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The President

Establishment of the Springfield 1908 Race Riot National Monument

By the President of the United States of America

A Proclamation

In August 1908, mere blocks from the former home of President Abraham Lincoln, a white mob attacked the Black community in Springfield, Illinois, lynching two Black Americans and burning homes down to their foundations. By the time the National Guard quelled the violence, the mob had looted and destroyed businesses, razed city blocks, and displaced hundreds of people from their homes. Labeled by the media as a race riot, the event was emblematic of the racism, intimidation, violence, and lynchings that Black Americans experienced in communities across the country in the late 19th and early 20th Centuries. The horror that became known as the Springfield 1908 Race Riot drew the attention of national newspapers and Black and white activists interested in social change. In the wake of the devastation and ensuing outcry, a group of visionary civic leaders launched the National Association for the Advancement of Colored People, which went on to achieve momentous civil rights victories and continues to work toward racial justice and equity.

Today, the foundations of destroyed homes and the objects they contain are tangible markers of these historic events and reminders of the impact that the Springfield 1908 Race Riot had on our Nation. The area located between North 9th and 11th Streets, and between East Mason and East Madison Streets, constitutes the Springfield 1908 Race Riot Site. This site weaves together two important threads in our Nation's story: the hateful violence targeted against Black Americans, and the power of dedicated individuals to come together across racial lines to transform shock and grief into hope and action.

At the turn of the 20th Century, the United States was still struggling to fulfill the promises of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution—amendments that abolished slavery; guaranteed due process and equal protection under the law; and prohibited abridgement of the right to vote on account of race, color, or previous condition of servitude. Numerous States and municipalities, primarily in the South, passed anti-Black legislation, including Jim Crow laws, to enforce racial segregation and to maintain white structural power by restricting Black people's daily lives. As millions of Black people migrated to towns and cities in the North seeking a better life, they were often confronted with racial bias, segregated schools, discriminatory and restrictive housing practices, and other forms of discrimination. Black people were also subjected to a nationwide wave of racial violence that began after the Civil War. Between 1882 and 1910, there were 2,503 recorded lynchings of Black people in the United States. Many lynchings during this grim chapter of American history occurred during riots led by white mobs engaged in a broader pattern of violence, similar to the one that took place in Springfield.

There, on Friday, August 14, 1908, a crowd of mostly white men gathered outside the Sangamon County Jail, which was 2 blocks from the edge of the Badlands neighborhood, a community northeast of the center of the city that included many low-income Black residents and families. The mob

was calling for the lynching of two Black men: Joe James and George Richardson. James stood accused of the murder of a white man and attempted assault on his daughter. Richardson was accused of sexually assaulting a white woman.

The sheriff, hoping to defuse the situation and avoid the white-mob lynchings that had occurred in similar circumstances, arranged for the two men to be quietly transferred to a jail in another town. Harry Loper, a local white leader who shared the sheriff's concerns, agreed to help with the transfer. When the crowd learned of the sheriff's and Loper's actions, it erupted in violence. The mob wreaked havoc and destruction in the surrounding Badlands and Levee neighborhoods—attacking and destroying dozens of Black-owned businesses and residences, as well as some Jewish-owned businesses and other businesses that served the predominantly Black community. Loper also paid a price for helping the men; after he returned, the mob set fire to his car and vandalized his restaurant.

One of the buildings the mob torched was in the Badlands neighborhood on 12th Street between Madison and Mason Streets where Scott Burton, a Black barber, was trying to protect his home. At approximately 2:30 a.m. on Saturday, August 15, 1908, the mob beat Burton into unconsciousness before dragging him half a block south to the corner of Madison and 12th Streets. There, he was further brutalized and hanged from a tree, and he died from his injuries. All the while, the rioters celebrated his lynching.

On Saturday, the second day of the riot, the violence briefly abated as State militia reinforcements arrived and Governor Charles Deneen designated the Illinois State Arsenal as a temporary refuge for Black residents. Black firefighters of Firehouse No. 5 responded to fires and fought to quench the flames and save the homes of Black residents and Black-owned businesses, even after being dismissed by the Mayor of Springfield. Despite these actions, by 7:00 p.m. Saturday evening, crowds again amassed and resumed the mob violence of the previous night.

That same day, the riot reached the home of William K. Donnegan, a Black 84-year-old retired cobbler who had made shoes for Abraham Lincoln and served as an Underground Railroad operative. Donnegan was married to a white woman and lived with his family in a nearby middle-class white neighborhood. On Saturday night, a group of white men gathered outside of Donnegan's house, beat him with bricks, and cut his throat with a razor. They dragged him across the street and hanged him from a tree in the neighboring schoolyard, just 2 blocks from the Illinois State Capitol. The police and National Guard personnel found Donnegan still alive, and took him to St. John's Hospital, where he received medical care along with other people injured in the riot—Black and white alike. Although he survived the night, he died the next day from his injuries.

Soon after the riot, George Richardson's accuser issued a signed statement confessing that her assailant had in fact been a white man. Joe James's story took a different turn. His lawyer tried to remove James's case from Sangamon County, arguing he would not be able to get an impartial jury there, but those efforts failed and James was tried and convicted in the same community that carried out the race riot. On October 23, 1908, James was executed by hanging at the Sangamon County Jail. Only one white rioter was convicted of a violent crime in connection with the destruction wrought on Springfield's Black community. In a poignant postscript, the two men lynched, Scott Burton and William K. Donnegan, were laid to rest in the same Springfield cemetery as President Lincoln.

