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAX Sapphire Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. *See* Exchange Rule 100.

fee table and the fees assessed by the Exchange's affiliates.¹²

2. Statutory Basis

The Exchange believes that its proposal to establish its Fee Schedule is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. Additionally, the Exchange believes the proposal is consistent with Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Definitions

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes providing a Definitions section in its Fee Schedule protects investors and the public interest by clarifying terms and locating them in a dedicated section of the Fee Schedule for ease of reference, thereby reducing the chance of confusion. Additionally, the Exchange notes that the proposed definitions are substantially similar to those of the Exchange's affiliate, MIAX Pearl Options, and are intended to ensure that the Fee Schedule is clear and unambiguous.

Routing Fees

The Exchange believes the proposal to establish routing fees and a routing fee structure of groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is an equitable allocation of reasonable fees and not unfairly discriminatory because all Members that are subject to routing fees are treated in a uniform manner.

The Exchange believes the proposed routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory as the proposal change seeks to recoup costs that are incurred by the Exchange when routing Priority and Public Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees and therefore is not discriminatory and furthers just and equitable principles of trade. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing, administrative, regulatory and technical costs.

The Exchange believes that the proposed Routing Fees are reasonable, equitable and not unfairly discriminatory because they seek to recoup costs incurred by MIAX Sapphire when routing orders to various away markets. In determining its proposed Routing Fees, the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule. This Routing Fees structure is not only similar to the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald,¹⁸ but is also comparable to the structure in place on at least one other options exchange, Cboe BZX Options.¹⁹ The Exchange believes that having ten groupings for its proposed routing fees is reasonable, equitable and not unfairly discriminatory because the Exchange will be able to better approximate its costs associated with routing orders to

away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute that corresponding contract at that corresponding exchange. The Exchange notes that in determining the appropriate groupings, the Exchange considered the transaction fees and rebates assessed by away markets, and grouped exchanges together that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the proposed Routing Fees table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, those members which are also Members of the Exchange will be assessed Routing Fees in the same manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the four exchanges. This proposal is identical to the routing fee tables of the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald.²⁰

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. MIAX Sapphire's proposed fees, as described herein, are comparable to fees charged by its affiliates, MIAX, MIAX Pearl, and MIAX Emerald,²¹ for the same service.

Definitions

The Exchange does not believe that its proposal to adopt a Definitions section to its Fee Schedule imposes any unnecessary burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed definitions are designed to improve the clarity and precision of the Exchange's Fee Schedule and are not competitive in nature.

Routing Fees

The Exchange does not believe that its proposal to adopt a Routing Fees imposes any unnecessary burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's Routing Fees reflect the

¹² See *supra* note 7.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5) [sic].

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See *supra* note 7.

¹⁹ See *supra* note 10.

²⁰ See *supra* note 7.

²¹ See *supra* note 6.

costs and fees incurred by the Exchange when routing orders to away markets on behalf of Members and are applied in a uniform manner to all similarly situated Members. Additionally, the Exchange notes that at least one other options exchange employs a similar routing fee structure.²²

The Exchange does not believe that the proposal will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that at least one other options exchange approximates its routing costs in a manner similar to that of the Exchange.²³ Additionally, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 16 other options exchanges. Based on publicly available information, no single options exchange has more than 16% of the market share.²⁴ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. SEC*, 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 exchanges possesses a

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”²⁶ Accordingly, the Exchange does not believe that its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁷ and Rule 19b-4(f)(2)²⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2024-13 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-SAPPHIRE-2024-13. 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-SAPPHIRE-2024-13 and should be submitted on or before September 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-18201 Filed 8-14-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100681; File No. SR-NASDAQ-2024-028]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF Under Nasdaq Rule 5711(d)

August 9, 2024.

On June 17, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities

²² See *supra* note 10.

²³ See *supra* note 10.

²⁴ See “Market Share/MTD AVERAGE”, available at <https://www.miaxglobal.com/> (data as of 7/1/2024-7/12/2024).

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

²⁹ 17 CFR 200.30-3(a)(12).

Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 2, 2024.³ The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act⁴ 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 16, 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 and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates September 30, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2024–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–18199 Filed 8–14–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100685; File No. SR–MIAX–2024–31]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 9, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 31, 2024, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (“Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the exchange grouping of options exchanges

within the routing fee table in Section (1)(c) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to reflect the recent addition of a new national securities exchange, MIAX Sapphire, LLC (“MIAX Sapphire”),³ to be listed in the routing fee table. The Exchange proposes to implement the fee change effective August 1, 2024.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program⁴ (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, MIAX PEARL, LLC (“MIAX Pearl”) and MIAX Emerald, LLC (“MIAX Emerald”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order’s origin type and whether it is a Penny or Non-Penny class.⁵

As a result of the anticipated launch of MIAX Sapphire in the third quarter of 2024, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to include MIAX Sapphire and the anticipated associated costs of routing customer orders to MIAX Sapphire for execution.

The impact of this proposed change will be increased routing options for Members.⁶ The Exchange notes that routing through the Exchange is optional and that Members will continue to be able to choose where to route applicable Member orders. Under

³ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240) (order approving application of MIAX Sapphire, LLC for registration as a national securities exchange).

⁴ See Exchange Rule 510(c).

⁵ See Cboe U.S. Options Fee Schedules, BZX Options, effective July 15, 2024, “Fee Codes and Associated Fees,” at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

⁶ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 100434 (June 26, 2024), 89 FR 54868.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

this proposed change, the Exchange will not amend the fees associated with the exchange groupings. This proposal

merely seeks to add MIAX Sapphire to the exchange groupings as described in the routing fee table below.

According, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, Cboe, Cboe EDGX Options, Nasdaq PHLX (except SPY), Nasdaq MRX, MIAX Sapphire	\$0.15
Routed, Priority Customer, Penny Program, to: BOX	0.30
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Emerald, MIAX Pearl, Nasdaq BX Options, MEMX	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq PHLX, Nasdaq MRX, MIAX Sapphire	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX Pearl, MIAX Emerald, Nasdaq GEMX, NOM, Nasdaq BX Options, Nasdaq ISE, MEMX	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX Pearl, MIAX Emerald, NOM, Nasdaq PHLX, Nasdaq BX Options, MEMX, MIAX Sapphire	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE American, Cboe, Nasdaq PHLX, Cboe EDGX Options, NOM	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, MIAX Sapphire	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Pearl, MIAX Emerald, MEMX	1.25
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, Nasdaq ISE, Nasdaq BX Options	1.40

In determining to amend its routing fee table to determine which category MIAX Sapphire belongs to the Exchange took into account anticipated transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fees structure is not only similar to the Exchange's affiliates, MIAX Pearl and MIAX Emerald, but is also comparable to the structure in place at Cboe BZX Options,⁷ a competing options exchange. The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)⁸ to execute that corresponding contract(s) at that corresponding exchange. The Exchange notes that in determining whether to include certain

exchanges in a certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees and rebates assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Pearl and MIAX Emerald, the Exchange's Members will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX Pearl and MIAX Emerald, will file to make the same proposed routing fee changes contained herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹¹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to add MIAX Sapphire to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to add MIAX Sapphire to the routing fee table of exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that will be incurred by the Exchange when routing customer orders to MIAX Sapphire on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed addition of MIAX Sapphire to the exchange groupings would increase the routing options available to Members. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an

⁷ The Cboe BZX Options fee schedule is similar to the Exchange's Fee Schedule in that it has exchange groupings, whereby several exchanges are grouped into the same category. See *supra* note 5.

⁸ This amount is to cover de minimis differences/changes to away market fees (*i.e.*, minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's target regarding routing fees and expenses is to be as close as possible to net neutral.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' orders in Penny classes and Non-Penny classes routed to MIAX Sapphire will be uniformly assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to add MIAX Sapphire to the routing fee table will impose any burden on intramarket competition. Rather, the Exchange believes that the proposal will promote competition by increasing the available away markets to which Members can route orders to.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2024-31 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-MIAX-2024-31. 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-MIAX-2024-31 and should be submitted on or before September 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-18202 Filed 8-14-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100682; File No. SR-CboeEDGA-2024-031]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to the Standard Rebate and Volume Tiers

August 9, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 2024, Cboe EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGA Equities") by: (1) modifying the standard rebate for orders that remove liquidity in securities priced at or above \$1.00; (2) modifying certain Add/Remove Volume Tiers; and (3) discontinuing certain Add/Remove Volume Tiers. The Exchange proposes to implement these changes effective August 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Taker-Maker" model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.0014 per share for orders that remove liquidity and assesses a fee of \$0.0030 per share for orders that add liquidity.⁴ For orders in securities priced below \$1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.⁵ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for

higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Standard Rates

Currently, the Exchange offers standard rebates to remove liquidity for orders appended with fee codes 6,⁶ BB,⁷ N,⁸ and W.⁹ The Exchange now proposes to revise the standard rebate associated with securities priced at or above \$1.00 from \$0.00140 per share to \$0.00160 per share for orders appended with fee codes 6, BB, N, or W. There is no proposed change in the rebate amount provided for securities priced below \$1.00. The purpose of increasing the standard rebate associated with fee codes 6, BB, N, and W in securities priced at or above \$1.00 is for business and competitive reasons, as the Exchange believes that increasing such rebate as proposed has the potential to make the Exchange more competitive in attracting orders designed to remove volume. The Exchange notes that the standard rebate remains competitive and continues to be more favorable for Members than the standard rebate provided by competing exchanges.¹⁰

Add/Remove Volume Tiers

Under footnote 7 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers four Add/Remove Volume Tiers that each provide a reduced fee for Members' qualifying orders yielding fee codes 3,¹¹ 4,¹² B,¹³ V,¹⁴ and Y¹⁵ where a Member

reaches certain add or remove volume-based criteria.¹⁶ The Exchange now proposes to modify the criteria associated with Add Volume Tier 2. The current criteria for Add Volume Tier 2 is as follows:

- Add Volume Tier 2 provides a reduced fee of \$0.0016 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV¹⁷ $\geq 0.50\%$ of the TCV¹⁸ or Members adds or removes an ADV $\geq 52,000,000$.

The proposed criteria for Add Volume Tier 2 is as follows:

- Add Volume Tier 2 provides a reduced fee of \$0.0016 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV $\geq 0.35\%$ of the TCV or Member adds or removes an ADV $\geq 35,000,000$.

Additionally, under footnote 7, the Exchange offers three Add/Remove Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes N, W, 6 and BB where a Member reaches certain add or remove volume-based criteria.¹⁹ The Exchange now proposes to modify the enhanced rebate associated with Remove Volume Tier 1. Currently, the Exchange provides an enhanced rebate of \$0.0018 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes N, W, 6 and BB) that satisfy the criteria of Remove Volume Tier 1. The Exchange proposes to increase the enhanced rebate from \$0.0018 to \$0.0020 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes N, W, 6 and BB) that satisfy the criteria of Remove Volume Tier 1. This change is being made for business and competitive reasons, as the Exchange believes that

⁶ Fee code 6 is appended to orders that remove liquidity from EDGA during the pre and post market in securities listed on all tapes.

⁷ Fee code BB is appended to orders that remove liquidity from EDGA in Tape B securities.

⁸ Fee code N is appended to orders that remove liquidity from EDGA in Tape C securities.

⁹ Fee code W is appended to orders that remove liquidity from EDGA in Tape A securities.

¹⁰ See *e.g.*, BYX Equity Fee Schedule, Standard Rates (the standard rebate provided to orders that remove liquidity is \$0.00020); Nasdaq BX Fee Schedule (orders that remove liquidity are assessed a fee of \$0.0007 unless certain volume thresholds are met).

¹¹ Fee code 3 is appended to orders that add liquidity to EDGA in the pre and post market in Tape A or Tape C securities.

¹² Fee code 4 is appended to orders that add liquidity to EDGA in the pre and post market in Tape B securities.

¹³ Fee code B is appended to orders that add liquidity to EDGA in Tape B securities.

¹⁴ Fee code V is appended to orders that add liquidity to EDGA in Tape A securities.

¹⁵ Fee code Y is appended to orders that add liquidity to EDGA in Tape C securities.

¹⁶ For the sake of clarity with additional proposed changes discussed *infra*, the Exchange will refer to the Add/Remove Volume Tiers applicable to fee codes 3, 4, B, V, and Y as the "Add Volume Tiers" as Members who satisfy these tiers are assessed a fee to add liquidity to the Exchange.

¹⁷ ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

¹⁸ TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹⁹ For the sake of clarity with the proposed changes to the Add Volume Tiers discussed *supra*, the Exchange will refer to the Add/Remove Volume Tiers applicable to fee codes N, W, 6, and BB as the "Remove Volume Tiers" as Members who satisfy these tiers receive an enhanced rebate for adding liquidity to the Exchange.

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (July 29, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

⁴ See EDGA Equities Fee Schedule, Standard Rates.

⁵ *Id.*

increasing the enhanced rebate as proposed could make the Exchange more competitive in attracting orders that remove volume in a manner consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange does not propose to modify the criteria associated with Remove Volume Tier 1. Additionally, the Exchange proposes to discontinue Remove Volume Tiers 2–3 as the Exchange no longer wishes to, nor is required to, maintain such tiers. More specifically, the proposed change removes these tiers as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange believes that the proposed modification to Add Volume Tier 2 and the proposed increase to the enhanced rebate associated with Remove Volume Tier 1 will incentivize Members to add volume to and remove volume from the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. While the proposed criteria of Add Volume Tier 2 is slightly easier to achieve than the current criteria, the Exchange believes that the criteria continues to be commensurate with the reduced fees offered by the Exchange, is a reflection of current market trends, and will continue to encourage Members to submit order flow to the Exchange. Similarly, the Exchange believes that the proposed increased enhanced rebate remains commensurate with the existing criteria for Remove Volume Tier 1 and will encourage Members to submit liquidity-removing orders to the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)²³ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to: (1) modify the standard rebate for orders that remove liquidity in securities priced at or above \$1.00 and (2) modify certain Add/Remove Volume tiers reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

Specifically, the Exchange's proposal to modify Add Volume Tier 2 is not a significant departure from existing criteria, is reasonably correlated to the reduced fees offered by the Exchange and other competing exchanges,²⁴ and will continue to incentivize Members to submit order flow to the Exchange. The criteria proposed by the Exchange is intended to reflect current market trends while continuing to encourage Members to submit order flow to the Exchange. Further, the Exchange's proposal to modify the enhanced rebate associated with Remove Volume Tier 1 is not a significant departure from existing enhanced rebates, is reasonably correlated to the enhanced rebates offered by the Exchange and other competing exchanges,²⁵ and will continue to incentivize Members to submit order flow to the Exchange. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by

exchanges,²⁶ including the Exchange,²⁷ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify Add Volume Tier 2 and Remove Volume Tier 1 is reasonable because the tiers will be available to all Members and provide all Members with an opportunity to receive a reduced fee or increased enhanced rebate. The Exchange further believes that modified Add Volume Tier 2 and Remove Volume Tier 1 will provide a reasonable means to encourage adding liquidity to and removing liquidity from the Exchange and to incentivize Members to continue to provide volume to the Exchange by offering them an additional opportunity to receive a reduced fee or increased enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

Further, the Exchange believes that its proposal to modify the standard rebate associated with securities priced at or above \$1.00 is reasonable, equitable, and consistent with the Act because such change is designed to make the Exchange more competitive in attracting orders that remove liquidity. The proposed increased standard rebate of \$0.00160 per share is reasonable and appropriate because it remains competitive with the standard rebate offered by other exchanges.²⁸ The Exchange further believes that the proposed increase to the standard rebate associated with securities priced at or above \$1.00 is not unfairly discriminatory because it applies to all Members equally, in that all Members will receive the higher standard rebate

²² *Id.*

²³ 15 U.S.C. 78f(b)(4).

²⁴ See NYSE National, Inc., Schedule of Fees and Rebates, Rates for Adding Liquidity (Per Share), available at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

²⁵ See Nasdaq BX Fee Schedule, Rebate to Remove Liquidity.

²⁶ See e.g., BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²⁷ See e.g., EDGA Equities Fee Schedule, Footnote 7, Add/Remove Volume Tiers.

²⁸ *Supra* note 10.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

upon submitting orders appended with fee codes 6, BB, N, or W.

The Exchange believes that its proposal to eliminate current Remove Volume Tiers 2–3 is reasonable because the Exchange is not required to maintain these tiers nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members (*i.e.*, the tiers will not be available for any Member). The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate current Remove Volume Tiers 2–3 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange believes the proposed modified Add Volume Tier 2 is reasonable as it does not represent a significant departure from the criteria currently offered in the fee schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the revised tier and have the opportunity to meet the tier's criteria and receive the corresponding reduced fee if such criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed rule changes would definitely result in any Members qualifying for the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange does not anticipate that at any Member will be able to satisfy proposed Add Volume Tier 2. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding reduced fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would

encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to Add Volume Tier 2 and proposed increase to the enhanced rebate of Remove Volume Tier 1 will apply to all Members equally in that all Members are eligible for the tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee or increased enhanced rebate on their qualifying orders if such criteria are met. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGA by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange believes the proposed elimination of Remove Volume Tiers 2–3 do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to eliminate the Remove Volume Tiers 2–3 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as the tiers will no longer be available to any Member.

Further, the Exchange believes the proposed increased standard rebate associated with orders that remove liquidity in securities priced at or above \$1.00 does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

proposed rebate associated with orders that remove liquidity in securities priced at or above \$1.00 would apply to all Members equally in that all Members are eligible for the revised standard rebate and all Members would be subject to the same associated rebate for removing liquidity from the Exchange in securities priced at or above \$1.00. As a result, any Member can decide to remove liquidity (or not remove liquidity) based on the associated rebate that the Exchange proposes to amend. Additionally, the increased rebate is designed to make the Exchange more competitive by offering an increased rebate to orders that remove liquidity from the Exchange.

Next, the Exchange believes the proposed rule changes do not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.²⁹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁰ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers

²⁹ *Supra* note 3.

³⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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' ³¹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³² and paragraph (f) of Rule 19b-4³³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2024-031 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-2024-031. 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-2024-031 and should be submitted on or before September 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-18200 Filed 8-14-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100690; File No. SR-CboeBYX-2024-004]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Definition of Retail Order, and Codify Interpretations and Policies Regarding Permissible Uses of Algorithms by RMOs

August 9, 2024.

On January 25, 2024, 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 the definition of Retail Order,³ and codify interpretations and policies regarding permissible uses of algorithms by Retail Member Organizations.⁴ The proposed rule change was published for comment in the **Federal Register** on February 13, 2024.⁵ On March 21, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ On May 13, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.⁹ On July 10, 2024, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On July 17, 2024, the Exchange withdrew Amendment No. 1. On August 7, 2024, the Exchange withdrew the proposed rule change (SR-CboeBYX-2024-004).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Retail Order" is defined in Exchange Rule 11.24(a)(2).

⁴ The term "Retail Member Organization" (or "RMO") is defined in Exchange Rule 11.24(a)(1) to mean a member of the Exchange (or a division thereof) that has been approved by the Exchange under Exchange Rule 11.24 to submit Retail Orders.

⁵ See Securities Exchange Act Release No. 99489 (February 7, 2024), 89 FR 10138 ("Notice"). The Commission has not received any comments on the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 99819, 89 FR 21294 (March 27, 2024).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 100113 (May 13, 2024), 89 FR 43488 (May 17, 2024).

³¹ *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)).

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f).

³⁴ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–18197 Filed 8–14–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100689; File No. SR–CboeBZX–2024–007]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Definition of Retail Order, and Codify Interpretations and Policies Regarding Permissible Uses of Algorithms by RMOs

August 9, 2024.

On January 25, 2024, Cboe BZX 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 the definition of Retail Order,³ and codify interpretations and policies regarding permissible uses of algorithms by Retail Member Organizations.⁴ The proposed rule change was published for comment in the **Federal Register** on February 13, 2024.⁵ On March 21, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ On May 13, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.⁹ On July 10, 2024, the Exchange submitted Amendment No. 1

to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On July 17, 2024, the Exchange withdrew Amendment No. 1. On August 7, 2024, the Exchange withdrew the proposed rule change (SR–CboeBZX–2024–007).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–18196 Filed 8–14–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100686; File No. SR–EMERALD–2024–19]

Self-Regulatory Organizations; MIAx Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 9, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 31, 2024, MIAx Emerald, LLC (“MIAx Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAx Emerald Options Exchange Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the exchange grouping of options exchanges within the routing fee table in Section 1(c) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to reflect the recent addition of a new national securities exchange, MIAx Sapphire, LLC (“MIAx Sapphire”),³ to be listed in the routing fee table. The Exchange proposes to implement the fee change effective August 1, 2024.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program⁴ (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAx Options”) and MIAx PEARL, LLC (“MIAx Pearl”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order’s origin type and whether it is a Penny or Non-Penny class.⁵

As a result of the anticipated launch of MIAx Sapphire in the third quarter

³ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240) (order approving application of MIAx Sapphire, LLC for registration as a national securities exchange).

⁴ See Exchange Rule 510(c).

⁵ See Cboe U.S. Options Fee Schedules, BZX Options, effective July 15, 2024, “Fee Codes and Associated Fees,” at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

¹⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The term “Retail Order” is defined in Exchange Rule 11.25(a)(2).

⁴ The term “Retail Member Organization” (or “RMO”) is defined in Exchange Rule 11.25(a)(1) to mean a member of the Exchange (or a division thereof) that has been approved by the Exchange under Exchange Rule 11.25 to submit Retail Orders.

⁵ See Securities Exchange Act Release No. 99488 (February 7, 2024), 89 FR 10121 (“Notice”). The Commission has not received any comments on the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 99815, 89 FR 21290 (March 27, 2024).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 100115 (May 13, 2024), 89 FR 43491 (May 17, 2024).

¹⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

of 2024, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to include MIAX Sapphire and the anticipated associated costs of routing customer orders to MIAX Sapphire for execution.

The impact of this proposed change will be increased routing options for Members.⁶ The Exchange notes that routing through the Exchange is optional and that Members will continue to be able to choose where to route applicable Member orders. Under this proposed change, the Exchange will

not amend the fees associated with the exchange groupings. This proposal merely seeks to add MIAX Sapphire to the exchange groupings as described in the routing fee table below.

According, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX (except SPY), Nasdaq MRX, MIAX Sapphire	\$0.15
Routed, Priority Customer, Penny Program, to: BOX	0.30
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Pearl, Nasdaq BX Options, MEMX	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX, Nasdaq MRX, MIAX Sapphire	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX Pearl, Nasdaq GEMX, NOM, Nasdaq BX Options, Nasdaq ISE, MEMX	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX, MIAX Pearl, NOM, Nasdaq PHLX, Nasdaq BX Options, MEMX, MIAX Sapphire	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: MIAX, NYSE American, Cboe, Nasdaq PHLX, Cboe EDGX Options, NOM	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, MIAX Sapphire	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Pearl, MEMX	1.25
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, Nasdaq ISE, Nasdaq BX Options	1.40

In determining to amend its routing fee table to determine which category MIAX Sapphire belongs to the Exchange took into account anticipated transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar to the Exchange's affiliates, MIAX Options and MIAX Pearl, but is also comparable to the structure in place on at least one other competing options exchange, Cboe BZX Options.⁷ The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)⁸ to

execute that corresponding contract at that corresponding exchange.

The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Options and MIAX Pearl, the Exchange's Members will be assessed routing fees in a similar manner. The Exchange notes that its affiliates, MIAX Options and MIAX Pearl, will file to make the same proposed routing fee changes contained herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and

other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹¹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to add MIAX Sapphire to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to add MIAX Sapphire to the routing fee table of exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory

⁶ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁷ The Cboe BZX Options fee schedule is similar to the Exchange's Fee Schedule in that it has

exchange groupings, whereby several exchanges are grouped into the same category. See *supra* note 5.

⁸ This amount is to cover de minimis differences/changes to away market fees (*i.e.*, minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not

intended to be a profit center for the Exchange and the Exchange's goal regarding routing fees and expenses is to be as close as possible to net neutral.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

because the proposed change seeks to recoup costs that will be incurred by the Exchange when routing customer orders to MIAX Sapphire on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed addition of MIAX Sapphire to the exchange groupings would increase the routing options available to Members. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' orders in Penny classes and Non-Penny classes routed to MIAX Sapphire will be uniformly assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to add MIAX Sapphire to the routing fee table will impose any burden on intramarket competition. Rather, the Exchange believes that the proposal will promote competition by increasing the available away markets to which Members can route orders to.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2024-19 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-EMERALD-2024-19. 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-EMERALD-2024-19 and should be submitted on or before September 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-18203 Filed 8-14-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0320]

LFE Growth Fund III, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 05/05-0320 issued to LFE Growth Fund III, L.P., said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024-18257 Filed 8-14-24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0418]

Seacoast Capital Partners III, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 01/01-0418 issued to Seacoast Capital Partners III, L.P. said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024-18254 Filed 8-14-24; 8:45 am]

BILLING CODE P

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION**Hatteras Venture Partners IV SBIC, L.P.****[License No. 04/44–0316]****Surrender of License of Small Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 04/44–0316 issued to Hatteras Venture Partners IV SBIC, L.P., said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–18258 Filed 8–14–24; 8:45 am]

BILLING CODE 8026–09–P**SMALL BUSINESS ADMINISTRATION****[License No. 05/05–0311]****Fidus Mezzanine Capital II, L.P.;
Surrender of License of Small
Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 05/05–0311 issued to Fidus Mezzanine Capital II, L.P., said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–18290 Filed 8–14–24; 8:45 am]

BILLING CODE P**SMALL BUSINESS ADMINISTRATION****National Regulatory Fairness Hearing**

AGENCY: Office of the National Ombudsman, Small Business Administration.

ACTION: Notice of hearing of the Regional Small Business Regulatory Fairness Boards.

SUMMARY: The SBA Office of the National Ombudsman is issuing this notice to announce the location, date,

and time of the National Regulatory Fairness Hearing. This hearing is open to the public. The topic of the hearing is “The Impact of Joint Ventures: Small Business Participation in Multiple Award Contracts”. The hearing will provide a platform for small businesses to share successes and challenges in competing for Multiple Award Task Order Contracts (MATOCs) related to Joint Ventures (JVs).

DATES: The meeting will be held on Thursday, September 12th, 2024, from 9:00 a.m.–12:00 p.m. EDT.

ADDRESSES: The meeting will be at U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416, on the concourse level in Eisenhower Hall.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), sec. 222, SBA announces the national hearing held by the Regional Small Business Regulatory Fairness Boards (Regional Regulatory Fairness Boards). The Regional Regulatory Fairness Boards are tasked to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement actions against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

FOR FURTHER INFORMATION CONTACT: The hearing is open to the public; however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Regulatory Fairness Board must contact Tiffany Younger Banks, Case Management Specialist, by August 28, 2024, by phone (888) 734–3247, by fax (202) 481–5719 or email ombudsman@sba.gov in order to be placed on the agenda. Additionally, if you need accommodations because of a disability, translation services, or require additional information, please contact Tiffany Younger Banks as well, no later than August 28, 2024.

For more information on the Office of the National Ombudsman, please visit our website at www.sba.gov/ombudsman.

Dated: August 8, 2024.

Andrienne Johnson,

SBA Committee Management Officer.

[FR Doc. 2024–18188 Filed 8–14–24; 8:45 am]

BILLING CODE P**SMALL BUSINESS ADMINISTRATION****[License No. 05/05–0306]****Trailhead Fund Limited Partnership;
Surrender of License of Small
Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 05/05–0306 issued to Trailhead Fund Limited Partnership, said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–18255 Filed 8–14–24; 8:45 am]

BILLING CODE P**SMALL BUSINESS ADMINISTRATION****Meeting of the Interagency Task Force
on Veterans Small Business
Development**

AGENCY: Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development (IATF).