The national and local press covered the Springfield 1908 Race Riot extensively. The devastation of the Badlands neighborhood and nearby sites captured the attention of prominent civil rights leaders and spurred new action. In response to the Springfield 1908 Race Riot, an interracial group of dozens of civil rights leaders, including W.E.B. Du Bois, William English Walling, Mary White Ovington, Ida B. Wells-Barnett, and Mary Church Terrell, issued an open letter in February 1909 "taking stock of the nation's progress"

on the centennial of Lincoln's birth. Invoking Lincoln's words from 1858 that "[a] house divided against itself cannot stand," the group "call[ed] upon all the believers in democracy to join in a national conference for the discussion of present evils, the voicing of protests, and the renewal of the struggle for civil and political liberty."

This call led to a meeting in the spring of 1909 of a group initially called the National Negro Committee to discuss forming a permanent, national organization that would advocate to combat lynching and racial prejudice, improve the lives of Black Americans, and secure the civil and political rights guaranteed to them by the Constitution. On May 12, 1910, the National Negro Committee formally named the new organization the National Association for the Advancement of Colored People (NAACP).

For more than a century, the NAACP has been at the forefront of key legal and political movements to end lynching, remove barriers of racial discrimination, and advance civil and political rights. The NAACP and its legal team devised the transformative, decades-long legal strategy culminating in *Brown v. Board of Education* (1954), in which the Supreme Court declared the "separate but equal" doctrine to be unconstitutional and gutted the legal underpinnings of segregation and Jim Crow laws.

The NAACP, along with partners and allies, turned the Springfield 1908 Race Riot's legacy from one of tragedy alone into one that led to enduring progress and change. Yet those violent and fateful days had persistent discriminatory effects on Springfield. Although the rioters did not succeed in driving Black residents from the city entirely, their actions led to the displacement of Black people from the Badlands and other affected neighborhoods and paved the way for so-called "urban renewal projects" that erased much of the neighborhoods' physical imprint. One of the country's first public housing projects was constructed on remnants of the Badlands neighborhood. The 8-block John Hay Homes housing complex, built in the 1940s, provided low-income housing, primarily to white people. The John Hay Homes and other projects drastically altered the landscape, demolishing blocks of structures to develop facilities including high-rise apartments, low-rent apartments, an expressway, and a civic center.

Notwithstanding the changes to the surrounding neighborhoods, the Springfield 1908 Race Riot Site, a 2-block area stretching northward from East Madison Street between North 9th and 11th Streets, still contains archeological remains and scars of the riot. The site, which has been identified as the approximate point where the violent assault on the Badlands neighborhood began in 1908, provides some of the last physical remains of the race riot and the neighborhood it destroyed, including the charred foundations of five houses burned by the white mob in 1908.

Archeological excavations of the site have uncovered other historic objects remaining at the site, including a partial cellar, stone steps, and a brick walk. This area and the archeological artifacts it contains have a singular ability to tell the story of the race riot and its impacts on Black residents at this pivotal point in Springfield and the Nation's history.

Archeological studies have concluded that the site likely contains significant additional resources and artifacts that could help further illuminate the history of the Badlands neighborhood. In addition to the five burned houses, the site encompasses the plots of several other buildings demolished in the riot. Spared the architectural erasure of urban renewal, the Springfield 1908 Race Riot Site can help bring greater attention to this chapter in American history. The National Park Service has recognized the historical significance of this site to civil rights history by adding it to the African American Civil Rights Network.

Preservation of the Springfield 1908 Race Riot Site will protect the objects of historic interest found therein from removal, development, or other activities that could erase their presence in the area. It will also ensure that the site and its objects remain available for future generations to learn

about the Springfield 1908 Race Riot and how this brutal event near President Lincoln's home underscored the pattern of racially motivated violence perpetrated on Black people throughout the country and catalyzed the formation of the NAACP. Ida B. Wells-Barnett, one of the co-founders of the NAACP and a national hero who led the campaign against lynching, described the Springfield 1908 Race Riot as showing that "the hue and cry once started stops at no bounds." Protecting the Springfield 1908 Race Riot Site is essential to preserve and narrate the history that galvanized civil rights leaders to establish an institution to work for real and lasting change, creating hope for our democracy out of the embers of this neighborhood in Springfield, Illinois.

WHEREAS, section 320301 of title 54, United States Code (the "Antiquities Act"), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected; and

WHEREAS, the Springfield 1908 Race Riot Site preserves some of the last remaining objects of historic interest from the Springfield 1908 Race Riot, memorializes the area where these tragic and notorious events occurred, and has been found to meet the criteria for national significance by the National Park Service in its June 2023 Special Resource Study; and

WHEREAS, the City of Springfield, Illinois, has expressed support for the establishment of a national monument to be administered by the National Park Service; and

WHEREAS, the City of Springfield has donated fee interest in approximately 0.39 acres of city-owned land within the Springfield 1908 Race Riot Site to the National Park Foundation; and

WHEREAS, St. John's Hospital of the Hospital Sisters of the Third Order of St. Francis has donated fee interest in approximately 1.18 acres of land within the Springfield 1908 Race Riot Site to the National Park Foundation; and

WHEREAS, the National Park Foundation has relinquished and conveyed all of the lands and interests in lands associated with the Springfield 1908 Race Riot Site described above to the Federal Government for the purpose of establishing a unit of the National Park System; and

WHEREAS, the City of Springfield owns additional land within the Springfield 1908 Race Riot Site that potentially contains archeological artifacts and has indicated an interest in making further land donations in the future; and

WHEREAS, the designation of a national monument to be administered by the National Park Service would recognize the historic significance of the Springfield 1908 Race Riot Site, particularly the events that took place at these locations from August 14–16, 1908, and their role in inspiring the formation of a national civil rights organization, and would provide a national platform for preserving and interpreting this important history; and

WHEREAS, I find that all the objects identified above, and objects of the type identified above within the area described herein, are objects of historic interest in need of protection under section 320301 of title 54, United States Code, regardless of whether they are expressly identified as objects of historic interest in the text of this proclamation; and

WHEREAS, I find that the boundaries of the monument reserved by this proclamation represent the smallest area compatible with the proper care and management of the objects of historic interest identified above, as required by the Antiquities Act; and

WHEREAS, it is in the public interest to preserve and protect the objects of historic interest associated with the Springfield 1908 Race Riot;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be part of the Springfield 1908 Race Riot National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described on the accompanying map, which is attached to and forms a part of this proclamation. The reserved Federal lands and interests in lands within the monument's boundaries encompass approximately 1.57 acres. The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws, including withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The establishment of the monument is subject to valid existing rights. If the Federal Government acquires any lands or interests in lands not owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as part of the monument, and objects of the type identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

The Secretary of the Interior shall manage the monument through the National Park Service, pursuant to applicable legal authorities and consistent with the purposes and provisions of this proclamation. For the purpose of preserving, interpreting, and enhancing the public understanding and appreciation of the monument, the Secretary of the Interior, through the National Park Service, shall prepare a management plan for the monument. The management plan shall ensure that the monument fulfills the following purposes for the benefit of present and future generations: (1) to preserve the historic and cultural resources within the boundaries of the monument; (2) to interpret the story of the Springfield 1908 Race Riot and its significance to the history of racial violence that occurred across the Nation; and (3) to commemorate the history of the Civil Rights Movement and civic leaders' work to build transformative organizations, including the NAACP. The National Park Service shall develop the management plan in consultation with local communities, organizations, and the general public to set forth the desired relationship of the monument to and support for other sites evaluated in the Springfield Race Riot Special Resource Study such as the Badlands Riot Area, the Levee Riot Area, the Sangamon County Courthouse/Old State Capitol, Firehouse No. 5, the home of Mabel Hallam, Kate Howard's Boarding House, the site of Scott Burton's lynching, the site of William Donnegan's lynching, the Illinois Executive Mansion, Camp Lincoln, St. John's Hospital, and the gravesites of Scott Burton and William Donnegan in Oak Ridge Cemetery.

The National Park Service shall consult with appropriate Federal, State, and local agencies and nongovernmental organizations in planning for interpretation, appropriate commemorative design, and visitor access and services at the monument.

The National Park Service is directed, as appropriate, to use applicable authorities to seek to enter into agreements with other entities to address

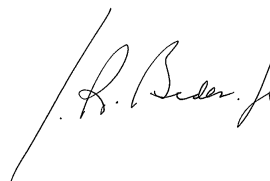
common interests and promote management efficiencies, including the provision of visitor services, interpretation and education, establishment and care of museum collections, and commemoration and preservation of historic objects. These entities may include the Lincoln Presidential Foundation, the NAACP, the Springfield and Central Illinois African American History Museum, and the American Civil Liberties Union.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof.

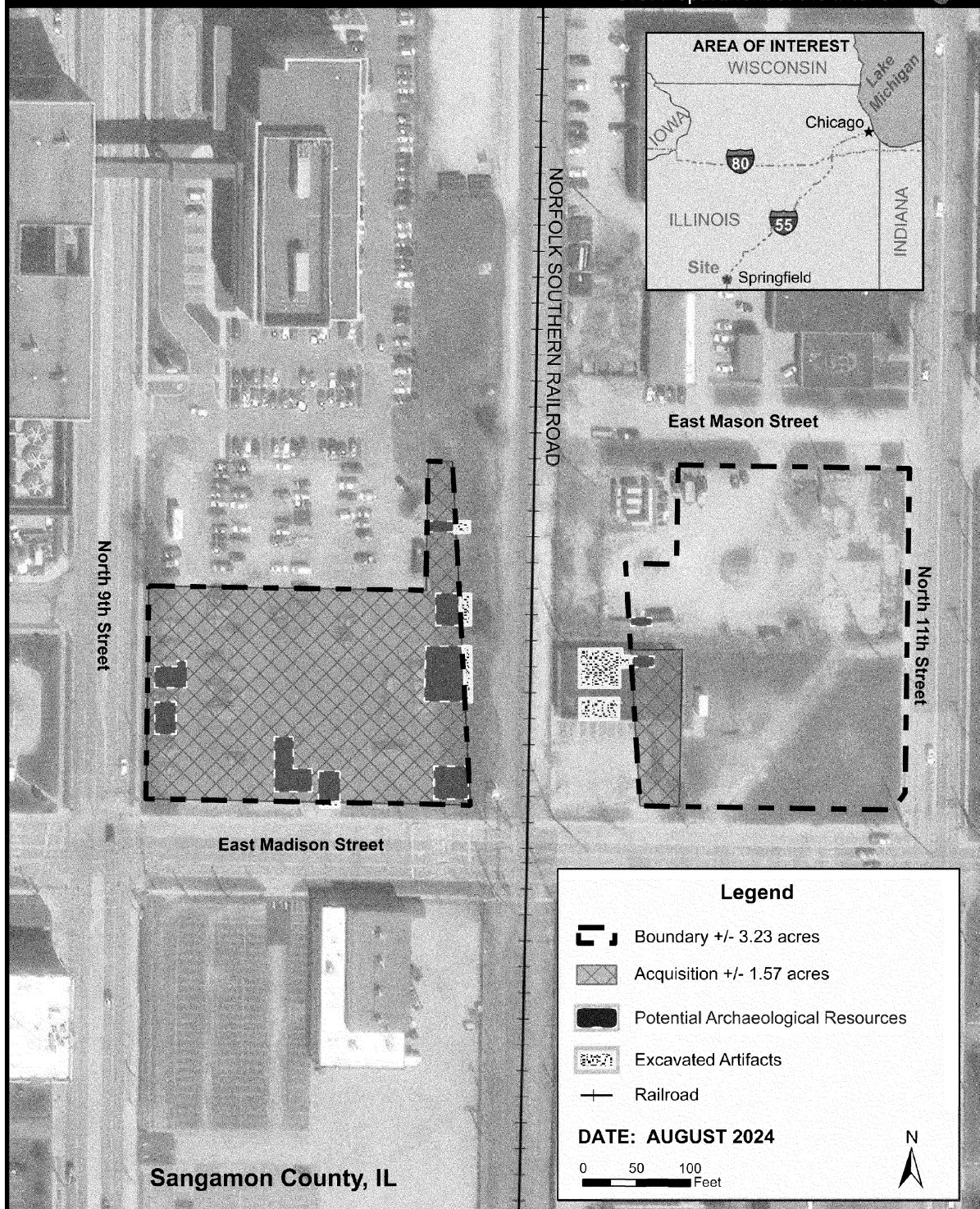
If any provision of this proclamation, including its application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth 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 extends from the bottom left towards the top right.