DATES: Tuesday, September 10, 2024, from 1:00 p.m. to 3:30 p.m. ET.

ADDRESSES: The public meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The virtual meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email veteransbusiness@sba.gov with subject line, “RSVP for September 10, 2024, IATF Virtual Public Meeting.” To submit a written comment, individuals should email

veteransbusiness@sba.gov with subject line, “Response for September 10, 2024, IATF Virtual Public Meeting” no later than September 6, 2024, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments

will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period. Participants can join the meeting via computer at this link: <https://bit.ly/IATF-Sept24> or by phone. Call in (audio only): Dial: +1 206-413-7980; Phone Conference ID: 260 716 995#. Special accommodation requests should be directed to OVBD at (202) 205-6773 or veteransbusiness@sba.gov. All applicable documents will be posted on the IATF website prior to the meeting: <https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-veterans-business-development#sba-card-collection--heading-7153>. For more information on veteran-owned small business programs, please visit www.sba.gov/ovbd.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (IAFT). The IATF is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the IATF's objectives for fiscal year 2024.

Dated: August 9, 2024.

Andrienne Johnson,
Committee Manager Officer.

[FR Doc. 2024-18185 Filed 8-14-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

Annual Meeting of the Regional Small Business; Regulatory Fairness Boards

AGENCY: Office of the National Ombudsman, Small Business Administration.

ACTION: Notice of open meeting of the Regional Small Business Regulatory Fairness Boards.

SUMMARY: The SBA, Office of the National Ombudsman, is issuing this notice to announce the location, date, time and agenda for the annual board meeting of the ten Regional Small Business Regulatory Fairness Boards. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, September 11, 2024, from

9:00 a.m. to 5:30 p.m. EDT, and Thursday, September 12, 2024, from 9:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held at U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416 on the concourse level in Eisenhower Hall.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104-121), sec. 222, SBA announces the meeting of the Regional Small Business Regulatory Fairness Boards (Regional Regulatory Fairness Boards). The Regional Regulatory Fairness Boards are tasked to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement actions against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

The purpose of the meeting is to discuss the following topics related to the Regional Regulatory Fairness Boards:

- Introduction of the Regional Regulatory Fairness Boards and the staff of the Office of the National Ombudsman
- Facilitated discussion of ongoing regulatory issues for small business
- Annual Report to Congress Update
- Office of Advocacy regulatory review
- SBA update and future outreach planning

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to attend must contact John Kelly, Case Management Specialist, by September 2, 2024. If you need accommodations because of a disability, translation services, or require additional information, please contact John Kelly, by phone (888) 734-3247, by fax (202) 481-5719 or email ombudsman@sba.gov, by August 28, 2024.

For more information on the Office of the National Ombudsman, please visit our website at www.sba.gov/ombudsman.

Dated: August 9, 2024.

Andrienne Johnson,
SBA Committee Management Officer.

[FR Doc. 2024-18183 Filed 8-14-24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-0255]

Farragut Mezzanine Partners III, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 03/03-0255 issued to Farragut Mezzanine Partners III, L.P., said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024-18256 Filed 8-14-24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for a meeting of the Advisory Committee on Veterans Business Affairs (ACVBA).

DATES: Thursday, September 12, 2024, from 9:00 a.m. to 3:30 p.m. ET.

ADDRESSES: The public meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The virtual meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email veteransbusiness@sba.gov with subject line, "RSVP for September 12, 2024, ACVBA Virtual Public Meeting." To submit a written comment, individuals should email veteransbusiness@sba.gov with subject line, "Response for September 12, 2024, ACVBA Virtual Public Meeting" no later than September 12, 2024, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205-6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish

to comment will be able to do so during the public comment period.

Participants can join the meeting via computer at this link <https://bit.ly/ACVBA-Sept24> or by phone. Call in (audio only): Dial: +1 206-413-7980; Phone Conference 514 432 834#.

Special accommodation requests should be directed to OVBD at (202) 205-6773 or veteransbusiness@sba.gov. All applicable documents will be posted on the ACVBA website prior to the meeting: <https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-veterans-business-development#sba-card-collection--heading-7153>. For more information on veteran-owned small business programs, please visit www.sba.gov/ovbd.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2024.

Dated: August 9, 2024.

Andrienne Johnson,
Committee Manager Officer.

[FR Doc. 2024-18189 Filed 8-14-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice:12491]

Notice of Receipt of Request From the Government of Mongolia Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice of request from Mongolia for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632-9935; culprop@state.gov; include "El Salvador" in the subject line.

SUPPLEMENTARY INFORMATION: The Government of Mongolia submitted a request to the Government of the United States on July 1, 2024, under Article 9

of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. Mongolia's request seeks U.S. import restrictions on archaeological and ethnological materials representing Mongolia's cultural patrimony. The Cultural Heritage Center website will provide instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: <https://eca.state.gov/cultural-property-advisory-committee-meeting-Sept-24-26-2-24>. This notice is published pursuant to authority vested in the Assistant Secretary of State for Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024-18244 Filed 8-14-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice:12492]

Cultural Property Advisory Committee; Notice of Meeting

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee ("the Committee").

DATES: The Committee will meet from September 24-25, 2024, from 9:00 a.m. to 5:00 p.m. (EDT)

ADDRESSES: The Committee will meet at 2200 C Street NW, Washington, DC 20520. The public will participate via videoconference.

Participation: The public may participate in, or observe, the virtual open session on September 24, 2024, from 2:00 p.m. to 3:00 p.m. (EDT). More information below.

FOR FURTHER INFORMATION CONTACT:

Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204-4765; (culprop@state.gov).

SUPPLEMENTARY INFORMATION: The Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee ("the Committee") in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601-2613) ("the Act"). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the proposed extension of the agreement with the Government of the Republic of El Salvador, a request from the Government of the Republic of Lebanon seeking import restrictions on archaeological and ethnological materials, and a request from the Government of Mongolia seeking import restrictions on archaeological and ethnological materials.

The Open Session: The public can observe the virtual open session on September 24, 2024. Registered participants may provide oral comments for up to a maximum of five (5) minutes each. The Department provides specific instructions on how to observe or provide oral comments at the open session at <https://eca.state.gov/cultural-property-advisory-committee-meeting-Sept-24-26-2-24>.

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, by September 16, 2024. Written comments are not required to make an oral comment during the open session.

Written Comments: The Committee will review written comments if received by 11:59 p.m. (EDT) on September 16, 2024. Written comments may be submitted in two ways, depending on whether they contain confidential information:

■ **General Comments:** For general comments, use <https://www.regulations.gov>, enter the docket [DOS-2024-0028], and follow the prompts.

■ **Confidential Comments:** For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to culprop@state.gov. Include "El Salvador," "Lebanon," and/or "Mongolia" in the subject line.

■ **Disclaimer:** The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: <https://eca.state.gov/cultural-property-advisory-committee-meeting-Sept-24-26-2-24>. Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via [regulations.gov](https://www.regulations.gov) are not private and are posted at <https://www.regulations.gov>. Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without

appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison R. Davis Lehmann,
Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.
[FR Doc. 2024–18237 Filed 8–14–24; 8:45 am]
BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12490]

Notice of Receipt of Request From the Government of the Republic of Lebanon Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.
ACTION: Public notice.

SUMMARY: Notice of receipt of request from Lebanon for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632–9935; culprop@state.gov; include “El Salvador” in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Republic of Lebanon made a request to the Government of the United States on January 23, 2024, under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Lebanon’s request seeks U.S. import restrictions on archaeological and ethnological materials representing Lebanon’s cultural patrimony. The Cultural Heritage Center website will provide instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: <https://eca.state.gov/cultural-property-advisory-committee-meeting-Sept-24-26-2-24>. This notice is published pursuant to authority vested in the Assistant Secretary of State for

Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Allison R. Davis Lehmann,
Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.
[FR Doc. 2024–18243 Filed 8–14–24; 8:45 am]
BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12489]

Proposal To Extend the Cultural Property Agreement Between the United States and El Salvador

AGENCY: Department of State.
ACTION: Public notice.

SUMMARY: Proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Materials of the Republic of El Salvador (“the El Salvador MOU”).

FOR FURTHER INFORMATION CONTACT: Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632–9935; culprop@state.gov; include “El Salvador” in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the El Salvador MOU is hereby proposed.

A copy of the El Salvador MOU, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: <http://culturalheritage.state.gov>.

Allison R. Davis Lehmann,
Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.
[FR Doc. 2024–18242 Filed 8–14–24; 8:45 am]
BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agency Information Collection Activities; Request for the Office of Management and Budget To Approve Renewal of the Collection of Information Titled ‘301 Exclusion Requests’

AGENCY: Office of the United States Trade Representative.
ACTION: 30-Day notice with a request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is submitting a request to the Office of Management and Budget (OMB) to reinstate an expired information collection request (ICR) titled *301 Exclusion Requests* under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations.

DATES: Submit comments no later than September 16, 2024.

ADDRESSES: Submit your comments on the information collection through <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection titled *301 Exclusion Requests* by selecting ‘Currently under Review-Open for Public Comments’ or by using the search function. The OMB control number for this information collection is 0350–0015.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel Rachel Hasandras at 202.395.5725.

SUPPLEMENTARY INFORMATION:

A. Comments

Submit written comments and suggestions to OMB addressing one or more of the following four points:

(1) Whether the ICR is necessary for the proper performance of USTR’s functions, including whether the information will have practical utility.
(2) The accuracy of USTR’s estimate of the burden of the ICR, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility and clarity of the ICR.

(4) Ways to minimize the burden of the ICR 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.

B. Overview of This Information Collection

Title: 301 Exclusion Requests.
OMB Control Number: 0350–0015, which expired on January 31, 2023.

Form Number(s): 301 Exclusion Request/Response/Reply Form; Exclusion Extension Comment.

Description: Following a comprehensive review of the July 6, 2018, and the August 23, 2018 actions, as modified, in the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, the President directed the U.S. Trade Representative to establish a process by which interested persons may request that particular machinery used in domestic manufacturing classified within a subheading under Chapters 84 and 85 of the the Harmonized Tariff Schedule of the United States (HTSUS) be temporarily excluded from Section 301 tariffs (machinery exclusion process).

Consistent with the President's direction, on May 28, 2024, USTR published a notice announcing that the U.S. Trade Representative was establishing an exclusion process and requested comments on whether certain subheadings under Chapters 84 and 85 of the HTSUS should or should not be eligible for consideration of temporary exclusion. *See* 89 FR 46252.

The ICR is included as an annex to this notice.

Affected Public: U.S. stakeholders who want to request, or respond to a request, to exclude particular products

from the additional duties on products from China.

Frequency of Submission: One submission per request, response, reply or comment.

Respondent Universe: U.S. stakeholders.

Reporting Burden:

Total Estimated Responses: 5,000 requests to exclude a particular product, 1,000 responses to a product exclusion request, and 750 replies to a response.

Total Estimated Annual Burden: USTR estimates that preparing and submitting a request to exclude a particular product will take approximately 90 minutes and will cost about \$175 per submission. The total time burden for requests is 7,500 hours (5,000 requests $\times$ 90 minutes) and the estimated total cost is \$875,000 (5,000 requests $\times$ \$175 per submission).

USTR estimates that preparing and submitting a response to a product exclusion request will take approximately 45 minutes, and will cost about \$100 per submission. The total time burden for responses is 750 hours (1,000 responses $\times$ 45 minutes) and the estimated total cost is \$100,000 (1,000 responses $\times$ \$100 per submission).

USTR estimates that preparing and submitting a reply will take approximately 45 minutes, and will cost about \$100 per submission. The total time burden for replies is 563 hours

(750 replies $\times$ 45 minutes) and the estimated total cost is \$75,000 (750 replies $\times$ \$100 per submission).

USTR estimates that it will take staff about 75 minutes to evaluate each request, response or reply or a total time burden of approximately 8,438 hours (6,750 requests/responses/replies $\times$ 75 minutes) at an estimated total cost of \$813,000. The \$813,000 total cost estimate includes the average annual salary plus benefits, for the federal employees and contractors expected to work on the exclusion process. USTR estimates that it will take approximately one year to complete the process.

Status: Pursuant to the PRA and its implementing regulations, USTR is submitting a request to OMB to renew approval of this ICR for three years.

C. Requirements for Submissions

You must submit written comments by the deadline set forth in this notice. Submit comments about the ICR, including the title *301 Exclusion Requests*, to the Office of Information and Regulatory Affairs at OMB, at oir-submissions@omb.eop.gov, or 725 Seventeenth Street NW, Washington, DC 20503, Attention: USTR Desk Officer.

Juan Millan,

Acting General Counsel, Office of the United States Trade Representative.

BILLING CODE 3390-F4-P

ANNEX

Exclusion Request Form

1. Requesting Organization Information

Full Requesting Organization Legal Name *(Public)

Requesting Organization Mailing Address

Street Address Line 1 *(BCI)

Street Address Line 2 *(BCI)

City *(BCI)

State *(BCI)

Zip Code *(BCI)

Country *(BCI)

Importer of Record Number *(BCI)

Point of Contact First Name *(BCI)

Point of Contact Last Name *(BCI)

Point of Contact Email Address *(BCI)

Point of Contact Phone Number *(BCI)

Website *(Public)

Does the requesting organization meet the size standards for a U.S. small business as established by the Small Business Administration? *(Public)

YES/NO/Not Sure

Are you an authorized representative/agent submitting on behalf of the requesting organization? *(Public) YES/NO

Authorized Representative/Agent Name *(Public)

Authorized Representative/Agent Mailing Address

Street Address Line 1 *(BCI)

Street Address Line 2 *(BCI)

City *(BCI)

State *(BCI)

Zip Code *(BCI)

Country *(BCI)

Point of Contact First Name *(BCI)

Point of Contact Last Name *(BCI)

Point of Contact Email Address *(BCI)

Point of Contact Phone Number *(BCI)

Website *(Public)

Who will be the primary point of contact? (Select One)

a. Requesting Organization

b. Authorized Representative/Agent

c. Requesting Organization and Authorized Representative/Agent

2. Manufacturing Equipment Description

Please select from the following pull down menu the 8-digit HTSUS item number for the Chinese-origin manufacturing equipment that you wish to address in this exclusion request.

Please provide the 10-digit HTSUS item number for the Chinese-origin manufacturing equipment you wish to address in this exclusion request. A 10-digit HTSUS number is required. *(Public)

Use numerical characters only with no special characters (Example: 1023456789).

For help with finding the HTSUS item number associated with your product, see <https://hts.usitc.gov/>. If the unique piece of manufacturing equipment of concern can be imported under multiple 10-digit HTSUS item numbers, please provide all applicable 10-digit HTSUS item numbers.

Please provide a complete and detailed description of the particular Chinese-origin manufacturing equipment of concern. *(Public) A detailed description of the manufacturing equipment includes, but is not limited to, its physical characteristics (e.g., dimensions, weight, material composition, etc.), whether the manufacturing equipment is designed to function in or with a particular machine (application), the unit value of the manufacturing equipment (please provide a range if necessary), and any unique physical features that distinguish it from other manufacturing equipment within the covered 10-digit HTSUS subheading. If needed, please attach images and specification sheets, CBP rulings, court decisions, and previous import documentation below. **Please also describe the manufacturing equipment's principal use.**

Note: USTR will not consider requests that identify the manufacturing equipment using criteria that cannot be made available to the public. USTR will not consider requests in which more than one unique piece of equipment is identified.

- a. **Manufacturing Equipment Name and Description (e.g., dimensions, weight, material composition, etc.): *(Public)**
 - b. **Manufacturing Equipment Function, Application, and Principal Use: *(Public)**
 - c. **SKU or product number: *(Public)**
 - d. **Manufacturer of the good: *(Public)**
 - e. **Please upload any relevant attachments that will help identify and distinguish the requesting organization's manufacturing equipment (e.g., CBP rulings, photos and specification sheets, and previous import documentation). *(Public)**
3. **Is the Chinese-origin manufacturing equipment of concern subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? *(Public)**
4. **Will the Chinese-origin manufacturing equipment of concern be used for domestic manufacturing? *(Public) YES/NO. If you indicate "YES", please describe how the Chinese-origin manufacturing equipment of concern will be used for domestic manufacturing, as well as indicate the manufacturing sector.**

5. If applicable, please submit documents showing grant funding from, or grant application to, a federal investment program related to the domestic manufacturing at issue, such as the IRA, CHIPS Act, Build America Buy America (BABA), Rural Energy for America Program (REAP). *(BCI)
6. Please address whether the manufacturing equipment of concern, or comparable manufacturing equipment, is available from sources in the United States? *(Public)
7. Please address whether the manufacturing equipment of concern, or comparable manufacturing equipment, is available from sources in third countries? *(Public)
8. Please discuss any attempts of the requesting organization to source the manufacturing equipment of concern from the United States or third countries. *(Public)
9. Has the requesting organization purchased the manufacturing equipment of concern from a source in the United States or in a third country in the past five years? If so, please describe why the manufacturing equipment of concern is no longer available from this source. *(Public)
10. Please comment on whether granting the exclusion request for the particular manufacturing equipment of concern would support domestic manufacturing. You must explain why you believe granting the exclusion request would or would not support domestic manufacturing. *(Public)
11. Please comment on whether the manufacturing equipment of concern is strategically important or related to “Made in China 2025” or other Chinese industrial programs. You must explain why you believe the manufacturing equipment of concern is or is not strategically important or related to “Made in China 2025” or other Chinese industrial programs. *(Public)
12. Please describe the supply chain of the manufacturing equipment of concern and any planned future supply chain modifications. *(BCI)
13. Please describe the projected future import trends of the manufacturing equipment of concern. *(BCI)
14. Include any additional attachments that should be considered along with this exclusion request (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument. *(Submitter Determines BCI or Public).

Objection to Exclusion Request Form

1. Objecting Organization Information

Full Objecting Organization Legal Name *(Public)

Objecting Organization Mailing Address

Street Address Line 1 *(BCI)

Street Address Line 2 *(BCI)

City *(BCI)
State *(BCI)
Zip Code *(BCI)
Country *(BCI)
Point of Contact First Name *(BCI)
Point of Contact Last Name *(BCI)
Point of Contact Email Address *(BCI)
Point of Contact Phone Number *(BCI)
Website *(Public)

Are you an authorized representative/agent submitting on behalf of the objecting organization? *(Public) YES/NO

Authorized Representative/Agent Name *(Public)
Authorized Representative/Agent Mailing Address
Street Address Line 1 *(BCI)
Street Address Line 2 *(BCI)
City *(BCI)
State *(BCI)
Zip Code *(BCI)
Country *(BCI)
Point of Contact First Name *(BCI)
Point of Contact Last Name *(BCI)
Point of Contact Email Address *(BCI)
Point of Contact Phone Number *(BCI)
Website *(Public)

Who will be the primary point of contact? (Select One)

- a. Objecting Organization
- b. Authorized Representative/Agent
- c. Objecting Organization and Authorized Representative/Agent

2. What is the objecting organization's relationship to the manufacturing equipment identified in the exclusion request (select all that apply):

- a. U.S. manufacturer of equipment identified in the exclusion request, or comparable manufacturing equipment
- b. Third-country manufacturer or importer of equipment identified in the exclusion request, or comparable manufacturing equipment
- c. Industry Association
- d. Other

3. Please identify the reasons you object to the exclusion request. *(Public)

Organizations filing objections should identify any factual problems in the exclusion request (e.g. product description).

4. Is the manufacturing equipment identified in the exclusion request, or comparable manufacturing equipment, currently manufactured in the United States? *(Public) YES/NO

If you indicate "YES", identify the name(s) and location(s) of the production facilities in the United States. *(Submitter Determines BCI or Public)

5. Is the manufacturing equipment identified in the exclusion request, or comparable manufacturing equipment, currently manufactured or able to be imported in/from third country sources? (*Public) YES/NO
If you indicate “YES”, identify the name(s) and location(s) of the production facilities in third-countries. *(Submitter Determines BCI or Public)
6. Please discuss the substitutability of the manufacturing equipment from the United States or third country sources as compared to the Chinese-origin manufacturing equipment identified in the exclusion request. *(Public)
7. Please provide a complete and detailed description of the manufacturing equipment from the United States or third country sources relative to the description cited in the exclusion request. *(Public)
 - a. Manufacturing Equipment Name and Description (e.g., dimensions, weight, material composition, etc.): *(Public)
 - b. Manufacturing Equipment Function, Application, and Principal Use: *(Public)
 - c. Please upload any relevant attachments that will help identify and distinguish the manufacturing equipment from the United States or third country sources (e.g., CBP rulings, photos and specification sheets, and previous import documentation). *(Public)
8. Has the objecting organization within the last two years attempted to sell, or successfully sold, the manufacturing equipment described in the exclusion request, or comparable manufacturing equipment, to the organization requesting the exclusion? *(Public) YES/NO. If you indicate “YES”, please provide supporting documentation. *(Submitter Determines BCI or Public).
9. Include any additional attachments that should be considered along with this objection to the exclusion request (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument. *(Submitter Determines BCI or Public).

Rebuttal to Objection Form

1. Rebutting Organization Information

Full Rebutting Organization Legal Name *(Public)

Rebutting Organization Mailing Address

Street Address Line 1 *(BCI)

Street Address Line 2 *(BCI)

City *(BCI)

State *(BCI)

Zip Code *(BCI)

Country *(BCI)

Point of Contact First Name *(BCI)

Point of Contact Last Name *(BCI)

Point of Contact Email Address *(BCI)

Point of Contact Phone Number *(BCI)
Website *(Public)

Are you an authorized representative/agent submitting on behalf of the rebutting organization? *(Public) YES/NO

Authorized Representative/Agent Name *(Public)
Authorized Representative/Agent Mailing Address
Street Address Line 1 *(BCI)
Street Address Line 2 *(BCI)
City *(BCI)
State *(BCI)
Zip Code *(BCI)
Country *(BCI)
Point of Contact First Name *(BCI)
Point of Contact Last Name *(BCI)
Point of Contact Email Address *(BCI)
Point of Contact Phone Number *(BCI)
Website *(Public)

Who will be the primary point of contact? (Select One)

- a. Rebutting Organization
- b. Authorized Representative/Agent
- c. Rebutting Organization and Authorized Representative/Agent

- 2. Please identify the reasons you are rebutting the objection to an exclusion request. *(Public)**
- 3. Include any additional attachments that should be considered along with this rebuttal (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument. *(Submitter Determines BCI or Public).**

Support of Exclusion Request Form

2. Supporting Organization Information

Full Supporting Organization Legal Name *(Public)
Supporting Organization Mailing Address
Street Address Line 1 *(BCI)
Street Address Line 2 *(BCI)
City *(BCI)
State *(BCI)
Zip Code *(BCI)
Country *(BCI)
Point of Contact First Name *(BCI)
Point of Contact Last Name *(BCI)
Point of Contact Email Address *(BCI)
Point of Contact Phone Number *(BCI)
Website *(Public)

Are you an authorized representative/agent submitting on behalf of the supporting organization? *(Public) YES/NO

Authorized Representative/Agent Name *(Public)
 Authorized Representative/Agent Mailing Address
 Street Address Line 1 *(BCI)
 Street Address Line 2 *(BCI)
 City *(BCI)
 State *(BCI)
 Zip Code *(BCI)
 Country *(BCI)
 Point of Contact First Name *(BCI)
 Point of Contact Last Name *(BCI)
 Point of Contact Email Address *(BCI)
 Point of Contact Phone Number *(BCI)
 Website *(Public)

Who will be the primary point of contact? (Select One)

- d. Supporting Organization
- e. Authorized Representative/Agent
- f. Supporting Organization and Authorized Representative/Agent

4. Please identify the reasons you support the exclusion request being granted.

***(Public)**

5. Include any additional attachments that should be considered along with this support of the exclusion request (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument. *(Submitter Determines BCI or Public).

[FR Doc. 2024–18190 Filed 8–14–24; 8:45 am]

BILLING CODE 3390–F4–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0062]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of

Management and Budget (OMB) for review and approval. This ICR allows for ongoing, collaborative, and actionable communication between FMCSA and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management. No public comments were received in response to the 60-day **Federal Register** notice.

DATES: Comments on this notice must be received on or before September 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Oliver, FMCSA, Office of Analysis, DOT, FMCSA, 1200 New

Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590–0001; 202–385–2324; Roxane.Oliver@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 2126–0049.

Type of Request: Renewal of a currently approved ICR.

Respondents: State and local agencies, the general public and stakeholders, original equipment manufacturers and suppliers to the commercial motor vehicle (CMV) industry, CMV fleet owners, CMV owner-operators, State CMV safety agencies, research organizations and contractors, news organizations, safety advocacy groups, and other Federal agencies.

Estimated Number of Respondents: 9,270.

Estimated Time per Response: Range from 5 to 30 minutes.

Expiration Date: August 31, 2024.

Frequency of Response: Generally, on an annual basis.

Estimated Total Annual Burden:
2,233.

Background

Executive Order 12862, "Setting Customer Service Standards," directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). To work continuously to ensure that our programs are effective and meet our customers' needs, FMCSA seeks to extend OMB approval of a generic clearance to collect qualitative feedback from our customers on our service delivery. The surveys covered in this generic clearance provide a way for FMCSA to collect this data directly from our customers.

The proposed future information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with FMCSA's programs.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both

the respondents and the Federal government;

- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the Agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections under this control number will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1)

whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-18284 Filed 8-14-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2024 Competitive Funding Opportunity: Public Transportation on Indian Reservations Program; Tribal Transit Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for \$9,169,076 in competitive grants for the Fiscal Year (FY) 2024 Public Transportation on Indian Reservations (Tribal Transit) Program.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* "APPLY" function by 11:59 p.m. Eastern time November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Elan Flippin-Jones, Office of Program Management, (202) 366-3800 or email *TribalTransit@dot.gov*. A TDD is available at 1-800-877-8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: The full text of the Notice of Funding Opportunity (NOFO) can be found on FTA's website at <https://www.transit.dot.gov/funding/grants/notices> and in the "FIND" module of *GRANTS.GOV*. The funding opportunity ID is FTA-2024-012-TPM-TRTR. Mail and fax submissions will not be accepted.

Veronica Vanterpool,
Acting Administrator.

[FR Doc. 2024-18239 Filed 8-14-24; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****[OCC Charter Number 703692]****Monroe Federal Savings & Loan Association, Tipp City, Ohio; Approval of Conversion Application**

Notice is hereby given that on August 9, 2024, the Office of the Comptroller of the Currency (OCC) approved the application of Monroe Federal Savings & Loan Association, Tipp City, Ohio, to convert to the stock form of organization. Copies of the application are available on the OCC website at the FOIA Reading Room (<https://foia-pal.occ.gov/palMain.aspx>) under Mutual to Stock Conversion Applications. If you have any questions, please contact Licensing Activities at (202) 649-6260.

(Authority: 12 CFR 192.205).

Dated: August 9, 2024.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2024-18310 Filed 8-14-24; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY**Bureau of the Fiscal Service****Proposed Collection of Information: Special Form of Assignment for U.S. Registered Securities**

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Securities.

DATES: Written comments should be received on or before October 15, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, P.O. Box 1328,

Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1530-0058.

Form Number: FS Form 1832.