Springfield 1908 Race Riot National Monument

National Park Service
U.S. Department of the Interior



[FR Doc. 2024-18999

Filed 8-21-24; 8:45 am]

Billing code 4310-10-C

Rules and Regulations

Federal Register

Vol. 89, No. 163

Thursday, August 22, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

[Docket ID: OPM-2024-0006]

RIN 3206-AO68

Prevailing Rate Systems; Abolishment of Frederick, Maryland, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Frederick, Maryland, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and define Frederick County, MD, to the Anne Arundel, MD, NAF FWS wage area, and Berkeley County, West Virginia, to the Washington, DC, NAF FWS wage area. These changes are necessary because NAF FWS employment in the survey area is now below the minimum criterion of 26 wage employees to maintain a wage area, and the local activities no longer have the capability to conduct local wage surveys.

DATES:

Effective date: This regulation is effective September 23, 2024.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after September 23, 2024.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606-2858 or by email at paypolicy@opm.gov.

SUPPLEMENTARY INFORMATION: On April 10, 2024, OPM issued a proposed rule (89 FR 25186) to abolish the Frederick, MD, NAF FWS wage area and define Frederick County, MD, to the Anne Arundel, MD, NAF FWS wage area, and Berkeley County, WV, to the Washington, DC, NAF FWS wage area. The Federal Prevailing Rate Advisory

Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus.

The proposed rule had a 30-day comment period, during which OPM received no comments. Therefore, this final rule adopts the proposed rule at 89 FR 25186 without change.

Expected Impact of This Rule

Section 5343 of title 5, U.S. Code, provides OPM with the authority and responsibility to define the boundaries of NAF FWS wage areas. Any changes in wage area definitions can have the long-term effect of increasing pay for Federal employees in affected locations. OPM expects this final rule to impact approximately 20 NAF FWS employees. Considering the small number of employees affected, OPM does not anticipate this rule will substantially impact local economies or have a large impact in local labor markets. As this and future wage area changes may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets, OPM will continue to study the implications of such impacts in future rules as needed.

Regulatory Review

Executive Orders 13563, 12866, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule is not a “significant regulatory action” under the provisions of Executive Order 14094 and, therefore, was not reviewed by OMB.

Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles and

responsibilities of State, local, or tribal governments.

Civil Justice Reform

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

Unfunded Mandates Act of 1995

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

Congressional Review Act

OMB’s Office of Information and Regulatory Affairs has determined this rule does not satisfy the criteria listed in 5 U.S.C. 804(2). OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date.

Paperwork Reduction Act

This rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kayyonne Marston,
Federal Register Liaison.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, amend the table by revising the wage area listings for the District of Columbia and the State of Maryland to read as follows:

Appendix D to Subpart B of Part 532— Nonappropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

DISTRICT OF COLUMBIA

Washington, DC

Survey Area

District of Columbia:

Washington, DC

Area of Application. Survey Area Plus:

West Virginia:

Berkeley

* * * * *

MARYLAND

Anne Arundel

Survey Area

Maryland:

Anne Arundel

Area of Application. Survey Area Plus:

Maryland (city):

Baltimore

Maryland (counties):

Baltimore

Frederick

Charles-St. Mary's

Survey Area

Maryland:

Charles

St. Mary's

Area of Application. Survey Area Plus:

Maryland:

Calvert

Virginia:

King George

Harford

Survey Area

Maryland:

Harford

Area of Application. Survey Area Plus:

Maryland:

Cecil

Montgomery-Prince George's

Survey Area

Maryland:

Montgomery

Prince George's

Area of Application. Survey Area.

* * * * *

[FR Doc. 2024-18740 Filed 8-21-24; 8:45 am]

BILLING CODE 6325-39-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC-2023-0210]

RIN 3150-AL09

Administrative Changes to Agency Rules of Practice and Procedure

AGENCY: Nuclear Regulatory
Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to revise the agency's rules of practice and procedure to improve access to documents and make e-filing rules technology neutral, to delete an obsolete regulation, to clarify the applicability of subpart L and subpart N procedures, to enhance internal consistency for page limit requirements, to enhance consistency with the Federal Rules of Evidence for "true copies," and to better reflect current Atomic Safety and Licensing Board Panel practice regarding admission of evidence.

DATES: The final rule is effective November 5, 2024, unless significant adverse comments are received by September 23, 2024. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Please refer to Docket ID NRC-2023-0210 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0210. Address questions about NRC dockets to Helen Chang; telephone: 301-415-3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at

<https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov.

- **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, Monday through Friday, except Federal holidays.

You can read a plain language description of this direct final rule at <https://www.regulations.gov/docket/NRC-2023-0210>. 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:

Ethan Licon, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1016, email: Ethan.Licon@nrc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Discussion
- V. Plain Writing
- VI. National Environmental Policy Act
- VII. Paperwork Reduction Act
- VIII. Congressional Review Act

I. Obtaining Information and Submitting Comments

A. Obtaining Information

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415–4737, or by email to PDR.Resource@nrc.gov.

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B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2023–0210 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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is using the “direct final rule procedure” for this rule. This amendment is effective on November 5, 2024. However, if the NRC receives significant adverse comments on this direct final rule by September 23, 2024, then the NRC will publish a document that withdraws this action and will address the comments received in a subsequent final rule or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or

unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

III. Background

The NRC's regulations governing the conduct of adjudicatory proceedings before the agency are contained in part 2 of title 10 of the Code of Federal Regulations (10 CFR), “Agency Rules of Practice and Procedure.” Periodically, the NRC has amended these rules, including adopting changes in 2004 to enhance efficiency; in 2012 to promote fairness, efficiency, and openness; in 2016 to reflect technological advances and current agency practice; and in 2020 to reflect Commission case law, Supreme Court precedent, and current agency practice. Since the last update to the agency's rules of practice and procedure, the NRC has identified additional provisions that should be updated to improve access to documents and make e-filing rules technology neutral, to delete an obsolete regulation, to clarify the applicability of Subpart L and Subpart N procedures, to enhance internal consistency for page limit requirements, to enhance consistency with the Federal Rules of Evidence for “true copies,” and to better reflect current Atomic Safety and Licensing Board Panel practice regarding admission of evidence.

IV. Discussion

Improving E-Filing and Access to Documents

This direct final rule makes targeted changes to §§ 2.4, 2.302, 2.304, 2.305, and 2.306 to clarify and make technology neutral the description of

the NRC's E-Filing system in 10 CFR part 2. Most significantly, this direct final rule eliminates references to “digital ID certificate” and “digital ID certificates” throughout 10 CFR part 2. The NRC is removing the definitions for “Digital ID certification” and “NRC Public Document Room,” revising existing definitions for “Electronic Hearing Docket” and “Public Document Room,” and adding new definitions for “Identification and authentication,” and “Portable storage media.” The NRC anticipates that future updates to its E-Filing system will eliminate the need for participants to obtain digital ID certificates and will instead use a more modern method for electronic identification and credentialing. Therefore, these changes will revise 10 CFR part 2 to accommodate methods of electronic identification and credentialing other than the use of digital ID certificates. These changes also will clarify the requirements related to exemptions from the use of the E-filing system and specify email as an alternative filing method pursuant to an exemption.

Settlement and Compromise

This direct final rule removes and reserves § 2.203. Section 2.203 currently applies to settlement and compromise in enforcement proceedings; however, § 2.203 is duplicative of § 2.338(i), which governs settlement generally. This change also is consistent with the apparent intent of the Commission to delete § 2.203 in the 2004 revision to part 2 (69 FR 2182, 2225), which consolidated settlement requirements into § 2.338 and removed other references to “Chief Administrative Law Judge.”

Admissibility of Duplicates

This direct final rule revises §§ 2.337(d) and 2.711(b) and (h) to use consistent terminology with Rule 1003 of the Federal Rules of Evidence, “Admissibility of Duplicates,” which provides that a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. As a result, this revision would streamline the process for the admission of duplicates. In addition, this direct final rule revises these regulations to enhance consistency with the Atomic Safety and Licensing Board Panel's practice for marking exhibits.

Applicability of Subpart L Procedures

This direct final rule revises § 2.1200 to clarify the scope of Subpart L as not governing all proceedings and to

simplify text that was duplicative of 10 CFR 2.310.

Applicability of Subpart N Procedures

This direct final rule revises § 2.1400 to clarify the scope of Subpart N as an opt-in set of procedures available for certain proceedings and to simplify text that was duplicative of 10 CFR 2.310.

Page Limits for Petitions for Review

This direct final rule revises § 2.341(b)(2) to make the page-limit requirement for petitions for review consistent with the page-limit requirement in 10 CFR 2.341(c) for briefs upon review by increasing the page limit for petitions for review from twenty-five (25) pages to (30) thirty pages.

Time To Request a Stay Under § 2.1213(a)

This direct final rule revises § 2.1213(a) by increasing the time to file a request for a stay of staff action under § 2.1202(a) from 5 days to 7 days. This change will make the time to file a request for a stay consistent, regardless of the day of the week staff issues a notification of license issuance pursuant to § 2.1202(a).