Abstract: The information is requested to complete transactions involving the assignment of U.S. Registered and Bearer Securities.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 3.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the 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 respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 9, 2024.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2024-18210 Filed 8-14-24; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY**Bureau of the Fiscal Service****Proposed Collection of Information: List of Data (A) and List of Data (B)**

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the List of Data (A) and List of Data (B).

DATES: Written comments should be received on or before October 15, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, P.O. Box 1328, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: List of Data (A) and List of Data (B).

OMB Number: 1530-0061.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining acceptability of the companies applying for a Certificate of Authority to write or reinsure Federal surety bonds and/or gain recognition as an Admitted Reinsurer.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 150.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the 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 respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 9, 2024.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2024–18211 Filed 8–14–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Claim Against the United States for the Proceeds of a Government Check

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Claim Against the United States for the Proceeds of a Government Check.

DATES: Written comments should be received on or before October 15, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION: *Title:* Claim Against the United States for the Proceeds of a Government Check.

OMB Number: 1530–0010.

Form Number: FS Form 1133 and FS Form 1133–A.

Abstract: The forms are used to collect information needed to process an individual's claim for non-receipt of proceeds from a U.S. Treasury check. Once the information is analyzed, a determination is made, and a recommendation is submitted to the program agency to either settle or deny the claim.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 51,640.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 8,609.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the 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 respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 9, 2024.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2024–18213 Filed 8–14–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Disclaimer and Consent With Respect To United States Savings Bonds/Notes

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Disclaimer and Consent With Respect To United States Savings Bonds/Notes.

DATES: Written comments should be received on or before October 15, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Disclaimer and Consent With Respect To United States Savings Bonds/Notes.

OMB Number: 1530–0059.

Form Number: FS Form 1849.

Abstract: A disclaimer and consent may be necessary when, as the result of an error in registration or otherwise, the payment, refund of purchase price, or reissue of savings bonds/notes as requested by one person would appear to affect the right, title or interest of some other person.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 450.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 45.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the 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 respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 9, 2024.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2024–18212 Filed 8–14–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's

determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. OFAC is also publishing updates to the identifying information of one person currently included on the SDN List.

DATES: August 9, 2024.

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.:

202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Associate Director for Sanctions Enforcement, Compliance & Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions

programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

A. On August 9, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individuals, entities, and property are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. ARKADIEV, Vladimir Mikhailovich (Cyrillic: АРКАДЬЕВ, Владимир Михайлович) (a.k.a. ARKADZYEU, Uladzimir Mihaylavych (Cyrillic: АРКАДЗЬЕЎ, Уладзімір Міхайлавіч)), Belarus; DOB 23 Apr 1965; POB Russia; nationality Russia; Gender Male; Passport KH1935655 (Russia) expires 16 Jan 2028; National ID No. 3230465K000PB5 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of Executive Order 14038 of August 9, 2021, “Blocking Property of Additional Persons Contributing to the Situation in Belarus,” 86 FR 43905, 3 CFR, 2021 Comp., p. 626 (E.O. 14038) for operating or having operated in the transportation sector of the Belarus economy.

2. BARABANOV, Oleg Fedorovich (Cyrillic: БАРАБАНОВ, Олег Федорович) (a.k.a. BARABANAU, Aleh Fyedaravych (Cyrillic: БАРАБАНАЎ, Алёг Фёдаравіч)), Belarus; DOB 29 Aug 1956; POB Belarus; nationality Belarus; Gender Male; Passport KH2539329 (Belarus) expires 13 Oct 2025; National ID No. 3290856K010PB6 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

3. CHIVEL, Yuri Aleksandrovich (Cyrillic: ЧИВЕЛЬ, Юрий Александрович) (a.k.a. CHIVELA, Yuri Alexandrovich), Belarus; DOB 01 Aug 1946; POB Belaya Tserkov, Ukraine; nationality Belarus; Gender Male; National ID No. 3010846A084PB2 (Belarus) (individual) [BELARUS-EO14038] (Linked To: LLC LABORATORY OF ADDITIVE TECHNOLOGIES).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of

LLC Laboratory of Additive Technologies, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

4. CHUDAKOV, Vladimir Vladimirovich (Cyrillic: ЧУДАКОВ, Владимир Владимирович) (a.k.a. CHUDAKOU, Uladzimiravich Uladzimir (Cyrillic: ЧУДАКОЎ, Уладзіміравіч Уладзімір)), Belarus; DOB 15 Jul 1970; POB Belarus; nationality Belarus; Gender Male; Passport MP3192003 (Belarus) expires 10 Aug 2026; National ID No. 3150770A025PB8 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the Belarus economy.

5. DIMENSHEIN, Arkady Samuilovich (Cyrillic: ДЗИМЕНШТЕЙН, Аркадий Самуилович) (a.k.a. DZIMENSHEIN, Arkadzi Samuilavich (Cyrillic: ДЗИМЕНШТЭЙН, Аркадзій Самуілавіч)), Belarus; DOB 13 Jan 1956; POB Borisov, Belarus; nationality Belarus; Gender Male; National ID No. 3130156A064PB3 (Belarus) (individual) [BELARUS-EO14038] (Linked To: ALC DISKOMS).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of ALC Diskoms, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

6. GERASIM, Oleg Romualdovich (Cyrillic: ГЕРАСИМ, Олег Ромуальдович) (a.k.a. HERASIM, Aleh Ramualdavych (Cyrillic: ГЕРАСИМ, Алєг Рамуальдавіч)), Belarus; DOB 03 Mar 1962; POB Belarus; nationality Belarus; Gender Male; Passport MP3293367 (Belarus) expires 02 Feb 2027; National ID No. 3030362A074PB6 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

7. ISHCENKO, Dmitry Olegovich (Cyrillic: ИЩЕНКО, Дмитрий Олегович) (a.k.a. ISHCENKO, Dima), Belarus; DOB 24 Jan 1983; POB Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 550098738 (Russia); National ID No. R0100000607471 (Belarus) (individual) [RUSSIA-EO14024] [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 of April 15, 2021, "Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (E.O. 14024) for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

8. KASTSIANOK, Siarhei Uladzimiravich (Cyrillic: КАСЦЯНОК, Сяргей Уладзіміравіч) (a.k.a. KOSTENOK, Sergey Vladimirovich (Cyrillic: КОСТЕНОК, Сергей Владимирович)), Belarus; DOB 10 Dec 1984; POB Riga, Latvia; nationality Belarus; Gender Male; Passport MC3337847 (Belarus); National ID No. 3101284C003PB0 (Belarus) (individual) [BELARUS-EO14038] (Linked To: LLC GROSVET GRUP).

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, LLC Grosvet Grup, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

9. KROKHOTIN, Evgeniy Yurievich (Cyrillic: КРОХОТИН, Евгений Юрьевич) (a.k.a. KRAKHOTSIN, Yauheni Yurevich (Cyrillic: КРАХОЦІН, Яўгеній Юрэвіч)), Belarus; DOB 26 Feb 1965; POB Belarus; nationality Belarus; Gender Male; Passport MP2682225 (Belarus) expires 26 Feb 2065; National ID No. 3260265C035PB4 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

10. LESCHANKA, Aliaksandr Mikalayevich (Cyrillic: ЛЕШЧАНКА, Аляксандр Мікалаевіч) (a.k.a. LESHCHENKO, Aleksandr Nikolaevich (Cyrillic: ЛЕЩЕНКО, Александр Николаевич)), Belarus; DOB 10 Nov 1965; POB Minsk, Belarus; nationality Belarus; Gender Male; National ID No. 3101165A043PB4 (Belarus) (individual) [BELARUS-EO14038] (Linked To: LIMITED LIABILITY COMPANY TOCHNAYA MEKHANIKA).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of Limited Liability Company Tochnaya Mekhanika, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

11. MIKHOLAP, Evgeniy Ivanovich (Cyrillic: МИХОЛАП, Евгений Иванович) (a.k.a. MIKHALAP, Yauheni Ivanavych (Cyrillic: МИХАЛАП, Яўгеній Іванавіч)), Belarus; DOB 11 Jan 1967; POB Russia; nationality Belarus; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport MP3010584 (Belarus) expires 23 Oct 2027; National ID No. 3110167A043PB2 (Belarus) (individual) [RUSSIA-EO14024] [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

12. NAREIKO, Ivan Nikolaevich (Cyrillic: НАРЕЙКО, Иван Николаевич) (a.k.a. NAREIKA, Ivan Mikalaevych (Cyrillic: НАРЭЙКА, Иван Мікалаевіч)), Belarus; DOB 12 May 1975; POB Russia; nationality Belarus; Gender Male; Secondary

sanctions risk: See Section 11 of Executive Order 14024.; Passport MP3379320 (Belarus) expires 21 Dec 2026; National ID No. 3120575A040PB3 (Belarus) (individual) [RUSSIA-EO14024] [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

13. PAVLENKO, Vladislav Nikolaevich (Cyrillic: ПАВЛЕНКО, Владислав Николаевич) (a.k.a. PAULENKA, Uładzislau Mikalaevych (Cyrillic: ПАЎЛЕНКА, Уладзіслаў Мікалаевіч)), 66L, Apt. 31, Pravdy St., Vitebsk, Belarus; DOB 11 Apr 1993; POB Belarus; nationality Belarus; Gender Male; Passport BM2519180 (Belarus) expires 30 Mar 2028; National ID No. 3110493H047PB9 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the Belarus economy.

14. PETROV, Oleg Vladimirovich (Cyrillic: ПЕТРОВ, Олег Владимирович) (a.k.a. PIATROU, Aleh Uładzimiravych (Cyrillic: ПЯТРОЎ, Алєг Уладзіміравіч)), Belarus; DOB 26 Mar 1962; POB Russia; nationality Russia; Gender Male; Passport OI0110473 (Russia) expires 19 Sep 2022; National ID No. 3260362B000VF1 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

15. SAVRUK, Viktoriya Orestovna (Cyrillic: САВРУК, Виктория Орестовна), Belarus; DOB 12 Feb 1980; nationality Ukraine; citizen Ukraine; Gender Female; National ID No. R0100001414249 (Ukraine) (individual) [BELARUS-EO14038] (Linked To: LLC MOT).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of LLC MOT, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

16. SIDARUK, Siarhei Mikalaevich (Cyrillic: СІДАРУК, Сяргей Мікалаевіч) (a.k.a. SIDORUK, Sergey Nikolaevich (Cyrillic: СИДОРУК, Сергей Николаевич)), Belarus; DOB 22 Dec 1962; POB Brest, Belarus; nationality Belarus; Gender Male; National ID No. 3221262A010PB1 (Belarus) (individual) [BELARUS-EO14038] (Linked To: OOO RUCHSERVOMOTOR).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of OOO Ruchservomotor, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

17. YAVORSKI, Aleksey Nikolaevich (Cyrillic: ЯВОРСКИЙ, Алексей Николаевич) (a.k.a. YAVORSKI, Aliaksei Mikalaevich (Cyrillic: ЯВОРСКИ, Аляксей Мікалаевіч)), Belarus; DOB 27 Feb 1981; POB Crimea, Ukraine; nationality Belarus; Gender Male; Passport MP2683544 (Belarus) expires 18 Sep 2029; National ID No. 3270281A003PB6 (Belarus) (individual) [BELARUS-EO14038] (Linked To: LLC ALYURTEKH).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of LLC Alyurtekh, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

18. ZAMULEVICH, Dmitriy Mikhailovich (Cyrillic: ЗАМУЛЕВИЧ, Дмитрий Михайлович) (a.k.a. ZAMULEVICH, Dzmitry Mihaylavych (Cyrillic: ЗАМУЛЕВІЧ, Дзмітрый Міхайлавіч)), Belarus; DOB 07 May 1974; POB Belarus; nationality Belarus; Gender Male; Passport BM2229283 (Belarus) expires 31 Jul 2024; National ID No. 3070574E057PB8 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

19. ZHARSKI, Aliaksandr Uladzimiravich (Cyrillic: ЖАРСКИ, АЛЯКСАНДР УЛАДЗІМІРАВІЧ) (a.k.a. ZHARSKII, Aleksandr Vladimirovich (Cyrillic: ЖАРСКИЙ, Александр Владимирович)), Belarus; DOB 14 Dec 1971; POB Saligorsk, Belarus; nationality Belarus; Gender Male; National ID No. 3141271A021PB4 (Belarus) (individual) [BELARUS-EO14038] (Linked To: OOO RUCHSERVOMOTOR).

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of OOO Ruchservomotor, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

Entities

1. ALC DISKOMS (a.k.a. ODO DISKOMS (Cyrillic: ОДО ДИСКОМС)), UL Sharangovicha 13, Minsk 220018, Belarus; Organization Established Date 30 Oct 1995; Organization Type: Manufacture of industrial, electric and electronic machinery; Tax ID No. 101065433 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Peleng JSC, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

2. AVIAKOMPANIYA BELKANTO LLC (Cyrillic: ООО АВИАКОМПАНИЯ БЕЛКАНТО) (a.k.a. BELCANTO AIRLINES; a.k.a. BELCANTO AIRLINES LLC; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU BELKANTO), 42, room 3H, Nemiga St., Minsk 220004, Belarus; 29, pom. 11, izolirovannoe pomeshchenie, kabinet 4, ul. Surganova, Minsk 220012, Belarus;

Organization Established Date 03 Aug 2020; Organization Type: Freight air transport; Tax ID No. 193453339 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

3. AVIAKOMPANIYA RADA LLC (a.k.a. AVIAKOMPANIYA RADA, OOO; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU AVIAKOMPANIYA RADA; a.k.a. RADA AIRLINES LLC), 16, pom. 411, 412, ul. Lozhinskaya, Minsk 220125, Belarus; 35 Starinovskaya St., Office 3N, Minsk 220056, Belarus; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 07 Apr 2015; Organization Type: Freight air transport; Tax ID No. 192457896 (Belarus) [RUSSIA-EO14024] [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

4. JOINT STOCK COMPANY PLANT LEGMASH (a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO BELORUSSKIY METALLURGICHESKIY ZAVOD; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO ZAVOD LEGMASH (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ЗАВОД ЛЕГМАШ); a.k.a. ZAVOD SHVEINYKH MASHIN OAO), 17, per. Vostochny, Orsha 211390, Belarus; Tax ID No. 300228934 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the Belarus economy.

5. KB UNMANNED HELICOPTERS LLC (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KB BESPILOTNYE VERTOLETY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КБ БЕСПИЛОТНЫЕ ВЕРТОЛЕТЫ); a.k.a. "UAVHELI"), d. 47, korp. 14, ul. Yanki Mavra, Minsk 220015, Belarus; Organization Established Date 26 Apr 2017; Organization Type: Manufacture of air and spacecraft and related machinery; Tax ID No. 192807396 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the Belarus economy.

6. LIMITED LIABILITY COMPANY TOCHNAYA MEKHANIKA (a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU TOCHNAYA MEKHANIKA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТОЧНАЯ МЕХАНИКА); a.k.a. "PRECISION MECHANICS LLC"), UL. Kazintsa 9/121A, Minsk 220108, Belarus; Organization Established Date 05 Feb 2009; Organization Type: Manufacture of

other fabricated metal products n.e.c.; Tax ID No. 191111141 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Peleng JSC, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

7. LLC ALYURTEKH (Cyrillic: ООО АЛЮРТЕХ), UL. Tyulenina 10G, Kalodzishchy 223051, Belarus; Organization Established Date 31 May 2010; Organization Type: Manufacture of other fabricated metal products n.e.c.; Tax ID No. 691303982 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Peleng JSC, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

8. LLC GROSVET GRUP (Cyrillic: ООО ГРОСВЕТ ГРУП), UL. Korzhenevskogo 14, Minsk 220108, Belarus; St. Novo-Moskovskaya, 5, Smolensk 214012, Russia; Organization Established Date 23 Jan 2012; Tax ID No. 191695746 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Peleng JSC, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

9. LLC LABORATORY OF ADDITIVE TECHNOLOGIES (a.k.a. LLC LASER DEVICES AND TECHNOLOGIES (Cyrillic: ООО ЛАЗЕРНЫЕ ПРИБОРЫ И ТЕХНОЛОГИИ; Cyrillic: ТОО ЛАЗЕРНЫЕ ПРИБОРЫ I ТЭХНАЛОГИИ); a.k.a. ООО ЛАБОРАТОРИЯ АДДИТИВНЫХ ТЕХНОЛОГИЙ (Cyrillic: ООО ЛАБОРАТОРИЯ АДДИТИВНЫХ ТЕХНОЛОГИЙ); a.k.a. ТОО ЛАБОРАТОРИЯ АДДИТИВНЫХ ТЕХНОЛОГИЙ (Cyrillic: ТОО ЛАБОРАТОРИЯ АДДИТИВНЫХ ТЕХНОЛОГИЙ)), Pekinskiy bld. 22, Minsk 222205, Belarus; Tsentralnaya Str. 2, room 116, Yutski 222744, Belarus; Organization Established Date 09 Feb 2017; Tax ID No. 691827047 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Peleng JSC, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

10. LLC MOT (a.k.a. ООО MOT), UL. Moskovskaya 202B/8-2, Brest 224020, Belarus; Organization Established Date 25 Sep 2016; Organization Type: Manufacture of other fabricated metal products n.e.c.; Tax ID No. 291194100 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for,

or goods or services to or in support of, Peleng JSC, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

11. OOO RUCHSERVOMOTOR (Cyrillic: OOO PYXCEPBOMOTOP) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU RUKHSERVOMOTOR; a.k.a. OOO RUKHSERVOMOTOR; a.k.a. TAA RUKHSERVAMOTOR (Cyrillic: TAA PYXCEPBAMATOP)), Montazhnikov St. 5, Minsk 220019, Belarus; Organization Established Date 24 Feb 2000; Organization Type: Manufacture of industrial, electric and electronic machinery; Tax ID No. 800002497 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vi) of E.O. 14038 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, LLC Laboratory of Additive Technologies, an entity whose property and interests in property are blocked pursuant to E.O. 14038.

12. RUZEKSPEDITSIYA LLC (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU RUZEKSPEDITSIYA; a.k.a. RUDENSKI UDOBRENCHESKI ZAVOD OOO; a.k.a. RUZSPEDITION LLC), 1K, pom. 36, ul. Zavodskaya, Bolbasovo 211004, Belarus; 40 Nemiga St., p. 304, Minsk 220004, Belarus; Organization Established Date 31 May 2016; Organization Type: Transportation and storage; Tax ID No. 690664113 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

13. UE RUBISTAR (Cyrillic: УП РУБИСТАР) (a.k.a. PRODUCTION UNITARY ENTERPRISE RUBISTAR MIKHOLAPA E.I. SMOLEVICH DISTRICT; a.k.a. PROIZVODSTVENNOE UNITARNOE PREDPRIVATIE RUBISTAR MIKHOLAPA E.I. SMOLEVICHSKII RAION; a.k.a. RUBISTAR, UP; a.k.a. RUBYSTAR AIRWAYS; a.k.a. UE RUBISTAR MIKHOLAPA E.I. SMOLEVICH DISTRICT), Ul. Peschanaya, d. 20, Smolevichi 222201, Belarus; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 23 Mar 1997; Organization Type: Freight air transport; Tax ID No. 600436180 (Belarus) [RUSSIA-EO14024] [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

14. VLATE LOGISTIK LLC (Cyrillic: OOO ВЛАТЕ ЛОГИСТИК) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VLATE LOGISTIK), 48 ul. Komarova, Pogranichny 231773, Belarus; Organization Established Date 15 Apr 2013; Organization Type: Transportation and storage; Tax ID No. 192003422 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the Belarus economy.

Property

1. EW-001PB; Aircraft Manufacture Date 26 Sep 2004; Aircraft Model 767-32KER; Aircraft Manufacturer's Serial Number (MSN) 33968; Aircraft Tail Number EW-001PB (aircraft) [BELARUS-EO14038] (Linked To: LUKASHENKA, Alyaksandr Ryhorovich).

Designated pursuant to section 1(a) of E.O. 14038 for being property of Alyaksandr Hryhoryavich Lukashenka, a person whose property and interests in property are blocked pursuant to E.O. 13405.

- B. On August 9, 2024, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continues to be blocked under the relevant sanctions authority listed below.

1. STATE AUTHORITY FOR MILITARY INDUSTRY OF THE REPUBLIC OF BELARUS (a.k.a. BELARUSIAN STATE AUTHORITY FOR MILITARY INDUSTRY; a.k.a. STATE MILITARY-INDUSTRIAL COMMITTEE OF BELARUS (Cyrillic: ГОСУДАРСТВЕННЫЙ ВОЕННО-ПРОМЫШЛЕННЫЙ КОМИТЕТ БЕЛАРУСИ)), 115 Nezavisimost ave, Minsk 220114, Belarus; 115 Nezavisimosti Avenue, Minsk 220114, Belarus; Organization Established Date 30 Dec 2003; Target Type Government Entity [BELARUS-EO14038].

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STATE AUTHORITY FOR MILITARY INDUSTRY OF THE REPUBLIC OF BELARUS (a.k.a. BELARUSIAN STATE AUTHORITY FOR MILITARY INDUSTRY; a.k.a. DZIARZAUNY VAJENNA-PRAMYSLOVY KAMITET (Cyrillic: ДЗЯРЖАЎНЫ ВАЕННА-ПРАМЫСЛОВЫ КАМІТЭТ); a.k.a. GOSKOMVOYENPROM (Cyrillic: ГОСКОМВОЕНПРОМ); a.k.a. STATE MILITARY-INDUSTRIAL COMMITTEE OF BELARUS (Cyrillic: ГОСУДАРСТВЕННЫЙ ВОЕННО-ПРОМЫШЛЕННЫЙ КОМИТЕТ БЕЛАРУСИ)), 115 Nezavisimosti Avenue, Minsk 220114, Belarus; Website <http://www.vpk.gov.by/>; Organization Established Date 30 Dec 2003; Target Type Government Entity [BELARUS-EO14038].

Designated pursuant to section 1(a)(ii) of E.O. 14038 for being a political subdivision, agency, or instrumentality of the Government of Belarus.

Dated: August 9, 2024.

Lawrence M. Scheinert,

Acting Deputy Director, Office of Foreign Assets Control

[FR Doc. 2024–18262 Filed 8–14–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions; Sanctions Actions Pursuant to Executive Order 14024

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of an aircraft identified as blocked property that has been removed from OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List). Property and interests in property relating to this aircraft are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions relating to this aircraft.

DATES: OFAC's action described in this notice was effective on August 9, 2024.

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Associate Director for Sanctions Enforcement, Compliance & Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's website at <http://www.treasury.gov/ofac>.

Notice of OFAC Actions

On August 9, 2024, OFAC removed from the SDN List the aircraft listed below, that was previously subject to prohibitions imposed pursuant to Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024).

Aircraft

1. P4–MIS; Aircraft Manufacture Date 31 May 2007; Aircraft Model Airbus A319–115; Aircraft Manufacturer's Serial Number (MSN)

3133; Aircraft Tail Number P4–MIS; Secondary sanctions risk: See Section 11 of Executive Order 14024. (aircraft) [RUSSIA–EO14024] (Linked To: VEKSELBERG, Viktor Feliksovich).

Dated: August 9, 2024.

Lawrence M. Scheinert,

Acting Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–18274 Filed 8–14–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Form 1096, Annual Summary and Transmittal of U.S. Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

DATES: Written comments should be received on or before October 15, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Please include, "OMB Number: 1545–0108—Public Comment Request Notice" in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Annual Summary and Transmittal of U.S. Information Returns. *OMB Number:* 1545–0108. *Regulation Project Number:* Form 1096.

Abstract: Form 1096 is used to transmit information returns (Forms

1099, 1098, 5498, and W–2G) to the IRS service centers. Under Internal Revenue Code section 6041 and related regulations, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize, categorize, and process the forms being filed.

Current Actions: Changes to update box numbers for Forms 1099–MISC and 1099–NEC along with updated filing projections will result in a decrease in the estimated annual burden by 893,582 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and State, local or tribal governments.

Estimated Number of Respondents: 2,124,667.

Estimated Time per Respondent: 11 min.

Estimated Total Annual Burden Hours: 403,687.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by

permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: August 12, 2024.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2024–18320 Filed 8–14–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Information Collection Tools Relating to IRS Customer Satisfaction Surveys

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to the IRS Customer Satisfaction Surveys.

DATES: Written comments should be received on or before October 15, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Please include, “OMB Number: 1545–2250—Public Comment Request Notice” in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: IRS Customer Satisfaction Surveys.

OMB Number: 1545–2250.

Regulation Project Number: N/A.

Abstract: Surveys conducted under this clearance are used by the Internal Revenue Service to determine levels of customer satisfaction as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services. Collecting, analyzing, and using customer opinion data is a vital component of IRS’s Balanced Measures Approach, as mandated by Internal Revenue Service Reform and Restructuring Act of 1998 and Executive Order 12862.

Current Actions: This is a renewal request. There are currently no changes planned. Any updates will be included with the submission package. It is estimated that 60,000 burden hours will be used over the course of the next three years.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Responses: 135,000.

Estimated Time Per Respondent: 8–9 mins.

Estimated Total Annual Burden Hours: 20,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: August 12, 2024.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2024–18296 Filed 8–14–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection Activity: Request for Approval of School Attendance and School Attendance Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Nancy Kessinger, 202–632–8924, nancy.kessinger@va.gov.

VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites

comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Approval of School Attendance (VA Forms 21–674 and 21–674c) and School Attendance Report (VA Form 21–674b).

OMB Control Number: 2900–0049
https://www.reginfo.gov/public/do/PRASearch.

(Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: VA Forms 21–674 and 21–674c are used to gather information that is necessary to determine benefit entitlement to or for a veteran's child between the ages of 18 and 23 who is attending school. VA Form 21–674b is used to verify the school attendance of a child who is receiving benefits or for whom benefits are being received. Without this information, VA would be unable to properly authorize benefits for school attendance. No changes have

been made to these forms. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 15,862 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 79,310 per year.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–18193 Filed 8–14–24; 8:45 am]

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Part II

Federal Reserve System

Federal Deposit Insurance Corporation

Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers;
Notice

FEDERAL RESERVE SYSTEM**[Docket No. OP–1817]****FEDERAL DEPOSIT INSURANCE CORPORATION****RIN 3064–ZA38****Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers**

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final guidance.

SUMMARY: The Board and the FDIC (together, the agencies) are adopting this final guidance for the 2025 and subsequent resolution plan submissions by certain foreign banking organizations (FBOs). The final guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted under the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (the Dodd-Frank Act), and the jointly issued implementing regulation (the Rule). The scope of application of the final guidance is foreign triennial full filers (specified firms or firms), which are foreign Category II and III banking organizations, and the guidance supersedes the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*. The final guidance describes the agencies' expectations, depending on the resolution strategy chosen by the firm, regarding a number of key vulnerabilities in plans for an orderly resolution under the U.S. Bankruptcy Code (*i.e.*, group resolution plan; capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; branches; and insured depository institution (IDI) resolution, if applicable). The final guidance modifies and clarifies certain aspects of the proposed guidance based on the agencies' consideration of comments to the proposal, additional analysis, and further assessment of the business and risk profiles of the firms.