Written Testimony in Subpart G Proceedings

This direct final rule revises § 2.711(b) to reflect current Atomic Safety and Licensing Board Panel practice by requiring written testimony to be offered and admitted into evidence as an exhibit rather than requiring the written testimony to be incorporated into the transcript of record as if read, though it may still be incorporated into the transcript as if read at the discretion of the presiding officer.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

X. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor

environmental assessment has been prepared for this final rule.

XI. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

XII. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 2. In § 2.4:

■ a. Remove the definition of “Digital ID certificate”;

- b. Revise the definition of “Electronic Hearing Docket”;
- c. Add in alphabetical order a definition for “Identification and authentication”;
- d. Remove the definition of “NRC Public Document Room”;
- e. Add in alphabetical order a definition for “Portable storage media”; and
- f. Revise the definition of “Public Document Room”.

The revisions and additions read as follows:

§ 2.4 Definitions.

* * * * *

Electronic Hearing Docket means the publicly available NRC information system that receives, stores, and provides online access via the NRC website to all publicly filed documents in NRC adjudications and to non-publicly filed documents for authorized participants pursuant to a protective order and that is available for use during a hearing to the extent circumstances, including the availability of internet access, permit.

* * * * *

Identification and authentication means the use of the NRC’s electronic credentialing program to validate a participant’s identity.

* * * * *

Portable storage media means a physical piece of hardware that can be added to and removed from a computing device or network for the purpose of transferring or storing electronic files. Examples include, but are not limited to, optical storage media such as CDs and DVDs as well as non-optical media such as solid-state drives and flash drives.

* * * * *

Public Document Room means the facility at the NRC at which agency public records will ordinarily be made available for inspection.

* * * * *

§ 2.203 [Removed and Reserved]

■ 3. Remove and reserve § 2.203.

§ 2.302 [Amended]

■ 4. In § 2.302:

- a. Amend paragraph (a) by removing the reference “(g)(1)” and adding in its place the reference “(h)(1) or (2)”;
- b. Amend paragraph (b)(1) by removing “or” at the end of the paragraph;
- c. Amend paragraph (b)(2) by removing the period and adding in its place “; or”;
- d. Add paragraph (b)(3);
- e. Revise paragraphs (d)(4), (f), and (g); and

■ f. Add paragraph (h).

The additions and revisions read as follows:

§ 2.302 Filing of documents.

(b) * * *

* * * * *

(3) Email: *Hearing.Docket@nrc.gov*.

* * * * *

(d) * * *

(4) If a filing must be submitted by two or more methods, such as a filing that must be transmitted electronically as well as physically delivered or mailed on portable storage media as described in paragraph (g)(2) of this section, the filing is complete when all methods of filing have been completed.

* * * * *

(f) *Identification and authentication.*

(1) The NRC provides identification and authentication services that permit participants in the proceeding to access the E-Filing system to file documents, serve other participants, and retrieve documents electronically filed in the proceeding.

(2) Any participant or participant representative that does not have an identification and authentication credential must request one from the NRC before that participant or representative intends to make its first electronic filing to the E-Filing system. A participant or representative may apply for an identification and authentication credential on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

(g) *Filing method requirements.* (1) Unless otherwise provided by order, all filings must be made in an electronic format (*i.e.*, computer files) via the E-Filing system in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the filing, and process and retrieve it a single page at a time. Detailed guidance on electronic formats that will meet these requirements may be found on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

(2) If a filing contains electronic portions that may not be transmitted via the E-Filing system for reasons of security or electronic format (as defined in paragraph (g)(1)), the portions not containing those sections must be transmitted electronically via the E-Filing system. In addition, portable storage media containing the entire electronic filing must be physically delivered or mailed.

(3) When an electronically formatted image or graphic of a physical object would not provide sufficient contextual value, the physical object may be physically delivered or mailed for inclusion in the adjudicatory record.

(4) In the circumstances described in paragraphs (g)(2) and (3) of this section, the submitter does not need to apply to the Commission or presiding officer for an exemption to deviate from the requirements in paragraph (g)(1) of this section.

(h) *Electronic filing exemptions—*(1) *Exemption from electronic transmission via the E-Filing system.* Upon a finding of good cause, the Commission or presiding officer may grant an exemption from the electronic transmission requirements found in paragraph (g)(1) of this section to a participant who is filing electronic documents. The exempt participant is permitted to file and serve electronic documents by email or by physically delivering or mailing portable storage media containing the documents. A participant granted this exemption would still be required to meet the electronic formatting requirements in paragraph (g)(1) of this section.

(2) *Exemption from electronic formatting and electronic transmission requirements.* Upon a finding of good cause, the Commission or presiding officer can exempt a participant from both the electronic formatting and electronic transmission requirements in paragraph (g) of this section. A participant granted such an exemption can file and serve paper documents either in person or by courier, express mail, some other expedited delivery service, or first-class mail, as ordered by the Commission or presiding officer.

(3) *Requesting an exemption.* A filer seeking an exemption under paragraph (h)(1) or (2) of this section must submit the exemption request with its first filing in the proceeding. In the request, a filer must show good cause as to why it cannot file electronically. The filer may not change its formats or delivery methods for filing until a ruling on the exemption request is issued. Exemption requests under paragraph (h)(1) or (2) of this section sought after the first filing in the proceeding will be granted only if the requestor shows that the interests of fairness so require.

■ 5. In § 2.304, revise the first sentence in paragraph (d)(1) introductory text and revise paragraphs (d)(1)(i) and (ii) to read as follows:

§ 2.304 Formal requirements for documents; signatures; acceptance for filing.

* * * * *

(d) * * *

(1) An electronic document must be signed using a participant's or a participant representative's identification and authentication credential. * * *

(i) When signing an electronic document using an identification and authentication credential, the signature page for the electronic document should contain a typed signature block that includes the phrase "Signed (electronically) by" typed onto the signature line; the name and the capacity of the person signing; the person's address, phone number, and email address; and the date of signature.

(ii) If additional individuals need to sign an electronic document, including any affidavits that accompany the document, such individuals must sign by inserting a typed signature block in the electronic document that includes the phrase "Executed in Accord with 10 CFR 2.304(d)" or its equivalent typed on the signature line as well as the name and the capacity of the person signing; the person's address, phone number, and email address; and the date of signature to the extent any of these items are different from the information provided for the credentialed signer.

* * * * *

■ 6. In § 2.305:

■ a. Amend the second sentence of paragraph (c) introductory text by removing the word "Upon" and adding in its place the phrase "In accordance with § 2.302(g)(2) or (3) or upon";

■ b. Revise paragraph (c)(2);

■ c. Amend paragraph (c)(3) by removing "§ 2.302(g)(3)" and adding in its place "§ 2.302(h)(2)";

■ d. Amend paragraph (e)(2) by removing the phrase "courier, express mail, or expedited delivery service" and adding in its place "other service methods permitted by NRC regulations";

■ e. Amend paragraph (e)(4)(ii) by removing "and" at the end;

■ f. Amend paragraph (e)(4)(iii) by removing the period and adding "; and" in its place; and

■ g. Add paragraph (e)(4)(iv).

The revision and addition read as follows:

§ 2.305 Service of documents, methods, proof.

* * * * *

(c) * * *

(2) A participant granted an exemption under § 2.302(h)(1) will serve the presiding officer and the participants in the proceeding that filed electronically by email or by physically delivering or mailing portable storage media containing the electronic document.

* * * * *

(e) * * *

(iv) Email: *Hearing.Docket@nrc.gov*.

* * * * *

§ 2.306 [Amended]

■ 7. In § 2.306, amend the first sentence of paragraph (b)(3) by removing the word “optical” and adding in its place the word “portable”.

■ 8. In § 2.337, revise paragraph (d) to read as follows:

§ 2.337 Evidence at a hearing.

* * * * *

(d) *Exhibits*. Exhibits must be marked in accordance with any instructions provided by the presiding officer. Exhibits must be filed through the agency’s E-Filing system, unless the presiding officer grants an exemption permitting an alternative filing method under § 2.302(h)(1) or (2) or unless the filing falls within the scope of § 2.302(g)(2) or (3) as not being subject to electronic transmission. When an exhibit is not filed through the E-Filing system, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate. Information that a party references through hyperlinks in an exhibit must be submitted by that party, in its entirety, either as part of the exhibit or as a separate exhibit, for that information to be included in the evidentiary record.

* * * * *

§ 2.341 [Amended]

■ 9. In § 2.341, amend paragraph (b)(2) introductory text by removing the phrase “twenty-five (25) pages” and adding in its place the phrase “thirty (30) pages”.

■ 10. In § 2.711, revise paragraphs (b) and (h) to read as follows:

§ 2.711 Evidence.

* * * * *

(b) *Testimony*. The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on every other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony must be offered and admitted in evidence as an exhibit or, in the discretion of the presiding officer, may be incorporated

into the transcript of the record as if read.

* * * * *

(h) *Exhibits*. Exhibits must be marked in accordance with any instructions provided by the presiding officer. Exhibits must be filed through the agency’s E-Filing system, unless the presiding officer grants an exemption permitting an alternative filing method under § 2.302(h)(1) or (2) or unless the filing falls within the scope of § 2.302(g)(2) or (3) as not being subject to electronic transmission. When an exhibit is not filed through the E-Filing system, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate. Information that a party references through hyperlinks in an exhibit must be submitted by that party, in its entirety, either as part of the exhibit or as a separate exhibit, for that information to be included in the evidentiary record.

* * * * *

■ 11. Revise § 2.1200 to read as follows:

§ 2.1200 Scope of this subpart.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70, and 72 of this chapter, except as determined through the application of § 2.310(b) through (h).

§ 2.1213 [Amended]

■ 12. In § 2.1213, amend paragraph (a) by removing the phrase “five (5) days” and adding in its place the phrase “seven (7) days”.

■ 13. Revise § 2.1400 to read as follows:

§ 2.1400 Purpose and scope of this subpart.

The purpose of this subpart is to provide simplified procedures for the expeditious resolution of disputes among parties in an informal hearing process. The provisions of this subpart, together with subpart C of this part, govern adjudicatory proceedings that the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request/petition determine will be conducted under this subpart in accordance with § 2.310.

Dated: August 1, 2024.

For the Nuclear Regulatory Commission.

Mirela Gavrilas,

Executive Director for Operations.