DATES: The final guidance is available on August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Board: Catherine Tilford, Deputy Associate Director, (202) 452–5240, Elizabeth MacDonald, Assistant Director, (202) 475–6316, Tudor Rus, Manager, (202) 475–6359, Mason Laird, Senior Financial Institution Policy Analyst II, (202) 912–7907, Caroline Elkin, Senior Financial Institution

Policy Analyst, (202) 263–4888, Division of Supervision and Regulation; or Jay Schwarz, Deputy Associate General Counsel, (202) 452–2970; Andrew Hartlage, Special Counsel, (202) 452–6483; Brian Kesten, Counsel, (202) 843–4079; or Sarah Podrygula, Senior Attorney, (202) 912–4658, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Robert C. Connors, Senior Advisor, (202) 898–3834; Mark E. Haley, Chief, (917) 320–2911, Patrick R. Bittner, Senior Policy Specialist, (202) 898–6571, Division of Complex Financial Institution Supervision and Resolution; Celia Van Gorder, Assistant General Counsel (Acting), (202) 898–6749; Dena S. Kessler, Counsel, (202) 898–3833; Gregory J. Wach, Counsel, (202) 898–6972, Legal Division.

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I. Introduction**A. Background**

Section 165(d) of the Dodd-Frank Act¹ and the Rule² require certain financial institutions to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers; (b) triennial full filers; and (c) triennial reduced filers.³ The terms “covered company” and “triennial full

filer” have the meanings given in the Rule, as do other, similar terms used throughout this final guidance document.

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.⁴ The Rule requires each covered company's full resolution plan to include, among other things, a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material entities, and interconnections and interdependencies.⁵ Targeted resolution plans are required to include a subset of information contained in a full plan.⁶ In addition, the Rule requires that all resolution plans consist of two parts: a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies, and a section that the agencies make available to the public.⁷ Public sections of resolution plans can be found on the agencies' websites.⁸

Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. To assist the development of covered companies' resolution planning capabilities and plan submissions, the agencies have provided feedback on individual plan submissions, issued guidance to certain groups of covered companies, and issued answers to frequently asked questions. The agencies believe that guidance can help focus the efforts of similarly situated covered companies to improve their resolution capabilities and clarify the agencies' expectations for those filers' future progress in their resolution plans. To date, the agencies have issued guidance to: (a) U.S. global systemically important banks (GSIBs),⁹ which constitute the biennial filer group; and (b) certain large FBOs that

⁴ 12 CFR 243.4(b) and 381.4(b).

⁵ 12 CFR 243.5 and 381.5.

⁶ 12 CFR 243.6(b) and 381.6(b).

⁷ 12 CFR 243.11(c) and 381.11(c).

⁸ The public sections of resolution plans submitted to the agencies are available at www.federalreserve.gov/supervisionreg/resolution-plans.htm and www.fdic.gov/regulations/reform/resplans/.

⁹ Guidance for section 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019) (2019 U.S. GSIB Guidance).

¹ 12 U.S.C. 5365(d).

² 12 CFR parts 243 and 381.

³ 12 CFR 243.4 and 381.4.

are triennial full filers.¹⁰ The agencies have not, however, thus far issued guidance to domestic triennial full filers and the additional FBOs that make up the remainder of the triennial full filers.

Several developments inform the final guidance:

- The agencies' consideration of comments to the proposed guidance (as defined below);
- The agencies' review of foreign triennial full filers' 2021 resolution plans and the issuance of individual letters communicating the agencies' feedback on those submitted plans;
- The agencies' recent experience with UBS Group AG's acquisition of Credit Suisse Group AG (CS) and, with respect to specified firms with large subsidiary IDIs, the resolutions of Silicon Valley Bank (SVB), Signature Bank (SB), and First Republic Bank (First Republic), and related stress experienced by a range of other financial institutions; and
- The agencies' analysis of the current risk profiles of the foreign triennial full filers.

The preamble to the 2019 revisions to the Rule indicated that the agencies would make any future resolution guidance available for comment,¹¹ and on August 29, 2023, the agencies invited comments on proposed guidance for the 2024 and subsequent resolution plan submissions by foreign triennial full filers (proposed guidance or proposal).¹²

The Rule requires triennial full filers to submit their resolution plans on or before July 1 of each year in which a resolution plan is due.¹³ At the time the agencies issued the proposed guidance, the foreign triennial full filers were required to submit their next resolution plans on or before July 1, 2024. In the proposal, the agencies requested comment about whether the agencies should provide more than six months for firms to take into consideration the expectations in the finalized guidance. Several comments discussed the timing of the next resolution plan submission and its relationship to the final guidance. Most requested extensions, with several requesting at least a year

and one stating six months would be adequate. One stated a maximum of six months from publication of the final guidance to the first submission would be adequate, though it did not specifically ask for an extension.

On January 17, 2024,¹⁴ the agencies announced an extension of the resolution plan submission deadline for the triennial full filers from July 1, 2024, to March 31, 2025. At this time, the agencies are further extending the 2025 resolution plan submission deadline for triennial full filers to October 1, 2025, to provide the firms with sufficient time to develop their full resolution plans in light of the final guidance. The agencies are also clarifying that all triennial full filers' subsequent resolution plan submission, a targeted resolution plan, are due on or before July 1, 2028, and that future resolution plan submissions will be due every three years after that, alternating between full and targeted resolution plans, pursuant to the Rule,¹⁵ unless the agencies exercise their authority under the Rule to alter the submission date for future resolution plan submissions.¹⁶

Resolution Plan Strategy

Foreign-based covered companies subject to the Rule have adopted one of two resolution strategies for their U.S. operations: (1) a single point of entry (SPOE) strategy where only the top tier U.S. material entity holding company enters resolution through a bankruptcy proceeding; or (2) a multiple point of entry (MPOE) strategy where multiple U.S. material entities enter separate resolution proceedings, including any top tier U.S. material entity holding company enters bankruptcy, any U.S. material entity subsidiary enters resolution pursuant to the Federal Deposit Insurance Act of 1950, as amended (the FDI Act), and other entities enter the appropriate resolution regimes or are wound down. The U.S. SPOE and U.S. MPOE resolution strategies that firms have chosen present different risks and entail different types of planning and development of capabilities; accordingly, the proposal contained content applicable to U.S. SPOE resolution strategies and separate content applicable to U.S. MPOE resolution strategies.

Commenters supported inclusion of expectations for both U.S. MPOE and U.S. SPOE resolution strategies, and supported firms' ability to choose either

strategy. However, some commenters questioned whether the agencies were expecting or encouraging firms to adopt a U.S. SPOE resolution strategy and recommended that the agencies disclose publicly whether they prefer a particular resolution strategy and engage in notice and comment rulemaking if they do. For firms that change resolution strategies, some commenters requested that the agencies provide a transition period and made statements about the preferred length of such a transition period, and one asked for an explanation for how a firm that is changing strategies can satisfy the agencies' expectations, and others requested that the agencies not issue any findings regarding a firm's first resolution plan that adopts a different resolution strategy.

The agencies do not prescribe a specific resolution strategy for any firm. This guidance, similarly, does not suggest that any firm should change its resolution strategy, nor are the agencies identifying a preferred strategy for a specific firm or set of firms. The selection of a preferred strategy, including U.S. MPOE or U.S. SPOE as a preferred resolution strategy, should reflect the characteristics of the firm and its business operations, and support the goal of the resolution plan to substantially mitigate serious adverse effects of the firm's failure on financial stability in the United States. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate a rapid and orderly resolution.

The agencies are providing separate guidance for a U.S. SPOE resolution strategy and a U.S. MPOE resolution strategy in acknowledgment that firms are free to adopt the resolution strategy that best suits their operations and organizations. Further, the agencies note there may be resolution strategies other than U.S. SPOE and U.S. MPOE that could facilitate a rapid and orderly resolution. The specified firms should continue to submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms. Regardless of strategy, a resolution plan should address the key vulnerabilities, support the underlying assumptions required to successfully execute the chosen resolution strategy, and demonstrate the adequacy of the capabilities necessary to execute the selected strategy.

Moreover, because the agencies do not prescribe resolution strategies, firms may voluntarily change their preferred strategy in the future. However, reflecting the voluntary nature of

¹⁰ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies 2020 FBO Guidance, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

¹¹ Resolution Plans Required, 84 FR 59194, 59204 (Nov. 1, 2019) (2019 *Federal Register* Rule Publication).

¹² <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829b.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23067.html>. See also Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers, 88 FR 64641 (Sept. 19, 2023).

¹³ 12 CFR 243.4(b)(3) and 381.4(b)(3).

¹⁴ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240117a.htm>; <https://www.fdic.gov/news/press-releases/2024/pr24002.html>.

¹⁵ 12 CFR 243.4(b) and 381.4(b).

¹⁶ 12 CFR 243.4(d)(2) and 381.4(d)(2).

resolution strategy changes, the agencies do not anticipate providing a transition period during which a firm would be free from potential findings under the Rule while it effectuates a change in resolution strategy, whether from U.S. MPOE to U.S. SPOE, or to any other resolution strategy. A firm controls the timing of when it submits its first plan with a different strategy; accordingly, it can take the time it needs to put in place the resources and capabilities needed to submit a plan that satisfies the standard in section 165(d) of the Dodd-Frank Act and the Rule. The standard of review for a resolution plan submission of a firm that transitions to a new strategy is therefore the same as for any firm subject to the Rule.¹⁷

B. Connection to Other Rulemakings

Long-Term Debt Proposal

The agencies, as well as the Office of the Comptroller of the Currency (together with the agencies, the Federal banking agencies), issued in August 2023 a proposed rule for comment that would require certain large holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs, to issue and maintain outstanding a minimum amount of long-term debt (LTD), among other proposed requirements.¹⁸ The agencies have received comments on the LTD proposal, and will consider all comments received in context of the LTD rulemaking. The agencies requested comments on the proposed guidance that take the LTD proposal into consideration.

One commenter recommended that, for purposes of their resolution plans, firms should only assume their existing outstanding LTD and not the projected LTD that would be in place once the firm has achieved full compliance with the LTD proposal. Another commenter argued that the agencies should consider the interaction between the proposed guidance and LTD proposal, with a goal of having them work together to improve the resolvability of applicable banking organizations and avoid duplicative or contradictory requirements. The commenter also asserted that calibration of an IDI's internal LTD requirement could lead banking organizations using a U.S.

MPOE resolution strategy to adopt a U.S. SPOE resolution strategy because of the costs of compliance with such internal LTD issuance.

The Federal banking agencies have not finalized the LTD rulemaking as of the issuance of this final guidance. The agencies recognize that LTD issued and maintained by a specified firm could affect the firm's strategic analysis of the funding, liquidity, and capital needs of, and resources available to, the covered company and its material entities.¹⁹ However, the agencies believe that the finalization of a requirement to maintain a specified amount of LTD would not affect this guidance in any material way. Any final LTD rule will address the manner in which its requirements will be implemented. This final guidance is intended to convey the agencies' expectations regarding the content of resolution plan submissions, and not to contradict, modify, or accelerate a company's obligations under other laws or regulations. As provided in the final guidance, firms should develop their resolution plans in accordance with the current state of the applicable legal and policy frameworks. The agencies also recognize, however, that there may be phase-in periods during which rules become effective. Should the LTD rule be finalized in advance of October 1, 2025, the agencies will not expect firms to incorporate the requirements of the rule into their 2025 resolution plan submissions. This should provide firms covered by the LTD rule with reasonable time to consider any final LTD rule in a future resolution plan submission. Further, and as noted above, the agencies are not recommending that any specified firm adopt any particular strategy in response to this guidance or the LTD proposal.

Basel III End Game Proposal and the GSIB Capital Surcharge Proposal

The Federal banking agencies also issued in July 2023 a proposed rule for comment to substantially revise the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity.²⁰ The Board also issued a proposed rule for comment to amend the Board's rule that identifies and establishes risk-based capital surcharges

for GSIBs.²¹ The latter proposal would also amend the Systemic Risk Report (FR Y-15), which is the source of inputs to the implementation of the GSIB framework under the capital rule.

One commenter asserted that the issuance of multiple rulemaking and guidance proposals limited the commenter's ability to evaluate and comment on the proposed guidance. The commenter also recommended that the Federal banking agencies conduct an analysis of the costs and benefits of these proposals together. In addition, the commenter recommended providing the public more time to consider the interactions of the various proposals. Another commenter contended that the agencies should provide additional flexibility to firms that become triennial full filers as a result of the GSIB Capital Surcharge proposal and its associated changes to the Systemic Risk Report (FR Y-15). The commenter argued that such triennial full filers should have an extended transition period of two years before taking into account the final guidance.

The Federal banking agencies have not finalized the LTD rulemaking, Capital rulemaking, or GSIB Capital Surcharge rulemaking as of the issuance of this final guidance, and comments on those proposed rules are currently under consideration. The final guidance does not rely on or presume the finalization of these rulemakings and instead states, as proposed, that a resolution plan should be based on the current state of the applicable legal and policy frameworks.²² The agencies note that the Federal banking agencies extended the comment period on the LTD rulemaking,²³ the Capital rulemaking,²⁴ and the GSIB Capital Surcharge rulemaking²⁵ to allow interested parties more time to analyze relevant issues and prepare their comments. In addition, staff of the agencies met with members of the

²¹ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm>. See also Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15), 88 FR 60385 (Sept. 1, 2023) (GSIB Capital Surcharge proposal).

²² See *infra* section V.X of this document.

²³ Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions; Extension of Comment Period, 88 FR 83364 (Nov. 19, 2023).

²⁴ Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity; Extension of Comment Period, 88 FR 73770 (Oct. 27, 2023).

²⁵ Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15); Extension of Comment Period, 88 FR 73772 (Oct. 27, 2023).

¹⁷ See 12 CFR 243.8 and 381.8.

¹⁸ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829a.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23065.html>. See also Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (Sept. 19, 2023) (LTD proposal).

¹⁹ See 12 CFR 243.5(c)(1)(iii) and 381.5(c)(1)(iii).

²⁰ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23055.html>. See also Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity, 88 FR 64028 (Sept. 18, 2023) (Capital proposal).

public—including those who asked for additional time to review the various proposals—at the request of those persons after the close of the comment period. Moreover, the Board collected data from the banks affected by the Capital rulemaking to further clarify the estimated effects of the proposal.²⁶ The FBO guidance proposal also included an analysis of potential burden of the proposal pursuant to the Paperwork Reduction Act.²⁷ As discussed below, the agencies did not receive any comment on that section of the proposal.²⁸

The agencies also note that the Rule establishes a transition period for new covered companies that become triennial full filers.²⁹ As discussed elsewhere in this document, a specified firm is only expected to take into account the guidance for the resolution plan submission that is due at least 12 months after the date the firm becomes a specified firm.³⁰

FDIC IDI Resolution Plan Proposal

The agencies received two comments on the connection between the proposal and the IDI Rule.³¹ The FDIC published proposed revisions to the IDI Rule on September 19, 2023,³² and published final revisions on July 9, 2024.³³ One commenter recommended coordinating aspects of the proposed guidance and the Proposed IDI Rule, including having consistent terms and concepts, and permitting cross-referencing to section 165(d) resolution plans under the Proposed IDI Rule. Another commenter suggested aligning the Rule and the IDI Rule to reduce the combined compliance burden.

The Rule requires a covered company to submit a resolution plan that would allow for the rapid and orderly resolution of the firm under the Bankruptcy Code in the event of material financial distress or failure. The final guidance clarifies the agencies' expectations regarding certain topics and provides direction as to how

a covered company may demonstrate its compliance with its statutory obligation under section 165(d) of the Dodd-Frank Act to develop a resolution plan allowing for its rapid and orderly resolution. The IDI Rule serves a different purpose: the IDI Rule assists the FDIC in preparing to manage the resolution of a covered insured depository institution. While these two rules may be complementary, they are not the same. Additionally, whether to align the Proposed IDI Rule with the Rule or permit cross-referencing to section 165(d) resolution plans under the IDI Rule is outside the scope of this guidance.

C. Proposed Guidance

On August 29, 2023, the agencies invited public comment on proposed guidance for how foreign triennial full filers' resolution plans could address key challenges in resolution, which was proposed to apply beginning with the subject firms' 2024 resolution plan submissions.³⁴ The proposal identified the banking organizations to which the guidance would apply and articulated several areas of guidance: group resolution plan; capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; branches; and IDI resolution, if applicable. The proposed guidance described the agencies' proposed expectations for each of these areas. Most substantive topics were bifurcated, with separate guidance for a U.S. SPOE resolution strategy and a U.S. MPOE resolution strategy. The proposed guidance concluded with information about the format and structure of a plan that applied equally to plans contemplating either a U.S. SPOE resolution strategy or a U.S. MPOE resolution strategy.

The proposed guidance for firms that adopt a U.S. SPOE resolution strategy was generally based on the 2020 FBO Guidance or the associated proposal.³⁵ The proposed guidance for firms that adopt a U.S. MPOE resolution strategy was based upon the 2020 FBO Guidance but modified to be pertinent to U.S. MPOE resolution strategies. The agencies also proposed to clarify their expectations for specified firms that adopt a U.S. MPOE resolution strategy that includes the resolution of a material entity that is a U.S. IDI.

The agencies invited comments on all aspects of the proposed guidance. The agencies also specifically requested

comments on a number of issues, including the utilization of a U.S. SPOE resolution strategy by FBOs, the interaction of resolution guidance with a final long-term debt rule, the interaction between U.S. and global resolution strategies, the amount of time between the publication of the final guidance and the firms' next resolution plans, the appropriateness of guidance on IDI resolution, and whether to issue derivatives and trading expectations.

II. Overview of Comments

The agencies received and reviewed eight comment letters on the proposed guidance. Commenters included various financial services trade associations and two public interest groups. In addition, the agencies met with representatives of a banking organization that would be a specified firm and trade associations that represents banking organizations at their request to discuss issues relating to the proposed guidance.³⁶ This section provides an overview of the general themes raised by commenters. The comments received on the proposed guidance are further discussed below in the sections describing the final guidance (and, in some cases, previously in section I), including any changes that the agencies have made to the proposed guidance in response to comments.

Differentiating Expectations Based on Size, Complexity, and Risk

Most commenters contended that the proposed guidance did not sufficiently differentiate expectations among firms subject to resolution planning guidance. Several commenters argued that the specified firms have reduced their activities in the United States, resulting in a reduced risk and financial stability profile, and that expectations be adjusted accordingly. Some commenters also recommended that foreign triennial full filers without intermediate holding companies (IHCs) should not be covered by the guidance or should be the subject of guidance tailored to their risk profiles. In contrast, one commenter contended that the proposed guidance favors the U.S. MPOE resolution strategy by including fewer expectations for firms that adopt that strategy and recommended that the guidance for such firms be more aligned with

²⁶ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231020b.htm>.

²⁷ See proposed guidance at 88 FR 64648–49.

²⁸ See *infra* section IV of this document.

²⁹ See 12 CFR 243.4(b)(5) and 381.4(b)(5).

³⁰ See *infra* section III.B of this document.

³¹ 12 CFR 360.10 (IDI Rule).

³² Resolution Plans Required for Insured Depository Institutions With \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion But Less Than \$100 Billion in Total Assets, 88 FR 64579 (Sept. 19, 2023) (Proposed IDI Rule).

³³ Resolutions Plans Required for Insured Depository Institutions With \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion But Less Than \$100 Billion in Total Assets, 89 FR 56620 (July 9, 2024).

³⁴ *Supra* note 12.

³⁵ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 15449 (March 18, 2020) (2020 Proposed FBO Guidance).

³⁶ Summaries of those meetings and copies of the comments can be found on each agency's website. https://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=OP-1817&doc_ver=1; <https://www.fdic.gov/resources/regulations/federal-register-publications/2023/2023-guidance-resolution-plan-submissions-foreign-triennial-3064-za38.html>.

guidance for resolution plan filers using a U.S. SPOE resolution strategy.

In addition, some commenters argued that section 165 of the Dodd-Frank Act requires the agencies to tailor application of prudential standards issued pursuant to that section, such as resolution planning guidance; contended that the proposal was too similar to the 2019 U.S. GSIB Guidance or 2020 Proposed FBO Guidance; and encouraged expectations in the final guidance to be further differentiated based on size, risk and other factors. Several commenters also objected to expectations in the proposal that were proposed in the 2020 Proposed FBO Guidance but not finalized in the 2020 FBO Guidance—including guidance on group resolution plans, resolution capital adequacy and positioning requirements (RCAP), resolution liquidity adequacy and positioning (RLAP), governance mechanisms, and separability—and contended that the agencies did not adequately explain their rationale for adopting expectations different from those in the 2020 FBO Guidance.

Resolution Strategy and Transition Period

Several commenters supported the proposal's inclusion of expectations for both U.S. MPOE and U.S. SPOE resolution strategies and the agencies' statement that firms have the ability to choose their preferred strategy. However, as noted above, some commenters questioned whether the agencies were expecting or encouraging firms to adopt a U.S. SPOE resolution strategy. For firms that change resolution strategies, some commenters requested that the agencies provide a transition period during which the agencies would not make credibility findings in connection with a plan review, and one commenter requested that the agencies explain how a firm that is changing strategies can satisfy the agencies' expectations.

Interaction Between U.S. and Group Resolution Planning

Some commenters disagreed with the proposed guidance relating to the interaction of the U.S. and the global resolution plans. Commenters claimed that global resolution plans are sometimes written by home authorities and FBOs may not always have full visibility into the details of those plans' assumptions, strategies, and necessary capabilities. These commenters also asserted that, in some countries, home country regulators may consider aspects of the group plan to be confidential supervisory information and,

accordingly, the global resolution plan is not shared with the firm beyond very general terms. In addition, one commenter contended that the proposal did not specify with sufficient detail what information from a group resolution plan should be included in the U.S. resolution plan. Commenters urged the agencies to coordinate with home country authorities and to use Crisis Management Groups (CMGs), which are designed for collaboration between international regulators, to obtain this type of information.

Capital and Liquidity

The agencies received a number of comments on the capital and liquidity sections of the proposed guidance. With regard to the capital section of the proposed guidance, most commenters argued that the proposal included expectations that are duplicative of existing capital requirements and suggested removing the guidance on RCAP from the final guidance; one commenter, however, supported including RCAP expectations in final guidance. One commenter suggested that RCAP expectations would increase the complexity of the resolution planning process and another commenter expressed concern that RCAP expectations could result in excessive capital placement in the U.S., which could prevent firms from effectively positioning capital in times of stress.

With regard to the liquidity section of the proposed guidance, commenters suggested there is redundancy between the proposal and certain regulatory requirements and also recommended removing the guidance on RLAP from the final guidance; one commenter, however, supported including RLAP expectations in final guidance. One commenter expressed concern that RLAP expectations could make it more difficult for the specified firm's parent to deploy liquidity resources most effectively in stress. In addition, one commenter requested that the final guidance strengthen expectations for liquidity in resolution by including a procedure or protocol for liquidity related decisions, irrespective of resolution strategy.

IDI Resolution Analysis

The agencies received a number of comments on the proposed guidance related to the resolution of a subsidiary material entity U.S. IDI. Multiple commenters requested clarity on how the firm's plan should address the expectations regarding the FDIC's statutory least-cost requirement and questioned whether there is sufficient

information available for firms to effectively evaluate whether a proposed resolution plan would satisfy the least-cost analysis expectations. These commenters also questioned whether the least-cost analysis would be of value to FDIC in an actual resolution and argued that the guidance should be aligned with the requirements of the IDI Rule. One stated sufficient time should be given for firms to conduct new analyses and seek additional guidance from the agencies and that aspects of this section of the proposal should not be finalized.

One commenter asked the agencies to consider the compliance burden of the guidance, while another commenter argued that firms should not be expected to demonstrate that their preferred strategy would be consistent with the FDIC's statutory least-cost requirement. Another commenter suggested that the agencies should require firms to develop resolution strategies involving bridge depository institutions (BDIs) and recommended that the guidance address the value of assets transferred to such a BDI, how the resolution plan would address the IDI's franchise value, and how the preferred resolution strategy would result in a least-costly resolution.

Derivatives and Trading

Some commenters supported not including derivatives and trading expectations, stating it was appropriate to exclude such guidance because the specified firms have limited derivatives and trading portfolios, particularly relative to the U.S. G-SIB banking organizations covered by such guidance. However, some other commenters supported including such expectations in the final guidance, contending that derivatives activity for foreign triennial full filers may increase in the future and proposed applying such guidance to firms with net derivatives exceeding a given threshold.

Connection to Other Rules

The agencies received a number of comments about the interaction of the proposed guidance with several other rulemaking initiatives by the Federal banking agencies. For example, some commenters recommended coordinating the FDIC's Proposed IDI Rule revisions with the resolution plan rule and final guidance for the specified firms. Several commenters also suggested that the agencies consider the interaction between the proposed guidance and the LTD proposal to ensure the two proposals work together to improve the resolvability of applicable banking organizations and avoid duplicative or

contradictory requirements. Some commenters expressed concern that including certain expectations in the final guidance, such as those relating to capital, would be premature before finalizing the Capital proposal and LTD proposal, which impact firms' capital planning. Further, some commenters recommended that the Federal banking agencies analyze the costs and benefits of these proposals together.

Timing of Next Resolution Plan

Several comments discussed the timing of the next resolution plan submission and its relationship to this final guidance. Some commenters recommended providing at least one year between issuing final guidance and the deadline for foreign triennial full filers' next resolution plan submissions. However, other commenters suggested that six months from publication of the final guidance to the first resolution plan submission would be adequate for firms to take into account the guidance.

III. Final Guidance

After considering the comments, conducting additional analysis, and further assessing the business and risk profiles of foreign triennial full filers, the agencies are issuing final guidance that includes certain modifications and clarifications from the proposal. In particular, the capital, group resolution plan, operational, assumptions, and IDI resolution sections of the final guidance reflect changes from the proposed guidance. In addition, as was noted in the proposal,³⁷ the final guidance consolidates all prior resolution planning guidance for the firms in one document and clarifies that any prior guidance not included in the final guidance has been superseded. Further, as was noted in the proposal,³⁸ the final guidance is not intended to override the obligation of an individual firm to respond in its next resolution plan submission to pending items of individual feedback or any shortcomings or deficiencies jointly identified or determined by the agencies in that firm's prior resolution plan submissions. The guidance is drafted to reflect the current conditions in the industry and institutions as they exist today.

As discussed below,³⁹ several commenters asserted that the proposal did not adequately differentiate among covered companies based on their size, complexity, and risk to financial stability. The guidance, however, takes

into account the size and complexity of firms, their resolution strategy, and whether they are based in the United States or in a foreign jurisdiction. In addition, the final guidance is not meant to limit firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy.

The agencies also note that commenters described certain expectations that are set forth in the guidance as "requirements." As the agencies indicated in the proposed guidance and are now reaffirming, the final guidance does not have the force and effect of law. Rather, the final guidance outlines the agencies' supervisory expectations regarding each subject area covered by the final guidance.⁴⁰ The final guidance includes language reflecting this position.⁴¹

Finally, the agencies made several minor, non-substantive changes from the proposal, including to align the wording of guidance directed at firms that adopt an SPOE resolution strategy and firms that adopt an MPOE resolution strategy.

A. Scope of Application

The agencies proposed applying the guidance to all foreign-based triennial full filers and invited comment on all aspects of the proposed scope of the guidance. Multiple commenters argued that foreign triennial full filers without IHCs should not be covered by the guidance or should be the subject of guidance tailored to their risk profiles. In making this suggestion, one commenter stated that, unlike domestic firms, the resolution of U.S. operations of FBOs is anticipated to occur as part of the home country resolution and the IHC threshold represents a materiality threshold for understanding the importance of the U.S. operations and for resolution planning. The commenter also stated that separate guidance could be proposed for foreign triennial full filers without an IHC. Several commenters further argued that the specified firms are already subject to enhanced requirements in both the U.S. and their home jurisdictions, and that the firms are smaller, better capitalized, and present a much-reduced risk to U.S. financial stability relative to category I firms. One commenter also contended that imposing additional resolution planning expectations would undermine these firms' ability to support U.S. capital markets while

another commenter argued that the guidance should place greater reliance on cooperation among international regulators.

After review and consideration of these comments, the agencies are finalizing this section of the guidance as proposed. The agencies are issuing expectations to these firms to help them further strengthen their resolution plans based on the agencies' recent experience with UBS Group AG's acquisition of CS and, with respect to specified firms with large subsidiary IDIs, the resolutions of SVB, SB, and First Republic. Like CS, many of the specified firms are foreign GSIBs with a large presence in the United States. The guidance covers large FBOs both with and without a U.S. IHC and covers the entirety of their U.S. operations. The final guidance will strengthen these firms' resolution plans for their U.S. operations, while allowing flexibility based on the characteristics of individual firms and their respective resolution strategies. The agencies note that some aspects of the guidance may not be relevant to banking organizations without a U.S. IHC and do not expect firms to include in their resolution plans information about topics that do not relate to the structure of their operations. More generally, the level of detail in firms' resolution plans about specific topics and vulnerabilities should reflect the importance of those activities to the firm and whether they relate to or support any identified critical operations or core business lines or are material to the execution of the resolution strategy.

In many cases, the preferred resolution outcome for U.S. operations would be successful execution of the home country's global resolution strategy and the agencies have developed guidance to clarify the interactions between firms' U.S. and global resolution strategies. The home country resolution planning requirements do not make the guidance unnecessary for these firms. The Rule requires FBOs to submit plans providing for the rapid and orderly resolution of their U.S. subsidiaries and operations⁴² under the Bankruptcy Code in the event of their failure. The agencies are issuing guidance to assist FBO firms in enhancing the resolution plans required under U.S. law.

B. Transition Period

The proposed guidance did not describe how the guidance would be applied to FBOs that become covered by its scope, but it did request comment on all aspects of the proposed scope of

³⁷ See proposed guidance at 88 FR 64644.

³⁸ See *id.*

³⁹ See *infra* section III.M of this document.

⁴⁰ See 12 CFR 262.7 and appendix A to 12 CFR part 262; 12 CFR part 302.

⁴¹ See *infra* section V.I of this document.

⁴² See 12 CFR 243.5(a)(2)(i) and 381.5(a)(2)(i).

application. To provide certainty to FBOs, the final guidance states that when an FBO becomes a specified firm, the final guidance will apply to the firm's next resolution plan submission with a submission date that is at least 12 months after the time the firm becomes a specified firm.⁴³ If a specified firm ceases to be a foreign triennial full filer, it will no longer be considered a specified firm, and the guidance will no longer be applicable to that firm as of the date the firm ceases to be a foreign triennial full filer.

C. Interaction With Group Resolution Plan

The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy that does not involve the placement of any U.S. material entities into resolution. However, by law, section 165(d) resolution planning provisions require relevant FBOs to contemplate their resolution in the United States. U.S. operations of an FBO are often highly interconnected with the broader, global operations of the financial institution. To clarify the interaction between U.S. and global resolution strategies, the proposal outlined expectations that specified firms should describe the impact of executing the firm's global, group-wide resolution plan on the firm's U.S. operations and detail the extent to which resolution planning under the Rule relies on different assumptions, strategies, and capabilities from the global plan. The group resolution plan section of the proposed guidance differed from a similarly named section of the 2020 Proposed FBO Guidance by focusing on how U.S. resolution planning is integrated into a FBO's global resolution planning efforts, in addition to describing the impact on U.S. operations of executing the global plan. In 2020, the agencies declined to finalize that aspect of the 2020 Proposed FBO Guidance, stating that the item was addressed by the Rule and that the agencies would collaborate with home country regulators to better understand the impact on U.S. operations of executing a firm's group resolution plan.⁴⁴ However, recent events have underscored the need to better understand group resolution plans, and particularly the impact of executing the home plan on U.S. operations. These events, combined with prior resolution

plan submissions from the specified firms that did not provide consistent and sufficient details regarding the integration of U.S. resolution planning with the firm's group resolution planning process, prompted the agencies to issue additional guidance. Moreover, the final guidance differs from the 2020 Proposed FBO Guidance in several ways by further clarifying the Rule expectation and focusing on the reliance between U.S. and group resolution plans based on information available to the firm, as described below.

The agencies received several comments regarding this section of the proposal. Commenters claimed that global plans are sometimes written by home authorities and FBOs may not always have full visibility into the details of those plans' assumptions, strategies, and capabilities. Commenters also asserted that, in some countries, the global resolution plan is not shared with the firm beyond very general terms and that home country regulators may consider aspects of the group plan to be confidential supervisory information. In addition, one commenter contended that the proposal did not specify with sufficient detail what information from a group resolution plan should be included in the U.S. resolution plan. Commenters urged the agencies to coordinate with home country authorities and to use CMGs, which are designed for collaboration between international regulators, to obtain this type of information.

After consultation with certain home authorities and in response to these comments, the agencies are finalizing this section of the guidance with revisions. First, the agencies recognize that not all firms have access to the group-wide resolution plan for that financial institution. Accordingly, the final guidance clarifies that firms are not expected to provide information that they do not possess and does not include an expectation that firms specifically identify the extent to which resolution planning under the Rule relies on different assumptions, strategies, and capabilities from the global plan. Furthermore, the agencies note that while CMGs have been and continue to be a useful forum for collaboration between home and host authorities regarding resolution related topics, centralizing information about group resolution plans in resolution plans submitted under the Rule could help the agencies prepare for a range of outcomes and supplement ongoing coordination with home country authorities.

Accordingly, the final guidance provides that a plan should describe the extent of reliance on U.S. operations for executing the global resolution strategy and any reliance on the home or parent operations for executing the U.S. resolution strategy. A description of capabilities relied on to execute the U.S. resolution strategy that differ from capabilities to execute the global resolution strategy should also be included in a plan. The agencies also have retained language from the proposal that a specified firm's broader resolvability framework is expected to consider the objectives of both the group-wide resolution strategy and the U.S. resolution strategy pursuant to the Rule, with complementary efforts to enhance resolvability across plans. The agencies do not believe that inclusion of this type of information about group resolution plans in U.S. resolution planning poses confidentiality issues, and the agencies will collaborate with home authorities to address any outstanding issues regarding the confidentiality of group resolution plans. The agencies encourage specified firms to bring specific confidentiality concerns to the attention of the agencies and their respective home authorities.

D. Capital

For specified firms using a U.S. SPOE resolution strategy, the agencies proposed capital expectations substantially similar to those in the 2020 Proposed FBO Guidance. The ability to provide sufficient capital to material entities without disruption from creditors is essential to a U.S. SPOE resolution strategy's objective to ensure that material entities can continue to maintain operations as the firm is resolved. The proposal described expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (*e.g.*, debt that a parent holding company may choose to forgive or convert to equity) among the material entities within the firm (RCAP). The proposal also described expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The agencies received numerous comments on the capital section of the proposed guidance. One commenter supported including RCAP expectations in the final guidance. Several commenters, though, asserted that RCAP would be duplicative of existing capital requirements, such as total loss absorbing capacity (TLAC) provisions, and recommended that the agencies

⁴³ The plan type for that next submission remains as specified by the Rule, *i.e.*, a full or targeted resolution plan. See 12 CFR 243.4 and 381.4.

⁴⁴ See 2020 FBO Guidance at 85 FR 83567.

remove RCAP from the final guidance. These commenters also contended that the agencies did not sufficiently explain why the agencies proposed guidance on capital, including RCAP, when the agencies previously considered adopting RCAP expectations in the 2020 Proposed FBO Guidance but omitted these expectations from the 2020 FBO Guidance. A commenter argued that existing capital requirements are sufficient for the size and complexity of the firms subject to this guidance without RCAP expectations, which, the commenter asserted, add more complexity to the resolution planning process. Another commenter expressed concern that RCAP expectations could result in excessive capital placement in the U.S., and that this could prevent firms from effectively positioning capital in times of stress.

One commenter contended that as the majority of IHCs subject to guidance are required to hold local resources for the recapitalization of their U.S. operations under U.S. TLAC requirements, the agencies should not issue additional requirements related to local bail-in-able resources. A commenter argued that the risk characteristics of U.S. IHCs do not justify requiring pre-positioning of capital for U.S. IHC subsidiaries and urged that, at a minimum, the agencies should not implement both IDI-level LTD requirements and RCAP expectations for firms that select a U.S. SPOE resolution strategy.

One commenter also asserted that including expectations in this guidance regarding the positioning of capital is premature given that finalization of the Capital proposal and the LTD proposal may impact firms' capital planning. A commenter specifically pointed to language in the LTD proposal in which the agencies cite RCAP as one of the reasons why IDI-level LTD requirements are not necessary for the IDI subsidiaries of U.S. GSIBs.

After reviewing these comments, the agencies are finalizing this section of the guidance largely as proposed, with one clarification concerning RCEN. Whereas the proposed guidance provided that to the extent a firm's U.S. resolution strategy relies on the recapitalization of U.S. non-branch material entities, such recapitalization should be to a level that allows for an orderly resolution of the U.S. non-branch material entities, the final guidance specifies that the recapitalization should allow U.S. non-branch material entities to operate or be wound down in an orderly manner. This change is intended to provide more detail to firms to help them develop their plans.

Although the agencies previously pointed to TLAC requirements applicable to U.S. IHCs as part of the rationale for not including RCAP expectations in the 2020 FBO Guidance,⁴⁵ the agencies believe RCAP expectations are important for FBOs adopting a U.S. SPOE resolution strategy in order to ensure the appropriate positioning of capital and other loss-absorbing instruments among the U.S. IHCs and all of their material entity subsidiaries and to effectively execute a U.S. SPOE resolution strategy. Specifically, TLAC requirements apply to the IHC, while RCAP expectations under the guidance are applicable not just at the IHC level, but between the U.S. IHC and its material entity subsidiaries. Further, resources required to be held at the IHC consistent with TLAC requirements may differ from the firm's expected resource needs to execute a U.S. SPOE resolution strategy at specific material entities. Plans submitted by the specified firms would benefit from the firm's own assessment of its resource positioning and the resolution needs among its material entities, not just the IHC or the IDI.

Further, the stress experienced by and the failure of several large banking organizations in March 2023 highlighted the fast-moving nature of stress events, as several banking organizations entered resolution proceedings rapidly. These events also highlighted the potential for the failure of a large regional banking organization to affect financial stability. Successful execution of a U.S. SPOE resolution strategy—including the need to ensure that individual material entities have adequate capital to maintain operations as the firm is resolved—is unlikely to be successful under a short time frame without advance planning. Appropriate positioning of capital and other loss-absorbing instruments among the firm's material entities is an important element of this advanced planning to reduce uncertainty and enable timely recapitalization consistent with a U.S. SPOE resolution strategy. Accordingly, the agencies are finalizing guidance that includes RCAP expectations, despite not including those expectations in the final 2020 FBO guidance, to support the successful execution of the U.S. SPOE resolution strategy.

Finalizing RCAP expectations is not premature in light of outstanding proposals such as the LTD rulemaking and other pending rules because the RCAP expectations can be achieved with or without the LTD contemplated in the LTD proposal. The Federal

banking agencies have not finalized the LTD rulemaking proposal as of the issuance of this final guidance, and comments on that proposed rule are currently under consideration. Specifically, the final guidance does not rely on or presume the finalization of pending rules and instead states, consistent with the proposal, that a resolution plan should be based on the current state of the applicable legal and policy frameworks.⁴⁶ The guidance is intended to assist firms in developing their resolution plans, which are required to be submitted pursuant to the Dodd-Frank Act and the Rule. While other capital and resolution-related rules may establish minimum standards applicable to firms submitting resolution plans, this guidance is designed to facilitate a firm's own analysis of the firm's expected needs in resolution across that firm's material entities.

Regarding the comment that RCAP expectations would result in excessive capital placement in the United States, RCAP is not a regulatory requirement, but rather a potential element of an effective SPOE resolution strategy. The specified firms are not required to adopt a U.S. SPOE resolution strategy. To the extent a specified firm selects a U.S. SPOE resolution strategy, any reduction in flexibility would be balanced by benefits prepositioning provides in reducing uncertainty and enabling timely recapitalization of material entities. Furthermore, the agencies' reference to RCAP in the LTD preamble as one reason for not proposing IDI-level LTD requirements for U.S. GSIBs does not provide a rationale for excluding RCAP expectations from this guidance. First, in addition to RCAP expectations, the U.S. GSIBs are different in profile from these firms, and are subject to the most stringent capital, liquidity, and other prudential standards of all banking organizations that operate in the United States. Second, as noted above, the goals of this guidance would be complemented by additional LTD issued by specified firms, and the guidance is practicable in the absence of an LTD requirement.

For firms that adopt a U.S. MPOE resolution strategy, the agencies did not propose further expectations concerning capital and asked a question about whether capital-related expectations should be applied. In response, one commenter agreed with the proposal that additional expectations are not warranted for firms using a U.S. MPOE resolution strategy, arguing that such expectations would serve no purpose.

⁴⁵ See 2020 FBO Guidance at 85 FR 83563.

⁴⁶ See *infra* section V.X of this document.

However, another commenter contended that it is not prudent to assume that material entities within a holding company structure can be discontinued in an orderly manner and that, at a minimum, capital plans are needed for each material entity to preserve its value during the transition period between a firm's failure and when it can be sold or closed in an orderly way. The commenter asked the agencies to reconsider expectations for firms that adopt a U.S. MPOE resolution strategy and align them with expectations for firms that adopt a U.S. SPOE resolution strategy.

The agencies have determined that additional capital expectations for firms selecting a U.S. MPOE resolution strategy are not necessary at this time. Under a U.S. MPOE resolution strategy, most material entities do not continue as going concerns upon the firm's entry into resolution proceedings and are likely to have already depleted existing capital requirements. Accordingly, the agencies are finalizing this section of the guidance as proposed.

E. Liquidity

For firms that adopt a U.S. SPOE resolution strategy, the agencies proposed liquidity expectations substantially similar to those in the 2020 Proposed FBO Guidance. A firm's ability to reliably estimate and meet its liquidity needs prior to, and in, resolution is important to the execution of a firm's resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows subsidiaries to continue to operate while the firm is being resolved in accordance with the firm's resolution strategy. For firms that adopt a U.S. MPOE resolution strategy, the agencies proposed that a firm should have the liquidity capabilities necessary to execute its resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution.

The agencies received numerous comments on the liquidity section of the proposed guidance. One commenter supported including RLAP expectations in the final guidance for firms that adopt a U.S. SPOE resolution strategy.

Several commenters, however, requested that the agencies remove RLAP expectations from the final guidance, claiming that the expectation is redundant to certain liquidity requirements, such as the Liquidity Coverage Ratio (LCR) and Internal

Liquidity Stress Testing (ILST). Several commenters also argued FBOs have reduced their activities in the United States, resulting in a reduced risk and financial stability profile, and that liquidity requirements set forth in existing regulatory requirements, and not RLAP, should set the binding constraint on the firms. In addition, one commenter expressed concern that RLAP expectations could make it more difficult for the global firm to deploy liquidity resources most effectively in stress. Several commenters also asserted that the agencies did not sufficiently explain the rationale for including RLAP expectations that the agencies had previously considered but omitted from the 2020 FBO Guidance.

Another commenter requested that for firms that adopt a U.S. MPOE resolution strategy, the guidance strengthen expectations for liquidity in resolution by including a procedure or protocol for liquidity related decisions, irrespective of resolution strategy. The commenter argued that the guidance should identify the importance of overcoming barriers to moving liquidity across material legal entities and clarify which types of transfers of liquidity are permissible for material entities in resolution.

After reviewing these comments, the agencies are finalizing this section of the guidance as proposed.⁴⁷ While the agencies previously did not adopt RLAP expectations in the 2020 FBO Guidance, the agencies' recent experiences highlighted the fast-moving nature of bank failure and resolution and underscored the need to maintain sufficient and appropriately positioned liquidity across the IHC and its subsidiaries to be prepared for a successful U.S. SPOE resolution strategy. The agencies also believe that RLAP expectations are appropriate in light of recent events demonstrating that liquidity pressures on these firms can change dramatically over a short period of time. Having sufficient and appropriately positioned liquidity at the time of failure increases the probability that operating subsidiaries will have enough liquidity to be able to continue to operate while the firm is being resolved, and the RLAP expectations help achieve this goal.

RLAP expectations are not addressed by ILST and other regulatory requirements. Maintaining sufficient and appropriately positioned liquidity is critical to executing a U.S. SPOE resolution strategy, regardless of the size and complexity of the banking

organization. The LCR and ILST requirements that commenters referenced serve a different purpose—to promote resilience of firms' funding profiles—and are not focused on resolution planning.

RLAP expectations also would not hinder a specified firm's global parent from deploying liquidity resources most effectively in stress. Unlike ILST and other regulatory requirements, RLAP is not a regulatory requirement, but rather an example of a decision-making framework for liquidity needs and positioning in support of an effective SPOE resolution strategy that could be consistent with effective resolution planning. As discussed elsewhere, the guidance is not a legally binding enforceable requirement and is therefore not a binding constraint, and the specified firms are not required to adopt a U.S. SPOE resolution strategy or develop RLAP capabilities. To the extent a specified firm adopts a U.S. SPOE resolution strategy and uses RLAP, any reduction in flexibility would be balanced against the benefits prepositioning provides in enabling subsidiaries to continue to operate while the firm is being resolved.

Finally, the agencies are not establishing expectations for procedures or protocols for liquidity related decisions and clarifying the types of transfers of liquidity that are permissible for material entities in resolution for firms that adopt a U.S. MPOE strategy. The Rule already includes requirements for firms to include detailed descriptions of funding and liquidity needs and resources of material entities, and to identify interconnections and interdependencies related to liquidity arrangements.⁴⁸ Beyond the assumptions specified in the final guidance related to liquidity, additional details of how each firm provisions liquidity in the lead up to and during resolution are not needed at this time. Furthermore, firms should follow procedures and protocols that are aligned with their larger liquidity management frameworks to facilitate their preferred resolution strategies.

F. Governance Mechanisms

The agencies proposed separate governance mechanisms expectations based on a firm's preferred resolution strategy. Specified firms that use an SPOE resolution strategy would have been expected to develop an adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress to ensure that

⁴⁷ The agencies are clarifying one aspect of RLAP guidance that could be construed to impose a requirement on the specified firms.

⁴⁸ 12 CFR 243.5(c)(1)(iii) and (g) and 381.5(c)(1)(iii) and (g).

there is sufficient time to prepare for resolution-related actions. For specified firms that adopt a U.S. MPOE resolution strategy, the agencies proposed providing governance mechanisms expectations to ensure communication and coordination between the governing body of the U.S. operations and the foreign parent.

The agencies requested comment on whether to apply additional governance mechanisms expectations to firms contemplating a U.S. MPOE resolution strategy. One commenter called for the agencies to apply similar expectations regardless of a firm's preferred resolution strategy, arguing that many aspects of resolution planning are the same or similar for U.S. MPOE and U.S. SPOE resolution strategies. The commenter also encouraged the agencies to adopt expectations that firms articulate their internal legal strategy, processes for making key decisions, and roles and responsibilities leading up to and after bankruptcy. Another commenter argued in favor of not providing any governance mechanisms guidance to firms adopting a U.S. MPOE resolution strategy.

Other commenters called on the agencies to limit the expectations for firms adopting a U.S. SPOE resolution strategy. These commenters contended that expectations should not apply to a specified firm that does not rely on foreign support or transfer of prepositioned resources during runway or resolution, and that the expectations as proposed were too prescriptive or burdensome. One commenter requested that the agencies clarify why expectations (for foreign parent support, triggers, and support within the United States) in the 2020 Proposed FBO Guidance but were not finalized were included in the proposed guidance for FBOs that adopt a U.S. SPOE resolution strategy.

The agencies are finalizing this section of the guidance as proposed.⁴⁹ For firms that adopt a U.S. MPOE resolution strategy, the governance mechanisms guidance already includes expectations regarding the role of U.S. board and senior management under the U.S. resolution strategy as well as expectations regarding triggers and other internal-decision-making processes relating to the decision to

implement the strategy. Adopting expectations for the processes for making key decisions, internal legal strategy, and roles and responsibilities would be duplicative. In addition, under a U.S. MPOE resolution strategy, certain material entities' entry into resolution is typically determined by or dependent on the actions of supervisory and resolution authorities. As a result, additional expectations similar to those included for a U.S. SPOE resolution strategy (additional triggers, playbooks, foreign parent support, and support within the United States) would not meaningfully improve the resolvability of specified firms adopting a U.S. MPOE resolution strategy.

Governance mechanisms expectations for firms adopting a U.S. SPOE resolution strategy are reasonable in light of the events of March 2023. The stress experienced by and the failure of several large banking organizations in March 2023 highlighted the potentially fast-moving nature of bank resolution, as several banking organizations entered resolution proceedings rapidly. These events also highlighted the potential for the failure of a large regional banking organization to affect financial stability. Successful execution of a U.S. SPOE resolution strategy—including the timely escalation of information to both U.S. IHC and foreign parent governing bodies in order to mitigate vulnerabilities and take corresponding actions, and the transmission of resources to and within an FBO's U.S. material entity subsidiaries—is unlikely to be successful within a short time frame without advance planning, appropriate governance structures and processes, and assessment of possible impediments, legal or otherwise. Accordingly, in contrast to the 2020 FBO Guidance, this final guidance contains governance mechanisms expectations related to foreign parent support, triggers, and support within the United States for specified firms adopting a U.S. SPOE resolution strategy. Because the Rule requires firms to contemplate resolution under the Bankruptcy Code, resolution-specific triggers facilitating communication and coordination are appropriate to promote resolvability even if a firm monitors and controls capital and liquidity and operations in business-as-usual (BAU) and if the preferred strategy of an FBO is a successful home country resolution. The agencies note that firms' BAU processes and procedures may be relevant to, and could inform, such resolution capabilities.

In addition, while a firm may understand the current legal risks associated with its preferred resolution

strategy under the Bankruptcy Code, commercial and bankruptcy law and precedent evolve, and it is important that a firm's plan reflect an up-to-date assessment of possible legal challenges and potential mitigants. The expectation that a resolution plan includes such an analysis of potential challenges does not constrain firms' ability to determine the particular form and structure of the framework developed to support its particular resolution strategy and needs. The agencies also note that the guidance only relates to an analysis of planned support; there are no expectations that a plan should provide for such support.

Regarding the provision of foreign support or transfer of prepositioned resources during runway or resolution, it should be noted that neither the final guidance nor the Rule endorses a specific mechanism for the provision of such support. Instead, a firm that adopts a U.S. SPOE resolution strategy should explain in its resolution plan how it will meet its U.S. resource needs, such as through prepositioning, parent support, and other options.

G. Operational

For firms that adopt a U.S. SPOE resolution strategy, the agencies proposed adopting portions of the operational expectations of the 2020 FBO Guidance, 2020 Proposed FBO Guidance, and SR letter 14–1,⁵⁰ with modifications based on the specific characteristics and complexities of the specified firms. The proposal contained expectations on payments, clearing, and settlement activities (PCS); managing, identifying, and valuing collateral; management information systems; shared and outsourced services; and qualified financial contracts (QFC). For firms that adopt a U.S. MPOE resolution strategy, the agencies proposed expectations based on SR letter 14–1 and the 2020 FBO Guidance that are most relevant to a U.S. MPOE resolution strategy. As noted in the proposal, development and maintenance of operational capabilities is important to support and enable execution of a firm's preferred resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse effects on U.S. financial stability. The failure of several large banking organizations in March 2023 highlighted the importance of firm capabilities to generate timely and accurate data on a material entity basis. For example, having the ability to

⁴⁹ As noted above, the agencies made several minor, non-substantive changes from the proposal, including to align the wording of guidance directed at firms that adopt a U.S. SPOE resolution strategy and firms that adopt a U.S. MPOE resolution strategy. The agencies also provided one minor clarifying example of an external stakeholder that could be relevant for purposes of a governance playbook.

⁵⁰ SR letter 14–1, "Principles and Practices for Recovery and Resolution Preparedness" (Jan. 24, 2014), available at: <https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm>.

produce a list of key management and support employees at the legal entity level is critical both to continue operations pursuant to a U.S. SPOE resolution strategy and to facilitate the work of resolution authorities in a U.S. MPOE resolution strategy. As a result, in a change from the 2020 FBO Guidance, the agencies proposed and are now finalizing management information systems guidance for both U.S. SPOE and U.S. MPOE resolution strategies. The agencies also proposed, in a change from the 2020 FBO Guidance, and are now finalizing guidance on QFCs for the U.S. SPOE resolution strategy, as not all firms subject to the final guidance are subject to the QFC stay rules of the Board, Office of the Comptroller of the Currency, and the FDIC.⁵¹

The Agencies received three comments on the proposed guidance. One commenter suggested that the proposed guidance related to management information systems, qualified financial contracts, and shared and outsourced services should help strengthen the specified firms' operational readiness. Another commenter argued that the proposed guidance's expectation that MPOE firms remediate vendor arrangements to support continuity of shared and outsourced services is overbroad. The commenter asserted that this expectation is inappropriate for MPOE firms that mostly receive external services through its IDI because termination of such vendor contracts due to *ipso facto* clauses would be stayed by the FDI Act,⁵² and as many firms include resolution-resilient terms in vendor contracts when those contracts undergo periodic review and renewal. The commenter recommended that the Agencies specify that this expectation would apply only to contracts not covered by the FDI Act stay. Another commenter contended that firms with limited PCS activities, such as firms without identified critical operations related to those activities, should not have to develop the same capabilities as firms with more complex PCS activities.

After review and consideration of these comments, the agencies are finalizing this area of the guidance with one clarification applicable only to firms that adopt a U.S. SPOE strategy, and one modification applicable to firms with either U.S. resolution strategy. The proposed guidance for firms that adopt a U.S. SPOE strategy

stated that a firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations or core business lines. Implied in the concept of supporting identified critical operations or core business lines is the notion that a firm would need to be able to execute its resolution strategy. Accordingly, the final guidance for firms that adopt a U.S. SPOE strategy explicitly states that a firm's implementation plan to ensure continuity of shared services should include those services that are material to the execution of the firm's resolution strategy.

The agencies recognize that firms anticipate relying on external parties for the execution of some aspects of the resolution strategy, and the proposal included and the final guidance maintains the expectation that a firm identify and support the continuity of outsourced services that support critical operations or are material to the execution of the U.S. resolution strategy. Such outsourced services that firms may rely on could be employing outside bankruptcy counsel and consultants to help prepare documents needed to file for bankruptcy, and to represent the firm during the course of the bankruptcy proceedings. The agencies expect that covered companies engage in advance planning to help facilitate their ability to complete all filings, motions, supporting declarations and other documents to prepare for and file an orderly resolution in bankruptcy. In recognition of this expectation, the final guidance clarifies that—regardless of strategy—those professionals' services could be material to the execution of a firm's U.S. resolution strategy and, if so, should be accounted for in the firm's resolution plan. Accordingly, the agencies expect that firms should prepare during business-as-usual to ensure they can complete and file all documents needed to initiate their preferred resolution strategy.

The other aspects of this section of the guidance are being finalized as proposed. The comment addressing contract remediation correctly observes that the FDI Act permits the FDIC as receiver of a failed IDI to enforce contracts with that IDI notwithstanding any provisions in the contract permitting termination due to insolvency or appointment of the receiver. However, it is advantageous for contracts that support identified critical operations or that are material to the execution of the resolution strategy to not purport to permit termination. Counterparties may not be aware of the receiver's authority under the FDI Act to

enforce such agreements, potentially requiring the receiver to seek authority from a court to compel the counterparty's performance, which could lead to interruption of identified critical operations and capabilities needed to execute the resolution strategy. Further, counterparties located overseas may not recognize the authority afforded the receiver to compel the performance of contracts. The agencies recognize that contract remediation is an ongoing process and encourage firms to make such changes proactively.

Regarding PCS activities, as discussed elsewhere,⁵³ the Agencies note that the level of detail provided in a firm's plan should be both consistent and commensurate with the firm's risk and activities.

H. Legal Entity Rationalization and Separability

For foreign banking organizations that adopt a U.S. SPOE resolution strategy, the agencies proposed substantively adopting legal entity rationalization (LER) expectations from the 2020 FBO Guidance and separability expectations from the 2020 FBO Proposed Guidance. The LER expectations stated that firms should maintain a structure that facilitates orderly resolution of their operations, including by developing and describing criteria that consider the best alignment of legal entities and business lines and facilitate resolvability of U.S. operations. The separability expectations provided that firms should identify discrete U.S. operations that could be sold or transferred in resolution under a range of potential failure scenarios. The agencies declined to finalize the separability expectations in the 2020 Proposed FBO Guidance, stating that the agencies had found that the separability options within the United States were few, their inclusion in resolution plans had yielded limited new insights, and the agencies expected that such information would be obtainable through international collaboration with home country regulators.

For FBOs that adopt a U.S. MPOE resolution strategy, the agencies proposed adopting LER expectations that were reduced relative to the 2020 FBO Guidance and separability expectations that were similarly reduced relative to the 2020 FBO Proposed Guidance. The LER expectations clarified that these firms should have legal entity structures that support their U.S. resolution strategy and describe these structures in their

⁵¹ See 12 CFR part 47 (Office of the Comptroller of the Currency); 12 CFR part 252, subpart I (Board); and 12 CFR part 382 (FDIC).

⁵² See 12 U.S.C. 1821(e)(13)(A).

⁵³ See *infra* section III.M of this document.

plans, as well as discuss their rationale for the legal entity structure in cases where a material entity IDI relies on other affiliates during resolution. The separability expectations requested that firms include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution.

The agencies received two comments on the separability guidance for foreign banking organizations. One commenter contended that separability analysis is inappropriate for businesses and legal entities that would be wound down in resolution, as it may not be feasible to sell or otherwise transfer such businesses, and that separability analysis would not enhance resolvability. The commenter further noted that many elements of the separability analysis may not be appropriate for firms that are not active in the investment banking space or lack large mergers and acquisitions teams. Another commenter called on the agencies not to reimpose separability expectations that had been proposed in 2020 but removed from the final 2020 FBO Guidance, instead suggesting that the agencies obtain separability insights through collaboration with home country regulators.

After review and consideration of the comments, the agencies are finalizing this guidance as proposed. The application of LER and separability expectations to FBOs, whether they adopt an SPOE or MPOE strategy, remains appropriate because these firms have significant non-bank or cross-national activities, as well as interconnections among U.S. IHC subsidiaries, U.S. branches, and the foreign parent. The 2023 bank failures highlighted the benefit of understanding the separability options of U.S. operations of FBOs, particularly for the purpose of informing discussions with foreign regulatory authorities regarding the potential restructuring of an FBO's U.S. operations in resolution. While the agencies continue to discuss firm separability and other topics with home country regulators, identification of separability options for U.S. operations and inclusion of supporting analysis in resolution plans provides important information to complement and enhance ongoing international coordination.

Finally, the agencies moved expectations on LER governance processes from the separability section to the LER section of the guidance text.

I. Insured Depository Institution Resolution

Background

In the proposal, the agencies provided clarifying expectations as to how a firm adopting a U.S. MPOE resolution strategy with a material entity IDI should explain how the IDI can be resolved under the FDI Act in a manner that is consistent with the overall objectives of the resolution plan. In particular, the proposed expectations for IDI resolution were designed to support the resolution plans' effectiveness in substantially mitigating the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States, while also adhering to the legal requirements of the FDI Act without relying on the assumption that the systemic risk exception will be invoked in connection with the resolution of the firm. For example, the agencies proposed clarifying that if a firm adopting a U.S. MPOE resolution strategy selects an IDI resolution strategy other than a payout liquidation, the firm's plan should provide information supporting the feasibility of the firm's selected strategy, although such a feasibility analysis need not consist of a full FDI Act least-cost requirement analysis. The agencies proposed that a firm could instead provide a more limited analysis. The proposal noted that the same expectations would not be applicable to firms adopting an SPOE resolution strategy because the U.S. IDI subsidiaries of such firms would not be expected to enter resolution.

The agencies received a number of comments on the proposed guidance related to the resolution of a subsidiary material entity U.S. IDI. Some commenters requested additional clarity on how the firm's plan should address the expectation that the plan include an analysis of how the resolution strategy could potentially meet the FDIC's statutory least-cost requirement. One commenter suggested that the agencies should require firms to develop resolution strategies involving BDIs. This commenter recommended that the guidance address how firms could describe and quantify the value of the firm's assets transferred to such a BDI, and that the agencies should provide guidance so that firms would address how the resolution plan would incorporate the value of the IDI's assets and liabilities, including its franchise value, and how the preferred resolution strategy would result in a least-costly resolution. The commenter also recommended that firms and regulators

reach agreement on certain assumptions regarding valuations.

Another commenter argued that firms adopting a U.S. MPOE strategy should not be expected to demonstrate that their preferred strategy would be consistent with the FDIC's statutory least-cost requirement. This commenter stated that efforts to conduct a hypothetical least-cost requirement analysis, or a proxy for that analysis, would be of no or minimal value to the FDIC in an actual resolution event. The commenter claimed that it would not be possible to conduct a least-cost test requirement analysis in a resolution plan submission in the absence of actual bids from actual buyers. Instead, the commenter recommended that the guidance provide expectations for how firms selecting a U.S. MPOE strategy could demonstrate their valuation capabilities. The commenter also suggested that because a least-cost requirement analysis is not a component of the Proposed IDI Rule, it also should not be a component of the guidance. This commenter requested sufficient time to address any finalized guidance that provides expectations for including least-cost requirement analysis.

Several commenters suggested that the Proposed IDI Rule is a better forum to address how the IDI subsidiary of a specified firm selecting a U.S. MPOE strategy can be resolved under the FDI Act in a manner that is consistent with the FDI Act. Several commenters also suggested that the agencies' expectations for resolution plan submissions under the Rule should align with the requirements of the FDIC's IDI Rule plan submissions.

One commenter questioned whether firms have sufficient information about how the FDIC would conduct a least-cost test analysis in order for a firm to conduct an analysis of whether its preferred strategy could meet the FDIC's statutory least-cost requirement. This commenter stated that meeting the expectations in the proposal would involve significantly more detail and comparative analysis than the IDI Rule, and that, in order to prevent inconsistency and undue burden, the guidance should instead follow the IDI Rule so that firms can reference their IDI Rule submissions when preparing and submitting resolution plans under the guidance to reduce duplication and increase consistency.

When an IDI fails and the FDIC is appointed receiver, the FDIC generally must use the resolution option for the failed IDI that is least costly to the DIF of all possible methods (the least-cost

requirement).⁵⁴ A resolution plan that contemplates the separate resolution of a U.S. IDI that is a material entity and the appointment of the FDIC as receiver for that IDI should explain how the resolution could be achieved in a manner that adheres to applicable law, including the FDI Act, and that would achieve the overall objectives of the resolution plan. Prior resolution plans that have addressed the resolution of the IDIs in MPOE strategies have sometimes included resolution mechanics that are not consistent with the FDI Act, including inappropriate assumptions that uninsured deposits could automatically be transferred to a BDI.

Separate and distinct from the Rule, the FDIC has a regulation, the IDI Rule, requiring certain IDIs (covered IDIs or CIDs) to submit to the FDIC resolution plans providing information about how the CIDI can be resolved under the FDI Act. Contemporaneous with publication of the proposed guidance, the FDIC published in the **Federal Register** the Proposed IDI Rule, a proposed rulemaking to amend and restate the IDI Rule, which has since been finalized and was published in the **Federal Register** on July 9, 2024.

The IDI Rule and the Rule each have different goals, and, accordingly, the expected content of the respective resolution plans is different. The purpose of the IDI Rule is to ensure that the FDIC has access to the information it needs to resolve a CIDI efficiently in the event of its failure, including an understanding of the CIDI's ability to produce the information the FDIC would need to conduct a least-cost determination under a wide range of circumstances.

The Rule serves a different purpose. The Rule requires a covered company to submit a resolution plan that would allow rapid and orderly resolution of the subsidiaries and operations of a foreign covered company that are domiciled in the United States under the Bankruptcy Code in the event of material financial distress or failure.

The regional bank failures in March 2023 demonstrated that banking organizations of size and complexity similar to that of the specified firms—or even smaller and less complex banking organizations—can be disruptive to U.S. financial stability. In the case of Silicon Valley Bank and Signature Bank, uninsured depositors would have faced the potential for significant losses had the least costly approach to resolution, a payout liquidation, been adopted. The potential for contagion from the deposit runs at the firms that failed, as well as related potential for risks to the economy and financial stability, led the Secretary of the Treasury, in consultation with the President and after a written recommendation from the FDIC's Board of Directors and the Board, to invoke the systemic risk exception to enable the FDIC to resolve these institutions in a way that would avoid or mitigate serious adverse effects on economic conditions or financial stability. Though a specified firm would be conducting its analysis without input in the form of actual bids from potential buyers, the agencies expect firms to use available information to estimate the value of its franchise for purposes of conducting the limited least-cost analysis articulated in the guidance.

If a firm's resolution plan under the Rule that includes a U.S. MPOE strategy calls for resolving an IDI using a strategy other than payout liquidation, the plan should explain how the requirements of the FDI Act could be met without depending upon extraordinary government support. Even though this analysis is not binding in an actual resolution scenario, an analysis showing that the firm's preferred resolution strategy could satisfy requirements of the FDI Act could help the firm demonstrate that the resolution plan's preferred strategy could be executed in a manner consistent with applicable law. If a resolution plan does not provide such an explanation, it may be appropriate to conclude that the strategy would not satisfy the FDI Act's relevant provisions, such as the least-cost requirement, which could represent a weakness in the plan. As a general matter, the agencies followed this practice in reviewing previous full resolution plan submissions.

Guidance. In response to commenters, the agencies are providing additional detail to help address commenters' questions related to the FDI Act's least-cost requirement and how it relates to the expectations in this final guidance. The final guidance does not express a change in the agencies' expectations. Instead, the final guidance provides

more detail on approaches a firm can use to explain how the resolution of its IDI subsidiary can be achieved in a manner that substantially mitigates the risk that the firm's failure would have serious adverse effects on U.S. financial stability while also complying with the statutory and regulatory requirements governing IDI resolution. The final guidance lists a number of different common strategies for resolving an IDI and describes the kind of information that a firm could provide to explain how a resolution using one of the example strategies could be consistent with the least-cost requirement. The final guidance also provides information about calculating the value of an IDI's assets and its franchise value. Finally, the final guidance explicitly notes that the agencies are not expecting a firm to provide a complete least-cost analysis.

Strategies for Resolving an IDI

Purchase and Assumption

Transaction. The FDIC typically seeks to resolve a failed IDI by identifying, before the IDI's failure, one or more potential acquirers so that as many of the IDI's assets and deposit liabilities as possible can be sold to and assumed by the acquirer(s) instead of remaining in the receivership created on the failure date.⁵⁵ This transaction form, termed a purchase and assumption or P&A transaction, has often been the resolution approach that is least costly to the DIF, and is usually considered the easiest for the FDIC to execute and the least disruptive to the depositors of the failed IDI—particularly in the case of transactions involving the assumption of all the failed IDI's deposits by the assuming institution (an all-deposit transaction).

The limited size and operational complexity present in most small-bank failures have been significant factors in allowing the FDIC to execute P&A transactions with a single acquirer on numerous occasions. Resolving an IDI via a P&A transaction over the closing weekend, however, has not always been available to the FDIC, particularly in failures involving large IDIs. P&A transactions require lead time to identify potential buyers and allow due diligence on, and an auction of, the failing IDI's assets and banking business, also termed its franchise. The acquiring banks must also have sufficient excess capital to absorb the failed IDI's assets and deposit franchise, sufficient expertise to manage business integration, and the ability to comply

⁵⁴ See 12 U.S.C. 1823(c)(4)(A). A deposit payout and liquidation of the failed IDI's assets (payout liquidation) is the general baseline the FDIC uses in a least-cost requirement determination. See 12 U.S.C. 1823(c)(4)(D). An exception to this requirement exists when a determination is made by the Secretary of the Treasury, in consultation with the President and after a written recommendation from two-thirds of the FDIC's Board of Directors and two-thirds of the Board, that complying with the least-cost requirement would have serious adverse effects on economic conditions or financial stability and implementing another resolution option would avoid or mitigate such adverse effects. See 12 U.S.C. 1823(c)(4)(G). A specified firm should not assume the use of this systemic risk exception to the least-cost requirement in its resolution plan.

⁵⁵ See generally <https://www.fdic.gov/resources/resolutions/bank-failures/> for background about the resolution of IDIs by the FDIC.

with several legal requirements. Larger failed banks can pose significant, and potentially systemic, challenges in resolutions that make a P&A transaction less viable. These challenges include: a more limited pool of potential acquirers as a failed IDI increases in size; operational complexities that require lengthy advance planning on the part of the IDI and the FDIC; the development of certain expertise; potential market concentration and antitrust considerations; and potentially the need to maintain the continuity of activities conducted in whole or in part in the IDI that are critical to U.S. financial stability.

Alternative Resolution Strategies. If no P&A transaction that meets the least-cost requirement can be accomplished at the time an IDI fails, the FDIC must pursue an alternative resolution strategy. The primary alternative resolution strategies for a failed IDI are (1) a payout liquidation, or (2) utilization of a BDI.

Payout Liquidation. The FDIC conducts payout liquidations by paying insured deposits in cash or transferring the insured deposits to an existing institution or a new institution organized by the FDIC to assume the insured deposits (generally, a Deposit Insurance National Bank or DINB). In payout liquidations, the FDIC as receiver retains substantially all of the failed IDI's assets for later sale, and the franchise value of the failed IDI is lost. A payout liquidation is often the most costly and disruptive resolution strategy because of this destruction of franchise value and the FDIC's direct payment of insured deposits.

Bridge Depository Institution. If the FDIC determines that temporarily continuing the operations of the failed IDI is less costly than a payout liquidation, the FDIC may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.⁵⁶ Generally, a BDI would continue the failed bank's operations according to business plans and budgets approved by the FDIC and carried out by FDIC-selected BDI leadership. In addition to providing depositors continued access to deposits and banking services, the BDI would conduct any necessary restructuring required to rationalize the failed IDI's operations and maximize value to be achieved in an eventual sale.

Subject to the least-cost requirement, the initial structure of the BDI may be based upon an all-deposit transaction, a transaction in which the BDI assumes only the insured deposits, or a transaction in which the BDI assumes all insured deposits and a portion of the uninsured deposits. Once a BDI is established, the FDIC seeks to stabilize the institution while simultaneously planning for the eventual exit and termination of the BDI. In exiting and terminating a BDI, the FDIC may merge or consolidate the BDI with another depository institution, issue and sell a majority of the capital stock in the BDI, or effect the assumption of the deposits or acquisition of the assets of the BDI.⁵⁷ While utilizing a BDI can avoid the negative effects of a payout liquidation, such as destruction of franchise value, many of the same factors that challenge the feasibility of a traditional P&A transaction also complicate planning for the termination of a BDI through a sale of the whole entity or its constituent parts.

Though one commenter suggested that the guidance should require firms to develop resolution strategies involving BDIs, the agencies do not maintain an expectation that firms will develop resolution strategies involving BDIs. The expectations provided in this guidance are also intended to be helpful to firms that have chosen to involve a BDI in their resolution strategy.

Least-Cost Analysis for Resolution Plans. The final guidance does not include an expectation that firms provide in their resolution plans a complete least-cost analysis. Such an analysis would, for example, include a comparison of the preferred strategy for resolving an IDI that is a material entity against every other possible resolution method. While a firm may choose to provide a complete least-cost analysis, this guidance discusses expectations regarding a limited least-cost analysis that would explain how the firm's preferred U.S. strategy is not more costly than a payout liquidation and, if applicable, an insured-only BDI.

One commenter suggested that the agencies should provide guidance for how firms should address the valuation of an IDI's assets and liabilities, including its franchise value. In this final guidance, the agencies are providing additional explanation for how firms can develop and support the valuation of the IDI's assets and liabilities in an IDI resolution. This guidance includes a description of how firms can assess the franchise value of a firm's business.

Example. The following example should be read in conjunction with section VIII of the guidance text, *Insured Depository Institution Resolution*. This example is only intended to provide firms with an illustration of the types of considerations and calculations that could be included in a firm's analysis explaining how its preferred strategy would be less costly than a payout liquidation and, if applicable, an insured-only BDI. This example is not intended to serve as a template for firms or to provide guidelines for reasonable valuations of a firm's assets or liabilities. The valuations described in this example are intended to be illustrative and are not guidance about the likely values of a firm's assets and liabilities in an individual resolution plan or in resolution.

Bank A has \$500 billion in total assets, consisting of \$250 billion loans; \$75 billion cash and equivalents; \$125 billion in investment securities; and other assets totaling \$50 billion. The bank's initial funding structure consists of \$400 billion in deposits; \$25 billion in various unsecured payables and debt; \$25 billion in secured funding; and \$50 billion in capital instruments. For this example, the bank assumes it would encounter idiosyncratic events at a time when severely adverse economic conditions are present and this combination of events would cause the bank to be closed by the chartering authority and the FDIC appointed as receiver. The illustrative tables below reflect values as of the appointment of the FDIC as receiver.

The initial events combine to cause immediate losses of \$25 billion recognized as direct operating charges and \$15 billion through write-downs/provision expense for the loan portfolio, and \$60 billion of deposit runoff occurs.

- For purposes of conducting the analysis, the firm's management assumes that additional value diminution is present in the loan portfolio. Accordingly, after thoroughly analyzing the quality of its loan portfolio and determining the potential for additional credit losses, as well as considering the market value of the loan portfolio based upon the type of loans it holds in comparison with comparable sales transactions, and after further considering sensitivity testing, management supports an estimate near \$175 billion for the loan portfolio.

- In developing its Resolution Plan, the firm's management further supports that \$40 billion of additional deposit runoff would occur in addition to the initial \$60 billion. At the time of failure, Bank A's remaining \$300 billion of deposits are 60 percent insured and 40

⁵⁶ Before a BDI may be chartered, the chartering conditions set forth in 12 U.S.C. 1821(n)(2) must also be satisfied. For purposes of this guidance, if the Plan provides appropriate analysis concerning the feasibility of the BDI strategy, there is no expectation that the resolution plan also demonstrates separately that the conditions for chartering the BDI have been satisfied.

⁵⁷ 12 U.S.C. 1821(n)(10).

percent uninsured. The ratio of insured deposits to uninsured deposits is used to calculate the pro rata recovery of depositors and the losses imposed on the DIF as a result.⁵⁸

- The deposit runoff is assumed to be met by using \$50 billion of cash and selling \$50 billion of investment

securities. The remaining \$75 billion investment portfolio is entirely invested in short-term U.S. Treasury securities with an estimated value of \$70 billion.

- The other assets are implicated in the initial idiosyncratic loss. These other assets include fixed assets, foreclosed property, intellectual

property, and miscellaneous items with a market value of \$25 billion.

- As shown in table 1, the Plan provides an analysis of the payout liquidation strategy. This strategy includes an expected loss to the DIF of \$18 billion.

TABLE 1—ILLUSTRATION OF BANK A PAYOUT LIQUIDATION—COST ESTIMATE

[dollars in billions]

Liquidation market value		Payout liquidation liability claim and amount recovered		
Category	Value	Category	Claim	Recovery/(loss)
Loans	\$175	Secured Claims	\$25	\$25/(\$0)
Securities	70	Deposits Insured	180	\$162/(\$18)
Cash	25	FDIC incurs the loss for the insured deposits so that all insured deposits are fully repaid.		
Other	25			
Total	295	Deposits Uninsured	120	\$108/(\$12)
		Unsecured Claims/Debt	25	\$0/(\$25)
		Equity Holders		No recovery

Loss to Deposit Insurance Fund (to make whole insured depositors) = \$18 billion⁵⁹
 Losses to uninsured depositors = \$12 billion.

- However, the Plan also asserts and supports that the payout liquidation approach fails to reflect the franchise value of the combined deposit and loan relationships stemming from considerations such as the low administrative costs associated with servicing large deposits, the elimination of significant customer acquisition

costs, the stable fee income stream associated with the accounts due to barriers to entry for certain products, and the importance and value of integrating the loan and deposit products.

- The Plan calculates, and provides the analysis supporting the calculation, that the economic benefit of packaging

these benefits together in an all-deposit BDI is \$20 billion, which is reflected as a bid premium to liquidation pricing in table 2.

- The result is that the all-deposit BDI is less costly to the DIF than liquidation because of the inclusion of the bid premium.

TABLE 2—ILLUSTRATION OF BANK A PREFERRED STRATEGY—COST ESTIMATE

[dollars in billions]

All deposit bridge market value		All deposit bridge bank liability claim and amount recovered		
Category	Value	Category	Claim	Recovery/(loss)
Loans	\$175	Secured Claims	\$25	\$25/(\$0)
Securities	70	Deposits Insured	180	\$174/(\$6)
Cash	25	FDIC incurs the loss for the insured deposits so that all insured deposits are fully repaid.		
Other	25			
Sub Total	295	Deposits Uninsured	120	\$116/(\$4)*
Bid Premium	20	Unsecured Claims/Debt	25	\$0/(\$25)
Total	315	Equity Holders		No recovery

Loss to Deposit Insurance Fund (to make whole insured and uninsured depositors) = \$10 billion, which is less than the payout liquidation loss.⁶⁰

* Losses to uninsured depositors total \$4 billion and are absorbed by the DIF.

J. Derivatives and Trading Activities

The agencies requested comment on whether to provide derivatives and trading activities guidance for specified firms that adopt a U.S. SPOE or MPOE resolution strategy. Some commenters

argued that no derivatives and trading guidance is needed for foreign triennial full filers because they have limited derivatives and trading portfolios, particularly relative to the U.S. GSIB banking organizations covered by such

guidance. These commenters also noted that not all of the biennial filers, which are Category I firms, are subject to this type of guidance. These commenters also argued that if the agencies adopt

⁵⁸ See *infra* note 60.

⁵⁹ Calculation: (1) \$295 billion asset value less secured claim of \$25 billion = \$270 billion available to depositors and junior claims; (2) \$270 billion available spread pro-rata across \$300 billion depositor class; 60 percent insured deposits and 40

percent uninsured deposits; (3) \$270 billion $\times$.6 = \$162 billion paid to insured depositors; \$270 billion $\times$.4 = \$108 billion paid to uninsured depositors.

⁶⁰ Calculation: (1) \$315 billion asset value less secured claim of \$25 billion = \$290 billion available to depositors and junior claims; (2) \$290 billion

available spread pro-rata across \$300 billion depositor class; 60 percent insured deposits and 40 percent uninsured deposits; (3) \$290 billion $\times$.6 = \$174 billion paid to insured depositors; \$290 billion $\times$.4 = \$116 billion paid to uninsured depositors.

guidance on this topic, the agencies should be careful to avoid extraterritorial application of the guidance and should use the derivatives and trading expectations in the 2020 FBO Guidance for certain FBOs as a model, rather than the expectations in the 2020 Proposed FBO Guidance.

Other commenters supported providing such guidance to foreign triennial full filers, despite observing that these firms engage in less activity than the biennial filers. One commenter cautioned that derivatives activities for foreign triennial full filers may increase in the future and proposed the inclusion of an orderly-wind-down analysis for firms with net derivatives exceeding a given threshold. Another commenter recommended that the guidance include expectations for: roles and responsibilities in derivatives unwind, plan reporting regarding derivatives exposures, plan risk assessments in cross-border activity, barriers to swift unwind of derivatives activities booked outside the United States, and capabilities to generate detailed derivative reports. This commenter also argued that firms should specify plans to wind-down between affiliates and external counterparties, as well as describe potential sale of some trading positions.

After reviewing the comments and considering the scope of derivatives and trading activities of foreign triennial full filers,⁶¹ the agencies determined that the banking organizations that would be specified firms have limited derivatives and trading operations compared to the subset of Category I firms that are the subject of derivatives and trading guidance. The agencies also note that the Rule includes certain requirements regarding derivatives and trading activities with which all covered companies—including foreign triennial full filers—must comply, as well as the overall requirement to provide a strategic analysis describing the covered company's plan for orderly resolution.⁶² The agencies believe that for this set of covered companies (including the two firms that are in scope of the 2020 FBO guidance), given their current activities, the topic of derivatives and trading

activities is sufficiently addressed by the Rule. The agencies are therefore finalizing the guidance without including expectations on derivatives and trading activity for the specified firms.

The agencies also recognize that derivatives activity or risk for foreign triennial full filers may change in the future. The agencies may consider the need for firm-specific derivatives and trading expectations in the future for specified firms that substantially increase their derivatives and trading activities or change in a way such that having a strategy to wind-down their derivatives portfolios is critical to their resolvability.

K. Branches

The agencies received no comments regarding the branches section of the proposed guidance. The agencies are finalizing the section as proposed.

L. Format and Structure of Plans; Assumptions

This section of the proposal described the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Under the proposal, plans would have been expected to contain an executive summary, a narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions were generally similar to those in the 2020 FBO Guidance, except that the proposed guidance reflected the expectations that (a) a firm should support any assumptions that it will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy and clarified expectations around such assumptions, and (b) a firm should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt a U.S. MPOE resolution strategy, the proposal included the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress of the firm's U.S. operations, including consideration of the likelihood of the diminution of the firm's liquidity and capital levels prior to bankruptcy.

The final guidance also includes an expectation contained in the 2019 U.S. GSIB Guidance and 2020 FBO Guidance regarding the parameters of economic forecasting in resolution plan submission. Those guidance documents stated that a resolution plan should

assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which a resolution is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.⁶³ While this assumption is similar to a provision in the Rule,⁶⁴ the agencies believe it is important to provide guidance to firms about the timing of the required assumption in the Rule. The Board provides DFAST scenario information to the specified firms through the Board's public website. As such, the information is available to specified firms who themselves or their IHC subsidiaries are not subject to stress testing requirements.⁶⁵

The agencies received one comment in response to a question posed regarding assumptions related to lending facilities, including the Discount Window. The commenter supported the proposed assumptions guidance regarding these facilities and recommended that the agencies consider providing additional guidance on the assumptions related to the amount, timing, and limitations of liquidity that might become available from these sources. However, the additional guidance requested by the commenter is unnecessary, and the agencies are finalizing this section of the guidance as proposed with one clarification. Specifically, the proposed guidance regarding the relevant assumption already includes references to timing and limitations of liquidity commensurate with the activities of firms subject to the guidance.

As a clarification, the agencies have added a reference to Federal Home Loan Banks (FHLBs) as a type of borrowing for which firms should provide support in their resolution plans if they assume access during the period immediately prior to entering bankruptcy. The agencies' experiences in 2023 showed that many IDIs depend heavily on FHLB funding in times of stress and, accordingly, the agencies expect firms to be prepared to support any assumptions around such reliance for resolution planning purposes.

The agencies also received a comment recommending that more of firms' resolution plans be disclosed publicly to promote market discipline and specifically asking that the public portion of resolution plans describe

⁶¹ See FR Y-15 Systemic Risk Report, 2nd quarter 2023 data. Publicly available at the National Information Center, <https://www.ffiec.gov/NPW>. See also Quarterly Report on Bank Trading and Derivatives Activities—Third Quarter 2023. Publicly available at <https://www.occ.gov/publications-and-resources/publications/quarterly-report-on-bank-trading-and-derivatives-activities/index-quarterly-report-on-bank-trading-and-derivatives-activities.html>.

⁶² See 12 CFR 243.2 and 381.2; 12 CFR 243.5(c) and (e)(6)–(7), and 381.5(c) and (e)(6)–(7).

⁶³ *Id.*

⁶³ 2019 U.S. GSIB Guidance at 84 FR 1459; 2020 FBO Guidance at 85 FR 83578.

⁶⁴ 12 CFR 243.4(h)(1) and 381.4(h)(1).

⁶⁵ <https://www.federalreserve.gov/publications/dodd-frank-act-stress-test-publications.htm>.

potential acquirers of operations in the event of resolution. The Rule establishes at a high-level the required content of the public section of a resolution plan,⁶⁶ and this final guidance clarifies the agencies' expectations with respect to that section. The agencies are mindful that the public disclosure of resolution plans, which may contain private commercial information, has both benefits and drawbacks, and the agencies believe that, at the moment, the Rule—revisions to which are outside the scope of this guidance—and the final guidance appropriately balance transparency with confidentiality.

In addition, the agencies received two comments requesting clarification of the definition of “material entity” as applied to certain non-U.S. entities, such as foreign offices, in order to improve the alignment of U.S. resolution planning with home country strategies. In particular, the commenter contended that an aspect of the proposed guidance, which concerned assumptions regarding material entities, was inconsistent with the Rule. This was not the agencies' intent, and the final guidance modifies the assumption's description of “material entity” for consistency with the Rule by adopting the language for that provision in the final 2020 FBO Guidance.

The agencies are otherwise finalizing this section of the guidance as proposed.⁶⁷ The agencies did not receive any comments in response to the proposal's request for comments about answers to frequently asked questions, and the agencies have not included those prior answers to frequently asked questions because these prior answers were in response to questions posed by only a portion of the firms to which this guidance is applicable and regarding guidance with certain different expectations.

M. Additional Comments

Differentiating Resolution Plan Guidance

The agencies received several general comments about whether the expectations in the proposal were suitably modified from expectations included in past resolution plan guidance and whether the proposal appropriately distinguished between different types of triennial full filers. Several commenters contended that the

proposed guidance did not sufficiently differentiate expectations among firms subject to resolution planning guidance. Some of these commenters specifically claimed because the specified firms have limited operations compared to the U.S. GSIBs and have reduced the size and complexity of their U.S. operations, they should not be subject to similar resolution planning guidance as the U.S. GSIBs. One commenter argued that section 165 of the Dodd-Frank Act requires the agencies to differentiate the content of the resolution planning guidance; the proposal was too similar to the 2019 U.S. GSIB Guidance; and expectations for the specified firms should be further differentiated based on size, risk, and other factors. Another commenter argued that the proposed guidance favors the U.S. MPOE resolution strategy by including fewer expectations for firms that adopt that strategy and recommended that the guidance should be more aligned with guidance for resolution plan filers using a U.S. SPOE resolution strategy.

While the differentiation requirement in section 165 of the Dodd-Frank Act does not apply to this non-binding resolution plan guidance, the guidance differentiates among covered companies, taking into consideration their size, complexity, and other risk-related factors; their resolution strategy, whether SPOE or MPOE; and whether they are domestic or foreign-based.

The thresholds and risk-based indicators that form the basis of the risk-based category framework used by the Rule are designed to take into account an individual firm's particular activities and organizational footprint that may present significant challenges to an orderly resolution.⁶⁸ The Rule, using those categories, defines triennial full filers as one cohort because the failure of a Category II or III banking organization could pose a threat to U.S. financial stability. Banking organizations in these two categories often have similar characteristics, such as organizational structures, and similar resolution strategies that benefit from similar resolution guidance. Accordingly, the agencies believe the guidance is equally appropriate for all foreign Category II and III banking organizations. In addition, as discussed above, the regional bank failures in March 2023 demonstrated that the failure of banking organizations with \$100 billion to \$250 billion in total consolidated assets can be disruptive to U.S. financial stability. For these reasons, providing the guidance to

foreign triennial full filers in that asset range is appropriate to prevent or mitigate risks to the financial stability of the United States.

Guidance for specified firms that adopt a U.S. SPOE resolution strategy is differentiated relative to guidance for Category I banking organizations (*i.e.*, the 2019 U.S. GSIB Guidance), notably with the absence of derivatives and trading expectations, which are applicable to most of the U.S. GSIBs, and other operational guidance as well as reduced separability expectations. Other aspects of the U.S. SPOE guidance are appropriately similar to the 2019 U.S. GSIB Guidance because the successful execution of a U.S. SPOE resolution strategy benefits from the capabilities discussed in the guidance. The guidance for firms that adopt a U.S. MPOE resolution strategy includes substantially simpler expectations, relative to U.S. SPOE guidance and the 2019 U.S. GSIB Guidance, in the areas of capital, liquidity, governance mechanisms, operational, legal entity rationalization and separability, derivatives and trading expectations, and PCS. Having simpler expectations relative to U.S. SPOE guidance does not necessarily mean a firm adopting a U.S. MPOE strategy will encounter fewer challenges developing its resolution plans; regardless of the strategy chosen, the firm is responsible for providing adequate information and analysis to demonstrate its plan will facilitate an orderly resolution. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate an orderly resolution, and the agencies are not suggesting that any firm change its resolution strategy, nor do the agencies identify a preferred strategy for a specific firm or set of firms.⁶⁹

Finally, resolution plan guidance for Category II and III banking organizations is adapted to whether a covered company is based in the United States or in a foreign jurisdiction, with dedicated guidance documents for each type of firm. The Rule differentiates between banking organizations based on home jurisdiction,⁷⁰ and whether a banking organization is based in the United States can significantly impact its resolution strategy, resolution capabilities, and resolution planning. Accordingly, expectations for domestic and foreign-based triennial full filers are differentiated in the areas of capital, liquidity, governance mechanisms,

⁶⁶ 12 CFR 243.11(c) and 381.11(c).

⁶⁷ The agencies also are clarifying one expectation in the Financial Statements and Projections subsection of the Format and Structure of Plans; Assumptions section of the guidance that could be construed to impose a requirement on the specified firms.

⁶⁸ See 2019 *Federal Register* Publication at 84 FR 59197–201.

⁶⁹ See Section I.A *Resolution Plan Strategy* for further discussion about why the agencies are differentiating expectations depending on whether a firm adopts a U.S. SPOE or U.S. MPOE resolution strategy.

⁷⁰ See 12 CFR 243.5(a) and 381.5(a).

shared services, separability, branches, and group-wide resolution plans.

Relation to the 2020 Proposed FBO Guidance and 2020 FBO Guidance

Two commenters asserted that the agencies did not adequately explain why the proposal contained certain expectations the agencies had included in the 2020 Proposed FBO Guidance but declined to adopt in the 2020 FBO Guidance. One of these commenters also contended that the agencies did not adhere to certain administrative law requirements to identify and justify the proposed changes in expectations, particularly given that the agencies recently adopted the 2020 FBO Guidance. The proposal adequately identified and explained the proposed changes in resolution planning expectations,⁷¹ and the guidance is permissible under section 165(d) of the Dodd-Frank Act and the Rule. However, to promote transparency in the guidance-making process, the agencies have further clarified areas in which and explained why the final guidance differs from the 2020 FBO Guidance and adopts certain expectations proposed in the 2020 Proposed FBO Guidance.⁷²

The agencies also considered whether the 2020 FBO Guidance engendered reliance interests among the banking organizations that were the subject of that guidance. The agencies received no comments explicitly identifying such reliance interests; the 2020 FBO Guidance, like the current guidance, did not have the force and effect of law; and the 2020 FBO Guidance was applicable for only one resolution plan submission cycle, and only three banking organizations were within the scope of application of the 2020 FBO Guidance for the 2021 targeted plan submission (and one such banking organization no longer exists). Accordingly, the agencies believe that resolvability improvements that may arise from issuing this guidance outweigh any reliance interests generated by the 2020 FBO Guidance.

General Comments About the Proposal

The agencies received several general comments about resolution planning guidance. The agencies have considered these commenters' input but have made no modifications to the final guidance.

One commenter expressed support for the proposed guidance, in part because it reaffirms that bankruptcy is the preferred resolution strategy and would improve the quality of resolution plan

submissions through enhanced information and assumptions, better enabling the resolution of a specified firm in an orderly manner. Another commenter praised the agencies' proposal for providing needed clarity and transparency on expectations for specified firms' resolution plans, and for making several improvements that will improve specified firms' resolution plans.

Another commenter recommended that the agencies adopt the content of the guidance in the form of a legally binding and enforceable rule, in part due to the size and scope of specified firms, the importance of resolution planning, and the financial stability implications involved. This commenter also suggested that the large bank failures in 2023 demonstrated the need for improvement in banking organizations' resolution planning and the agencies' process for assessing these plans.

Resolution planning is important to U.S. financial stability; however, the agencies have not made changes to the guidance in response to these comments. The Rule, which is legally enforceable, identifies the specific topics that must be addressed in resolution plans. In contrast, resolution plan guidance outlines the agencies' supervisory expectations and priorities and articulates the agencies' general views regarding appropriate resolution planning practices for the specified firms. The final guidance provides examples of resolution plan content and capabilities that the agencies generally consider consistent with effective resolution planning. This approach is consistent with resolution planning guidance provided to other covered companies in the past, including guidance for Category I banking organizations and certain foreign Category II banking organizations.

A commenter argued that the agencies should allow for an iterative process for foreign triennial full filers to develop their strategies and capabilities, similar to the gradual maturation of Category I banking organizations' resolution plans. This commenter also argued the agencies should provide more than one year for firms to incorporate the final guidance into their next resolution plan submissions and that the guidance should not be the basis for a deficiency.

By statute and under the Rule, each resolution plan filer must submit a plan for orderly resolution under the Bankruptcy Code, and the agencies must assess the credibility of each plan. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate an orderly

resolution and the agencies are not suggesting that any firm change its resolution strategy, nor do the agencies identify a preferred strategy for a specific firm or set of firms. The standard of review for a resolution plan submission of a firm that transitions to a new strategy is the same as for any firm subject to the Rule. The agencies stated in the preamble to the 2019 revisions to the Rule that they would endeavor to finalize guidance a year in advance of the next applicable resolution plan submission date, and the agencies are extending the next resolution plan submission deadline for these firms to provide at least one year advanced notice of general guidance.⁷³ The agencies also reaffirm that the guidance does not have the force and effect of law, and the agencies do not take enforcement actions or issue findings based on resolution planning guidance.

A commenter argued that the various capital and resolution related proposals would, when considered holistically, disproportionately affect international banks and discourage international bank participation in U.S. banking and financial services markets to the detriment of U.S. financial stability. This commenter further cautioned that additional expectations for the U.S. operations of international banks could have unintended consequences and may lead to similar demands by other host-country supervisors, which could lead to fragmentation and less orderly resolution.

This guidance does not create additional requirements, but rather describes one approach to resolution plan content that could address the agencies' expectations. Furthermore, the agencies recognize that the specified firms' U.S. operations differ not only in the businesses they engage in, but also in their scope, size, and complexity. As such, the agencies expect that firms will adapt the guidance expectations in a manner commensurate with the risk profile of their U.S. operations. Doing so in a proportionate manner does not disadvantage the specified firms relative to domestic or foreign peers and the guidance does not serve as a deterrent to participating in the U.S. financial market.

Additionally, the agencies believe the guidance would help facilitate orderly resolution of U.S. operations of the specified firms in the event an orderly home-country led group-wide resolution is not feasible. The agencies note that to date, the existence of guidance for

⁷¹ See proposed guidance at 88 FR 64641, 64644–45, 47.

⁷² See sections III.C–L of this document.

⁷³ See 2019 **Federal Register** Publication at 84 FR 59204.

certain FBOs has not led to increased fragmentation, but rather has enhanced the dialogue among authorities about expectations for those FBOs' capabilities and resolution preparedness. The agencies will continue to engage with home-country authorities on resolution planning for foreign triennial full filers.

Comments About Resolution Planning Generally

Finally, a commenter asked the agencies to provide more information on the inconsistencies and problematic assumptions found in the 2021 plan submissions, as well as why the UBS Group AG's acquisition of CS and the U.S. domestic bank resolutions in 2023 prompted reversals of policy.

The agencies believe the preamble to the proposed guidance addresses the findings from the 2021 resolution plan submissions and learnings from the 2023 bank resolutions. The agencies would refer the commenter to other areas of this preamble for explanation of new areas of guidance, including the 2020 FBO Proposed Guidance. No specific changes have been made to the final guidance in response to this comment.

Comments Outside the Scope of Proposal

The agencies received several comments outside the scope of the proposed guidance. One commenter urged the agencies to shorten the length between resolution plan submissions under the Rule, from three to two years, and evaluate key aspects of plans annually. This commenter also recommended the agencies create an independent committee to advise the agencies on resolution planning matters as well as require large banking organizations to hold more capital generally. Another commenter argued that any LTD requirements should reflect a banking organization's preferred resolution strategy and not push a banking organization to adopt a particular strategy. That commenter also encouraged the FDIC to provide banking organizations at least one year to comply with any final IDI Rule and to align aspects of the IDI Rule with resolution planning under section 165(d) of the Dodd-Frank Act. The agencies have not made any changes to the guidance to address these comments.

IV. Paperwork Reduction Act

Certain provisions of the final guidance contain "collections of information" 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 agencies have requested and OMB has assigned to the agencies the respective control numbers shown. The information collections contained in the final guidance have been submitted to OMB for review and approval by the FDIC under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final guidance under the authority delegated to the Board by OMB and has approved these collections of information.

The agencies did not receive any comments related to the PRA.

The agencies have a continuing interest in the public's opinions of information collections. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** caption in the proposed guidance notice. All comments will become a matter of public record. 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.

Collection title: Board: Reporting Requirements Associated with Regulation QQ.

FDIC: Reporting Requirements Associated with Resolution Planning. *OMB control number:* Board 7100–0346; FDIC 3064–0210.

Frequency: Triennial, Biennial, and on occasion.

Respondents: Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978 and meets the relevant total consolidated assets threshold) with total consolidated assets of \$250 billion or more, a bank holding companies with \$100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

Current actions: The final guidance modifies certain provisions of the

proposed guidance. For domestic firms, the final guidance eliminates expectations related to separability, reducing the average burden hours per response by 3,000 for domestic firms using an SPOE strategy and 975 for domestic firms using an MPOE strategy. The final guidance also clarifies expectations around operational shared services for firms using an SPOE resolution strategy and around the IDI Resolution Plan/Least-Cost Test for all firms. Regarding operational shared services, the guidance clarifies that a firm's implementation plan to ensure continuity of shared services should include those that are material to the execution of the resolution strategy, such as reliance on outside bankruptcy counsel and consultants. Regarding the FDI Act's least-cost requirement and how it relates to expectations around IDI resolution, the agencies provided additional detail on how firms can develop and support the valuation of an IDI's assets and liabilities in an IDI resolution. The agencies do not anticipate these clarifications impacting the burden estimates.

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. As a result of this split and the final revisions, there is a proposed net increase in the overall estimated burden hours of 14,922 hours for the Board and 14,304 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection would be 216,129 hours and the total FDIC estimated burden would be 210,844 hours.

The following table presents only the change in the estimated burden hours, as amended by the final guidance, broken out by agency. The table does not include a discussion of the remaining estimated burden hours which remain unchanged.⁷⁴ As shown in the table, the triennial full filers' resolution plan submissions would be estimated more granularly according to SPOE and MPOE resolution strategies.

⁷⁴ In addition to the revisions to the estimations for triennial full filers, the agencies have revised the estimation for biennial filers from 40,115 hours per response to 39,550 hours per response to align with burden estimation methodology with what was used for triennial full filers under the final guidance. Specifically, the agencies removed a component for a biennial filer's analysis of its critical operations as part of its submission of targeted and full resolution plans, because this critical operations analysis is integrated in the preparation of such plans.

FR QQ	Estimated number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Board Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
Current Total				42,446
Final				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3	1	5,285	15,855
Final Total				57,368
FDIC Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	6	1	4,667	28,002
Current Total				37,779
Final				
Triennial Full:				
FBO SPOE	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,285	10,570
Final Total				52,083

* There are currently no domestic triennial full filers utilizing an SPOE strategy. Estimated hours per response for a domestic SPOE triennial full filer would be 10,535 hours.

V. Text of the Final Guidance

Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers

I. Introduction

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (the FDIC) (together, the agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the agencies promulgated a joint rule implementing the provisions of section 165(d).¹ Subsequently, in November 2019, the agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the agencies' experience implementing the

joint rule since its adoption.² Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain foreign financial companies required to submit Plans regarding development of their respective U.S. strategies to assist their further development of a Plan for their 2025 and subsequent Plan submissions. Specifically, the guidance applies to any foreign-based covered company that is triennial full filer under the Rule³ because it is subject to Category II or III standards according to its combined U.S. operations in accordance with the Board's tailoring rule (specified firms or firms).⁴ This guidance supersedes the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*.⁵

² Resolution Plans Required, 84 FR 59194 (Nov. 1, 2019). The amendments became effective December 31, 2019. The "Rule" means the joint rule as amended in 2019. Terms not defined herein have the meanings set forth in the Rule.

³ See 12 CFR 243.4(b)(1) and 381.4(b)(1).

⁴ Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

⁵ 85 FR 83557 (Dec. 22, 2020).

The Plan for a specified firm would address a scenario where its U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide sufficient financial support for the continuation of U.S. operations, and at least the top tier U.S. IHC files for bankruptcy under title 11, United States Code. Under such a scenario, the Plan should provide for the orderly resolution of the specified firm's U.S. material entities and operations.

The document does not have the force and effect of law.⁶ Rather, it describes the agencies' expectations and priorities regarding the specified firms' Plans and the agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of their U.S. resolution strategy.

When an FBO first becomes a specified firm,⁷ this document will

⁶ See 12 CFR 262.7 and appendix A to 12 CFR part 262; 12 CFR part 302.

⁷ See 12 CFR 252.5(c)-(d).

¹ Resolution Plans Required, 76 FR 67323 (Nov. 1, 2011).

apply to the firm's next resolution plan submission that is due at least 12 months after the date the firm becomes a specified firm. If a specified firm ceases to be subject to Category II or III standards, it will no longer be a specified firm, and this document would no longer apply to that firm.

In general, this document is organized around a number of key challenges in resolution (interaction with group resolution plan; capital; liquidity; governance mechanisms; operational; branches; legal entity rationalization and separability; and insured depository institution resolution (IDI), if applicable) that apply across resolution plans, depending on their strategy. Additional challenges or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan. In addition, each topic of this guidance is separated into expectations for a specified firm that adopts a U.S. single point of entry (U.S. SPOE) resolution strategy for its Plan and expectations for a specified firm that adopts a U.S. multiple point of entry (U.S. MPOE) resolution strategy for its Plan.⁸

Under the Rule, the agencies will review a Plan to determine if it satisfactorily addresses key potential challenges, including those specified below. If the agencies jointly decide that an aspect of a Plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the Plan, the agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code. The agencies may not take enforcement actions or issue findings based on this guidance.

II. Interaction With Group Resolution Plan

U.S. SPOE and U.S. MPOE

The agencies recognize that the preferred resolution outcome for the

⁸ The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution. However, because support from the foreign parent in stress cannot be ensured, the Rule provides that the U.S. resolution plan for specified firms must specifically address a scenario where the U.S. operations experience material financial distress, and the Plan cannot assume that the specified firm takes resolution actions outside the United States that would eliminate the need for any U.S. subsidiaries to enter resolution proceedings. See 12 CFR 243.4(h) and 381.4(h).

specified firms is often a successful SPOE home country resolution. Based on information available to the firm, a specified firm's Plan should describe: (i) the impact of executing the global resolution plan on U.S. operations, (ii) the extent of the specified firm's reliance on U.S. operations for execution of the global resolution plan, (iii) the extent of the specified firm's reliance on home country entities and operations for execution of the Plan, and (iv) any capabilities relied on to execute the U.S. resolution strategy that are different from those necessary to execute the global strategy. In addition, a specified firm's resolvability work in the United States should consider both the objectives of the firm's group-wide resolution strategy and the Rule. Efforts to enhance the resolvability of U.S. operations and entities should be as complementary as practicable to the group-wide resolution strategy, while complying with the Rule.

III. Capital

U.S. SPOE

The firm should have the capital capabilities necessary to execute its U.S. resolution strategy, including the modeling and estimation process described below.

Resolution Capital Adequacy and Positioning (RCAP). In order to help ensure that a firm's U.S. non-branch material entities⁹ could be resolved in an orderly manner, the firm's U.S. IHC should have an adequate amount of loss-absorbing capacity to execute its U.S. resolution strategy. Thus, a firm's U.S. IHC should have outstanding a minimum amount of loss-absorbing capacity, including long-term debt, to help ensure that the firm has adequate capacity to meet that need at the U.S. IHC on a consolidated basis (IHC LAC).¹⁰

Proceeds from a firm's IHC LAC should be appropriately positioned

⁹ The terms "material entities," "identified critical operations," and "core business lines" have the same meaning as in the Rule. The term "U.S. material entity" means any subsidiary, branch, or agency that is a material entity and is domiciled in the United States. The term "U.S. non-branch material entity" means a material entity organized or incorporated in the U.S. including, in all cases, the U.S. IHC. The term "U.S. IHC subsidiaries" means all U.S. non-branch material entities other than the U.S. IHC.

¹⁰ Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (Jan. 24, 2017); Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (Sept. 19, 2023).

between the U.S. IHC and the subsidiaries of the U.S. IHC that are material entities (U.S. IHC subsidiaries), consistent with any applicable rules requiring prepositioned resources at U.S. IDIs in the form of long-term debt. After adhering to any requirements related to prepositioning long-term debt at IDIs, the positioning of a firm's remaining IHC LAC should balance the certainty associated with prepositioning loss absorbing capacity directly at U.S. IHC subsidiaries (internal LAC) with the flexibility provided by holding recapitalization resources at the U.S. IHC (contributable resources) to meet unanticipated losses at the U.S. IHC subsidiaries. That balance should take account of both prepositioning at U.S. IHC subsidiaries and holding resources at the U.S. IHC, and the obstacles associated with each. With respect to material entities that are not subject to pre-positioning requirements, the firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary. The Plan should describe the positioning of internal LAC among the U.S. IHC and the U.S. IHC subsidiaries, along with analysis supporting such positioning.

Finally, to the extent that prepositioned internal LAC at a U.S. IHC subsidiary is in the form of intercompany debt and there are one or more entities between the lender and the borrower, the firm should structure the instruments so as to ensure that the U.S. IHC subsidiary can be recapitalized.

Resolution Capital Execution Need (RCEN). To the extent necessitated by the firm's U.S. resolution strategy, U.S. non-branch material entities need to be recapitalized to a level that allows them to operate or be wound down in an orderly manner following the U.S. IHC bankruptcy filing. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC bankruptcy filing (RCEN). The firm's positioning of IHC LAC should be able to support the RCEN estimates.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,¹¹ consistent with the firm's resolution strategy for its U.S. operations. The

¹¹ The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.

RCEN methodology should be calibrated such that recapitalized U.S. IHC subsidiaries will have sufficient capital to maintain market confidence as required under the U.S. resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for “well-capitalized” status and meet estimated additional capital needs throughout resolution. U.S. IHC subsidiaries that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm’s corporate governance processes and controls for the use of models and methodologies.

U.S. MPOE

N/A.

IV. Liquidity

U.S. SPOE

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy, including those described below. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at—or readily available from the U.S. IHC to—U.S. IHC subsidiaries, and a methodology for estimating the liquidity needed to successfully execute the U.S. resolution strategy, as described below.

Capabilities. A firm is expected to have a comprehensive understanding of funding sources, uses, and risks at material entities and identified critical operations, including how funding sources may be affected under stress. For example, a firm should have and describe its capabilities to:

(A) Evaluate the funding requirements necessary to perform identified critical operations, including shared and outsourced services and access to financial market utilities (FMUs);¹²

(B) Monitor liquidity reserves and relevant custodial arrangements by jurisdiction and material entity;¹³

(C) Routinely test funding and liquidity outflows and inflows for U.S. non-branch material entities at the legal entity level under a range of adverse stress scenarios, taking into account the effect on intra-day, overnight, and term funding flows between affiliates and across jurisdictions;

(D) Assess existing and potential restrictions on the transfer of liquidity between U.S. non-branch material entities;¹⁴ and

(E) Develop contingency strategies to maintain funding for U.S. non-branch material entities and identified critical operations in the event of a disruption in the specified firm’s current funding model.¹⁵

Resolution Liquidity Adequacy and Positioning (RLAP). With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each U.S. non-branch material entity—*i.e.*, the high-quality liquid assets (HQLA) at the U.S. non-branch material entity less net outflows to third parties and affiliates—and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile of the U.S. IHC and risk of each U.S. IHC subsidiary. The model should balance the reduction in frictions associated with holding liquidity directly at the U.S. IHC subsidiary with the flexibility provided by holding HQLA at the U.S. IHC or at a U.S. IHC subsidiary available to meet unanticipated outflows at other U.S. IHC subsidiaries.¹⁶ The firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary.

The model¹⁷ should ensure that on a consolidated basis the U.S. IHC holds sufficient HQLA to cover net liquidity outflows of the U.S. non-branch material entities. The model should also measure the stand-alone net liquidity positions of each U.S. non-branch material entity. The stand-alone net liquidity position of each U.S. non-branch material entity (HQLA less net outflows) should be measured using the firm’s internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to a non-U.S. affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at

any U.S. IHC subsidiary that is a depository institution could be moved to meet net liquidity deficits at an affiliate, or to augment U.S. IHC resources, consistent with Regulation W.

Additionally, the RLAP methodology should take into account for each of the U.S. IHC, U.S. IHC subsidiaries, and any branch that is a material entity:

(A) The daily contractual mismatches between their respective inflows and outflows;

(B) Their respective daily flows from movement of cash and collateral for all inter-affiliate transactions; and

(C) Their respective daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

In calculating its RLAP estimate, the U.S. IHC should calculate its liquidity position with respect to its foreign parent, branches and agencies, and other affiliates (together, affiliates) separately from its liquidity position with respect to third parties, and should not offset inflows from affiliated parties against outflows to external parties. In addition, a U.S. IHC should use cash-flow sources from its affiliates to offset cash-flow needs of its affiliates only to the extent that the term of the cash-flow source from its affiliates is the same as, or shorter than, the term of the cash-flow need of its affiliates.¹⁸

Resolution Liquidity Execution Need (RLEN). The firm should have a methodology for estimating the liquidity needed after the U.S. IHC’s bankruptcy filing to stabilize any surviving U.S. IHC subsidiaries and to allow those entities to operate post-filing, in accordance with the U.S. strategy.

The firm’s RLEN methodology should:

(A) Estimate the minimum operating liquidity (MOL) needed at each U.S. IHC subsidiary that is a material entity to ensure those entities could continue to operate, to the extent relied upon in the U.S. resolution strategy, after implementation of the U.S. resolution strategy and/or to support a wind-down strategy;

(B) Provide daily cash flow forecasts by U.S. IHC subsidiary to support estimation of peak funding needs to stabilize each entity under resolution;

(C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates for the U.S. IHC subsidiaries; and

¹⁴ *Id.*

¹⁵ 12 CFR 252.156(e).

¹⁶ To the extent HQLA is held at the U.S. IHC or at a U.S. IHC subsidiary, the model should consider whether such funds are freely available. To be freely available, the HQLA must be free of legal, regulatory, contractual, and other restrictions on the ability of the material entity to liquidate, sell, or transfer the asset.

¹⁷ “Model” refers to the set of calculations required by Regulation YY that estimate the U.S. IHC’s liquidity position.

¹⁸ The U.S. IHC should calculate its cash-flow sources from its affiliates consistent with the net internal stressed cash-flow need calculation in § 252.157(c)(2)(iv) of Regulation YY.

¹² 12 CFR 252.156(g)(3).

¹³ 12 CFR 252.156(g)(2).

(D) Estimate the minimum amount of liquidity required at each U.S. IHC subsidiary to meet the MOL and peak needs noted above, which would inform the provision of financial resources from the foreign parent to the U.S. IHC, or if the foreign parent is unable or unwilling to provide such financial support, any preparatory resolution-related actions.

The MOL estimates should capture U.S. IHC subsidiaries' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that U.S. IHC subsidiaries could operate without disruption during the resolution.

The peak funding needs estimates should be projected for each U.S. IHC subsidiary and cover the length of time the firm expects it would take to stabilize that U.S. IHC subsidiary. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that U.S. IHC subsidiaries could operate through resolution consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, *i.e.*, the minimum amount of HQLA required to facilitate the execution of the firm's strategy for the U.S. IHC subsidiaries.

For nonsurviving U.S. IHC subsidiaries, the firm should provide analysis and an explanation of how the material entity's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For example, if a U.S. IHC subsidiary that is a broker-dealer is assumed to fail and enter resolution under the Securities Investor Protection Act, the firm should provide an analysis of the potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution.

U.S. MPOE

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy. A Plan with a U.S. MPOE resolution strategy should include analysis and projections of a range of liquidity needs during resolution, including intraday; reflect likely failure and resolution scenarios; and consider the guidance on assumptions provided in Section X, Format and Structure of Plans; Assumptions.

V. Governance Mechanisms

U.S. SPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occur between the governing body of the U.S. operations (for example, the boards of the U.S. IHC or a U.S. subsidiary) and the foreign parent to facilitate the provision of financial support, or if not forthcoming, any preparatory resolution-related actions to facilitate an orderly resolution.

Playbooks, Foreign Parent Support, and Triggers. Governance playbooks should detail the board and senior management actions of U.S. non-branch material entities that would be needed under the firm's U.S. resolution strategy. The governance playbooks should also include a discussion of:

(A) The firm's proposed U.S. communications strategy, both internal and external;¹⁹

(B) The fiduciary responsibilities of the applicable board(s) of directors or other similar governing bodies and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken;

(C) Potential conflicts of interest, including interlocking boards of directors;

(D) Any employee retention policy; and

(E) Any other limitations on the authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for each entity whose governing body would need to act under the firm's U.S. resolution strategy.

In order to meet liquidity needs at the U.S. non-branch material entities, the firm may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed and as informed by the firm's RLEN estimates and liquidity positioning. To the extent the preferred global resolution strategy for the firm is a home country SPOE

resolution, the mechanism should be designed so as to not interfere with the execution of that strategy. The Plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent. The sufficiency of the liquidity should be informed by the firm's RLAP and RLEN estimates for the U.S. non-branch material entities. Additionally, the Plan should include analysis of the potential challenges to the planned foreign parent support mechanism and associated mitigants. Where applicable, the analysis should discuss applicable non-U.S. law and cross-border legal challenges (*e.g.*, challenges related to enforcing contracts governed by foreign law). The analysis should identify the mitigant(s) to such challenges that the firm considers most effective.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy. The triggers should:

i. Identify when and under what conditions the U.S. material entities would transition from business-as-usual (BAU) conditions to a stress period; and

ii. Take into consideration changes in the foreign parent's condition from BAU conditions through resolution.

(B) The escalation of information to and discussions with the appropriate governing bodies to confirm whether the governing bodies are able and willing to provide financial resources to support U.S. operations.

i. Triggers should be based on the firm's methodology for forecasting the liquidity and capital needed to facilitate the U.S. strategy. For example, triggers may be established that reflect U.S. non-branch material entities' financial resources approaching RCEN/RLEN estimates, with corresponding actions to confirm the foreign parent's financial capability and willingness to provide sufficient support.

Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to

¹⁹ External communications include those with U.S. and foreign authorities and other external stakeholders, such as any large depositors.

provide for communication, coordination, and confirmation of the provision of resources from the foreign parent.

Support Within the United States. If the Plan provides for the provision of capital and liquidity by a U.S. material entity (e.g., the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing (Support), the Plan should also include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to providing the Support. Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (e.g., imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the Plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's U.S. resolution strategy. The analysis should include mitigants to the potential challenges to the planned Support. The Plan should identify the mitigant(s) to such challenges that the firm considers most effective.

Furthermore, the Plan should describe key motions to be filed at the initiation of any bankruptcy proceeding related to (as appropriate) asset sales and other non-routine matters.

U.S. MPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occur between the governing body of the U.S. operations (for example, the boards of the U.S. IHC or a U.S. subsidiary) and the foreign parent to facilitate any preparatory resolution-related actions to facilitate an orderly resolution. The Plan should also detail the board and senior management actions of U.S. material entities that would be needed under the firm's U.S. resolution strategy.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to

specific actions for the escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy. The triggers should:

(A) Identify when and under what conditions the U.S. material entities would transition from BAU conditions to a stress period.

(B) Take into consideration changes in the foreign parent's condition from BAU conditions through resolution.

VI. Operational

U.S. SPOE

Payment, Clearing, and Settlement Activities Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,²⁰ or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution under its U.S. resolution strategy through a framework to support such access by:

- Identifying clients,²¹ FMUs, and agent banks as key from the firm's perspective for the firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative (volume and value)²² and qualitative criteria;
- Mapping U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank essential to an

orderly resolution under its U.S. resolution strategy that reflects the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (e.g., a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (e.g., a firm's provision of clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank, or a firm's U.S. affiliate and branch provision of U.S. material entities and key clients of the firm's U.S. operations with access to an FMU or agent bank). The framework also should address the potential impact of any disruption to, curtailment of, or termination of such direct and indirect relationships on the firm's U.S. material entities, identified critical operations, and core business lines, as well as any corresponding impact on key clients of the firm's U.S. operations.

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and key clients of the firm's U.S. operations in maintaining continued access to PCS services in the period leading up to and including the firm's resolution under its U.S. resolution strategy.

Each playbook should provide analysis of the financial and operational impact to the firm's U.S. material entities and key clients of the firm's U.S. operations due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's U.S. material entities, identified critical operations and core business lines, and key clients of the firm's U.S. operations, while the firm is in resolution under its U.S. resolution strategy. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients of the firm's U.S. operations, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

²⁰ A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of a financial market utility (FMU) through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations (e.g., payment services or custody services).

²¹ For purposes of this section, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and any related credit or liquidity offered in connection with those services.

²² In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

- Description of the firm's relationship as a user, including through indirect access, with the key FMU or key agent bank and the identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that use those PCS services;

- Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution under its U.S. resolution strategy;²³ the operational and financial impact of such actions on the firm's U.S. material entities, identified critical operations, and core business lines, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and

- Discussion of PCS-related liquidity sources and uses in BAU, in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by U.S. material entity.

- *PCS Liquidity Sources:* These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and prefunded amounts of key clients of the firm's U.S. operations in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (e.g., facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in all currencies relevant to the firm's participation, including placements of firm liquidity at central banks, key FMUs, and key agent banks.

- *PCS Liquidity Uses:* These may include margin and prefunding by the firm and key clients of the firm's U.S. operations, and intraday extensions of credit, including incremental amounts required during resolution.

- *Intraday Liquidity Inflows and Outflows:* The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.

*Content Related to Providers of PCS Services.*²⁴ Individual key FMU and key agent bank playbooks should include:

- Identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;

- Identification and mapping of PCS services to key clients of the firm's U.S. operations to whom the firm's U.S. material entities, identified critical operations, and core business lines provide such PCS services and any related credit or liquidity offered in connection with such services;

- Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to key clients of the firm's U.S. operations, including the viability of transferring activity and any related assets of key clients of the firm's U.S. operations, as well as any alternative arrangements that would allow the key clients of the firm's U.S. operations continued access to PCS services if the firm could no longer provide such access (e.g., due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;

- Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients of the firm's U.S. operations, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as (i) requiring key clients of the firm's U.S. operations to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (e.g., direct members of key FMUs) or any similar custodial arrangements that allow ready access to funds for such obligations in all relevant currencies of key clients of the firm's U.S. operations; (ii) delaying or restricting PCS activity of key clients of the firm's U.S. operations; and (iii) restricting, imposing conditions upon (e.g., requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients of the firm's U.S. operations; and

States, the firm is expected to produce a playbook for the U.S. material entities that provide those services, addressing each of the items described under "Content Related to Providers of PCS Services," which include contingency arrangements to permit the firm's key clients of the firm's U.S. operations to maintain continued access to PCS services.

- Descriptions of how the firm will communicate to key clients of the firm's U.S. operations the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients of the firm's U.S. operations (e.g., due to BAU usage of that access and/or related intraday credit or liquidity of the key client of the firm's U.S. operations), and the expected timing and form of such communication.

Capabilities. The firm is expected to have and describe capabilities to understand, for each U.S. material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. The firm should be able to:

- Track the following items by (i) U.S. material entity and, (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:

- PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;²⁵

- Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;²⁶

- Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and²⁷

- Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external);²⁸

- Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations;²⁹

- Develop contingency arrangements in the event of such adverse actions;³⁰ and

- Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral. The firm is expected to have

²³ Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

²⁴ Where a firm is a provider of PCS services through the firm's own operations in the United

²⁵ 12 CFR 243.5(e)(12) and 381.5(e)(12).

²⁶ *Id.*

²⁷ 12 CFR 252.156(g).

²⁸ 12 CFR 243.5(f)(1)(i) and 381.5(f)(1)(i).

²⁹ 12 CFR 252.156(e).

³⁰ *Id.*

and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates. Specifically, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;

- Be able to track both collateral sources (*i.e.*, counterparties that have pledged collateral) and uses (*i.e.*, counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;

- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;

- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;

- Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and

- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.³¹

In addition, as of the conclusion of any business day, the firm should be able to:

- Identify the legal entity and geographic jurisdiction where counterparty collateral is held;

- Document all netting and re-hypothecation arrangements with affiliates and external parties, by legal entity; and

- Track and manage collateral requirements associated with counterparty credit risk exposures between affiliates, including foreign branches.

At least on a quarterly basis, the firm should be able to:

- Review the material terms and provisions of International Swaps and Derivatives Association Master Agreements and the Credit Support Annexes, such as termination events, for triggers that may be breached as a result of changes in market conditions;

- Identify legal and operational differences and potential challenges in managing collateral within specific jurisdictions, agreement types, counterparty types, collateral forms, or other distinguishing characteristics; and
- Forecast changes in collateral requirements and cash and non-cash collateral flows under a variety of stress scenarios.

Management Information Systems.

The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the U.S. resolution strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity. The firm should have the capabilities to produce the following types of information, as applicable, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;

- Gross and net risk positions with internal and external counterparties;

- Guarantees, cross holdings, financial commitments and other transactions between material entities;

- Data to facilitate third-party valuation of assets and businesses, including risk metrics;

- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);

- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);

- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;

- Licenses and memberships to all exchanges and value transfer networks, including FMUs;

- Key management and support personnel, including dual-hatted

employees, and any associated retention agreements;

- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and

- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations³² or core business lines, or are material to the execution of the resolution strategy, and robust arrangements to support the continuity of shared and outsourced services, including, without limitation, appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or core business lines, or are material to the execution of the resolution strategy. Examples may include personnel, facilities, systems, data warehouses, intellectual property, and counsel and consultants involved in the preparation for and filing of bankruptcy. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

If a material entity provides shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a

³¹ The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

³² "Shared services that support identified critical operations" or "critical shared services" are those that support identified critical operations conducted in whole or in material part in the United States.

material entity providing shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should:

(A) Maintain an identification of all shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy;

(B) Maintain a mapping of how/where these services support its core business lines and identified critical operations;

(C) Incorporate such mapping into legal entity rationalization criteria and implementation efforts; and

(D) Mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to:

(A) Prevent automatic termination upon certain resolution-related events and

(B) Achieve continued provision of such services during resolution.³³

The firm should also store SLAs in a central repository or repositories located in or immediately accessible from the U.S. at all times, including in resolution (and subject to enforceable access arrangements) in a searchable format. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's U.S. resolution strategy) in such entities sufficient to cover contract costs, consistent with the U.S. resolution strategy. The firm should demonstrate that such working capital is held in a manner that ensures its availability for its intended purpose.

The firm should identify all critical service providers and outsourced services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, and identify any that could not be promptly substituted. The firm should:

(A) Evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance, and

(B) Update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

Qualified Financial Contracts. The Plan should reflect the current state of how the early termination of qualified financial contracts could impact the resolution of the firm's U.S. operations, including potential termination of any contracts that are not subject to contractual or regulatory stays of cross-default rights. Specifically, the Plan is expected to reflect the firm's progress regarding contractual stays in qualified financial contracts as of the date the firm submits its Plan or as of a specified earlier date. A firm that has adhered to the International Swaps and Derivatives Association's (ISDA) 2018 U.S. Resolution Stay Protocol or its antecedent, ISDA's 2015 Universal Resolution Stay Protocol (together, the Protocols) should discuss the extent of the firm's adherence to the Protocols in its Plan (and may also discuss the impact on U.S. operations of the firm's adherence to ISDA's 2016 Jurisdictional Modular Protocol on its non-U.S. operations). A Plan should also explain the firm's processes for entering bilateral contracts with third-party entities that do not adhere to the Protocols and provide examples of the contractual language that is used under those circumstances.

U.S. MPOE

Payment, Clearing, and Settlement Activities Capabilities. The firm is expected to have and describe capabilities to understand, for each U.S. material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- As users of PCS services:

- Track the following items by: (i) U.S. material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:

- PCS activities, with each activity mapped to the relevant material entities,

identified critical operations, and core business lines;

- Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;

- Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and

- Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).

- Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations;

- Develop contingency arrangements in the event of such adverse actions; and

- Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including intraday requirements.

- As providers of PCS services:

- Identify their PCS clients of their U.S. operations and the services they provide to these clients, including volumes and values of transactions;

- Quantify and explain time-sensitive payments; and

- Quantify and explain intraday credit provided.

Managing, Identifying and Valuing Collateral. The firm is expected to have and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates, including tracking collateral received, pledged, and available at the CUSIP level and measuring exposures.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the U.S. resolution strategy. The firm should have the capabilities to produce the following types of information, as applicable, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);

- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;

³³ The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the United States.

- Gross and net risk positions with internal and external counterparties;
- Guarantees, cross holdings, financial commitments and other transactions between material entities;
- Data to facilitate third-party valuation of assets and businesses, including risk metrics;
- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
- Licenses and memberships to all exchanges and value transfer networks, including FMUs;
- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain robust arrangements to support the continuity of shared and outsourced services that support any identified critical operations, or are material to the execution of the U.S. resolution strategy, including appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or are material to the execution of the U.S. resolution strategy. Examples may

include personnel, facilities, systems, data warehouses, intellectual property, and counsel and consultants involved in the preparation for and filing of bankruptcy. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements. If a material entity provides shared services that support identified critical operations,³⁴ or are material to the execution of the U.S. resolution strategy, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations, or are material to the execution of the U.S. resolution strategy, is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should:

(A) Maintain an identification of all shared services that support identified critical operations or are material to the execution of the U.S. resolution strategy, and

(B) Mitigate identified continuity risks through establishment of SLAs for all shared services supporting identified critical operations or are material to the execution of the U.S. resolution strategy. SLAs should fully describe the services provided and incorporate appropriate terms and conditions to:

(A) Prevent automatic termination upon certain resolution-related events; and

(B) Achieve continued provision of such services during resolution.³⁵

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the U.S. resolution strategy. Any of these services that cannot be promptly substituted should be identified in a firm's Plan. The firm should:

(A) Evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance; and

³⁴ This should be interpreted to include data access and intellectual property rights.

³⁵ The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the United States.

(B) Update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services.

Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

VII. Branches

U.S. SPOE & U.S. MPOE

Continuity of Operations. If the Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the Plan should support that assumption.

For any U.S. branch that is a material entity, the Plan should describe and demonstrate how the branch would continue to facilitate FMU access for identified critical operations and meet funding needs. For such a U.S. branch, the Plan should describe how it would meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements.³⁶ In addition, the Plan should describe how such a U.S. branch's third-party creditors would be protected such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations.

Impact of the Cessation of Operations. The Plan should provide an analysis of the impact of the cessation of operations of any U.S. branch that is a material entity on the firm's FMU access and identified critical operations, even if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how identified critical operations could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support identified critical operations provided by any U.S. branch that is a material entity, and mitigants that could address such obstacles in a timely manner.

³⁶ Firms should take into consideration historical practice, by applicable regulators, regarding asset maintenance requirements imposed during stress.

VIII. Legal Entity Rationalization and Separability

Legal Entity Rationalization

U.S. SPOE

Legal Entity Rationalization Criteria (LER Criteria). A firm should develop and implement legal entity rationalization criteria that support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution. LER Criteria should consider the best alignment of legal entities and business lines to improve the resolvability of U.S. operations under different market conditions. LER Criteria should govern the corporate structure and arrangements between the U.S. subsidiaries and U.S. branches in a way that facilitates resolvability of the firm's U.S. operations as the firm's U.S. activities, technology, business models, or geographic footprint change over time.

Specifically, application of the criteria should:

(A) Ensure that the allocation of activities across the firm's U.S. branches and U.S. nonbranch material entities support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution;

(B) Facilitate the recapitalization and liquidity support of U.S. IHC subsidiaries, as required by the firm's U.S. resolution strategy. Such criteria should include clean lines of ownership and clean funding pathways between the foreign parent, the U.S. IHC, and U.S. IHC subsidiaries;

(C) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution in the United States, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(D) Adequately protect U.S. subsidiary IDIs from risks arising from the activities of any nonbank U.S. subsidiaries (other than those that are subsidiaries of an IDI); and

(E) Minimize complexity that could impede an orderly resolution in the United States and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing the firm's U.S. structure and operations on a continuous basis. Finally, the Plan should include a description of the firm's legal entity rationalization governance process.

U.S. MPOE

Legal Entity Structure. A firm should maintain a legal entity structure that supports the firm's U.S. resolution strategy and minimizes risk to U.S. financial stability in the event of the resolution of the firm's U.S. operations. The firm should consider factors such as business activities; banking group structures and booking models and practices; and potential sales, transfers, or wind-downs during resolution. The Plan should describe how the firm's U.S. legal entity structure aligns core business lines and any identified critical operations with the firm's material entities to support the firm's U.S. resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI's subsidiary during resolution of its U.S. entities, including for the provision of shared services, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants.

The firm's corporate structure and arrangements among U.S. legal entities should be considered and maintained in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

Separability

U.S. SPOE

Separability. The firm should identify discrete U.S. operations that could be sold or transferred in resolution, with the objective of providing optionality in resolution under different market conditions.

A firm's separability options should be actionable, and impediments to their projected mitigation strategies should be identified in advance. Firms should consider potential consequences for U.S. financial stability of executing each option, taking into consideration impacts on counterparties, creditors, clients, depositors, and markets for specific assets. The level of detail and analysis should vary based on a firm's risk profile and scope of operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

Further, the firm should have, and be able to demonstrate, the capability to populate in a timely manner a data room with information pertinent to a potential divestiture of the identified separability options (including, but not limited to, carve-out financial statements, valuation analysis, and a legal risk assessment). Within the Plan, the firm should demonstrate how the

firm's LER Criteria and implementation efforts support meeting the separability-related guidance above. The Plan should also provide the separability analysis noted above.

U.S. MPOE

A Plan should include options for the sale, transfer, or disposal of U.S. significant assets, portfolios, legal entities, or business lines in resolution that may be executed in a reasonable period of time. For each option, supporting analysis should include: an execution plan that includes an estimated time frame for implementation, a description of any impediments to execution of the option, and mitigation strategies to address those impediments; a description of the assumptions underpinning the option; a financial impact assessment that describes the impact of executing the option; and an identified critical operation impact assessment that describes how execution of the option may affect the provision of any identified critical operation. Information systems should be robust enough to produce the required data and information needed to execute the options.

IX. Insured Depository Institution Resolution

U.S. MPOE

Least-cost requirement analysis. If the Plan includes a strategy that contemplates the separate resolution of a U.S. IDI that is a material entity, the Plan should explain how the resolution could be achieved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States while also complying with the statutory and regulatory requirements governing IDI resolution.

This explanation does not include an expectation that firms provide a complete least-cost analysis. A complete least-cost analysis would, for example, include a comparison of the preferred strategy for resolving an IDI that is a material entity against every other possible resolution method available for that IDI.

To explain how a firm's preferred strategy could potentially enable the FDIC to resolve the failed bank in a manner consistent with the FDIC's statutory least-cost requirement, the firm could instead compare the estimated costs to the DIF of the firm's preferred resolution strategy to a payout liquidation and, for strategies involving

a BDI, explain how the inclusion or exclusion of uninsured deposits within the BDI would impact the estimated overall costs to the DIF.

Firms should address the following matters as applicable to their strategy:

- **Payout Liquidation:** If the Plan envisions a payout liquidation for the IDI, with or without use of a Deposit Insurance National Bank or a paying agent, the Plan should explain how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- **P&A Transaction:** If the Plan assumes a weekend P&A strategy, the plan should first demonstrate the ready availability of this option under severely adverse economic scenario, assuming that markets are functioning and competitors are in a position to take on business. The Plan may demonstrate a weekend P&A strategy is available by discussing evidence of several potential buyers supported by information indicating that these potential buyers could reasonably be expected to have sufficient financial resources to complete the transaction in a severely adverse scenario and the expertise to incorporate the business of the failed bank. The plan should also address how such a merger can be completed with these potential acquirers considering any applicable approvals that would be required for the proposed transaction. Additionally, a P&A strategy should explain how it either (1) results in no loss to the DIF or (2) despite its resulting in a loss to the DIF, the loss is less than would be incurred through a payout liquidation.
- **All-Deposit BDI:** If the Plan contemplates a strategy involving an all-deposit BDI, the Plan should include an analysis that shows that the incremental estimated cost to the DIF of transferring all uninsured deposits to the BDI is offset by the preservation of franchise value and other benefits connected to the uninsured deposits (such as the franchise value derived from retaining full banking relationships).
- **BDI with Partial Uninsured Deposit Transfers:** A Plan may demonstrate the feasibility of a strategy involving a BDI that assumes (1) all insured deposits or (2) only a portion of uninsured deposits (e.g. an advance dividend to uninsured depositors for a portion of their deposit claim) by showing that the incremental estimated cost to the DIF of transferring the portion of uninsured deposits to the BDI is offset by the preservation of franchise value connected to those uninsured deposits (such as the

franchise value derived from retaining full banking relationships).

In all cases, the Plan should discuss how the implementation of the Plan's resolution strategy, including the impact on any depositors whose accounts are not transferred in whole or in part to a BDI, would not be likely to create the risk of serious adverse effects on U.S. financial stability.

Valuation. Regardless of the strategy chosen, the Plan should demonstrate reasonable and well-supported assumptions that support the valuation of the failed IDI's assets and business franchise under the firm's preferred strategy that are drawn from comparable transactions or other inputs observable in the marketplace. A firm's franchise value is generally understood to be the value of the bank as an operating company relative to the value of the firm's individual assets minus its liabilities. In assessing the franchise value of the firm's business, the Plan could provide support through relevant inputs such as the revenue generated by the account relationships; the efficiencies in administrative costs associated with servicing large deposits/ large relationships; the elimination of barriers to entry or the reduction in customer acquisition costs; growth history and prospects for the products or business activity; market trading or sales multiples; or any other factors the firm believes appropriate. Asset values should be representative of the bank's asset mix under the appropriate economic conditions and of sufficient distress as to result in failure.

Exit from BDI. A Plan should include a discussion of the eventual exit from the BDI. A Plan could support the feasibility of an exit strategy by, for example, describing an actionable process, based on historical precedent or otherwise supportable projections, that winds down certain businesses, includes the sale of assets and the transfer of deposits to one or multiple acquirers, or culminates in a capital markets transaction, such as an initial public offering or a private placement of securities.

X. Format and Structure of Plans; Assumptions

U.S. SPOE & U.S. MPOE

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's strategy for an orderly resolution. In addition, the executive summary should include a discussion of the

firm's assessment of any impediments to the firm's U.S. resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for an orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative).

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.

2. The firm must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.³⁷ The firm should not submit a Plan that assumes the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act.

3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

4. The Plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which the Plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.

5. The U.S. resolution strategy may be based on an idiosyncratic event or action, including a series of

³⁷ 12 CFR 243.4(h)(2) and 381.4(h)(2).

compounding events. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

6. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (*i.e.*, the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer).

7. For a firm that adopts a U.S. MPOE resolution strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress of the U.S. operations.³⁸ In particular, the Plan should consider the likelihood that there would be a diminution of the firm's liquidity buffer in the stress period prior to filing for bankruptcy from high unexpected outflows of deposits and increased liquidity requirements from counterparties. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the covered company or its material legal entity subsidiaries prior to the final recognition of losses, the demonstration and description of material financial distress may also include depletion of capital. Therefore, the Plan should also consider the likelihood of the depletion of capital.

8. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

9. The Plan should support any assumptions that the firm will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy. To the extent the firm assumes use of the Discount Window, Federal Home Loan Banks, and/or other borrowings, the Plan should support that assumption with a discussion of the operational testing conducted to facilitate access in a stress environment, placement of collateral, and the amount of funding accessible to the firm. The firm may assume that its depository institutions will have access to the Discount Window only for a few days

after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections.

The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the U.S. resolution strategy. It should also include statements of projected sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan should clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities. Material entities should encompass those entities, including subsidiaries, branches and agencies (collectively, Offices), which are significant to the activities of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

1. Any Office, wherever located, that is significant to the activities of an identified critical operation.

2. Any Office, wherever located, whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

3. Any Office, wherever located, that would provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

4. Any Office, wherever located, that is engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct

either the internal hedge side or the client-facing side of a transaction.

5. Any Office, wherever located, engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

6. Any Office, wherever located, holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the U.S. resolution strategy, and explain how the Plan addresses the actions and forbearances. The Plan should describe the consequences for the firm's U.S. resolution strategy if specific actions in each jurisdiction were not taken, delayed, or forgone, as relevant.

XI. Public Section

U.S. SPOE & U.S. MPOE

The purpose of the public section is to inform the public's understanding of the firm's U.S. resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy).

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the agencies have identified in prior plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the Plan is not binding on a bankruptcy court or other resolution authority and

³⁸ See Section 11(c)(5) of the FDI Act, codified at 11 U.S.C. 1821(c)(5), which details grounds for appointing the FDIC as conservator or receiver of an IDI.

that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.

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 August 9, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–18186 Filed 8–14–24; 8:45 am]

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