[FR Doc. 2024–18742 Filed 8–21–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 11, 91, 135, and 136

[Docket No.: FAA–2023–2250; Amdt. Nos. 1–76, 11–66, 91–376, 135–146, and 136–3]

RIN 2120–AL37

Use of Supplemental Restraint Systems

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule prohibits civil aircraft operations conducted with supplemental restraint systems (SRS) unless operators meet certain requirements for ensuring passenger and crewmember safety during all phases of the operation. The FAA expects these requirements to increase the safety of individuals on board civil aircraft operations conducted with SRS. This rule addresses recommendations from the National Transportation Safety Board and the Department of Transportation Office of Inspector General. Additionally, this rule will codify, with updates, an Emergency Order of Prohibition currently in effect addressing safety concerns regarding the use of supplemental restraints. The rule applies to all civil aircraft operations conducted with use of SRS. The rule does not apply to parachute operations, rotorcraft external-load operations, or public aircraft operations.

DATES: Effective October 21, 2024.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How to Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Raymond Plessinger, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–1100; email Raymond.Plessinger@faa.gov.

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

IRFA—Initial Regulatory Flexibility Analysis
 LOA—Letter of Authorization
 NAICS—North American Industry Classification System
 NPRM—Notice of Proposed Rulemaking
 NTSB—National Transportation Safety Board
 OEM—Original Equipment Manufacturer
 OMB—Office of Management and Budget
 PIC—Pilot in Command
 RFA—Regulatory Flexibility Act
 SBA—Small Business Administration
 SPRS—Supplemental Passenger Restraint System(s)
 SRS—Supplemental Restraint System(s)
 STC—Supplemental Type Certificate

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I. Executive Summary

A. Purpose of the Regulatory Action

This final rule addresses the use of supplemental restraint systems (SRS) in civil aircraft operations. An SRS is a device used to secure an individual inside an aircraft when that person is not secured by an FAA-approved safety belt and, if installed, shoulder harness, or an approved child restraint system. SRS are not installed on the aircraft pursuant to a Type Certificate, Supplemental Type Certificate, approved major alteration, or other FAA approval. An SRS consists of a harness secured around the torso of the individual using the SRS and a lanyard that connects the harness to an FAA-approved airframe attachment point inside the aircraft.

On March 11, 2018, five passengers drowned when the open-door helicopter in which they were traveling ditched¹ on the East River in New York, New York. They were unable to exit the aircraft because the harness/tether system each used hindered their egress. As a result of preliminary information discovered during the investigation of this accident, on March 19, 2018, the National Transportation Safety Board (NTSB) issued Urgent Safety Recommendation A–18–012, which recommended that the FAA prohibit all open-door aircraft operations using passenger harness systems unless the harness system allows passengers to rapidly release the harness with minimal difficulty and without having to cut or forcefully remove the harness.² On March 22, 2018, the FAA issued an Emergency Order of Prohibition titled “Operators and Pilots of ‘Doors Off’ Flights for Compensation or Hire”³ to all operators and pilots of flights for

compensation or hire with the doors opened or removed in the United States or using aircraft registered in the United States for doors-off flights. The Emergency Order of Prohibition prohibits the use of supplemental passenger restraint systems (SPRS) that cannot be released quickly in an emergency.⁴ At the time of the accident, no rules specifically addressed aircraft operations conducted with the use of SRS,⁵ including during operations with doors opened or removed.

B. Summary of the Rule

On November 21, 2023, the FAA published a notice of proposed rulemaking (NPRM) proposing to prohibit civil aircraft operations conducted with SRS unless operators meet certain requirements for ensuring passenger and crewmember safety during all phases of the operation.⁶ After the comment period closed January 22, 2024, the FAA reviewed the ten comments to the NPRM. This rule finalizes the NPRM as proposed, with a few revisions for clarity as discussed throughout this preamble.

This final rule addresses recommendations from the NTSB and the Department of Transportation Office of Inspector General.⁷ Additionally, this final rule codifies, with updates, an Emergency Order currently in effect addressing safety concerns regarding the use of supplemental restraints.

Generally, this final rule prohibits civil aircraft operations when individuals are secured by SRS except as provided in § 91.108. In addition, flight operations with doors opened or removed are prohibited when individuals are using SRS except under two scenarios. The first scenario is when each individual⁸ occupies an

⁴ The term “supplemental passenger restraint system,” as defined in the March 22, 2018, Emergency Order of Prohibition, means any passenger restraint that is not installed on the aircraft pursuant to an FAA approval, including (but not limited to) restraints approved through a Type Certificate, Supplemental Type Certificate, or as an approved major alteration using FAA Form 337.

⁵ The FAA uses the term “supplemental restraint system” (SRS) to refer to the device in general, but for the purposes of this rulemaking document, uses the term “supplemental passenger restraint system” (SPRS) when quoting or referring to documents that use the term “SPRS” (e.g., The Emergency Order of Prohibition). The FAA considers the two terms to be synonymous.

⁶ *Use of Supplemental Restraint Systems* NPRM, 88 FR 80997 (Nov. 21, 2023).

⁷ The SRS NPRM provides detailed information regarding the NTSB and the Department of Transportation’s recommendations, and how the FAA addressed those recommendations. See 88 FR 80999 through 81001.

⁸ The FAA uses two categories to define those who travel on aircraft: crewmember and passenger.

FAA-approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about them or occupies a properly secured and approved child restraint system during the entire flight. The second scenario is if each individual occupies an FAA-approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about them during movement on the surface, takeoff, and landing; during other phases of flight, if permitted by the pilot in command (PIC),⁹ the individual may use an SRS that meets all requirements in this rule. The operator generally will provide the SRS to individuals who seek to use the SRS during the flight, but in some cases, an individual may opt to provide their own SRS if it meets the requirements of this rule and the PIC approves use of the SRS.

This final rule requires the SRS to have a release mechanism that can be operated quickly by the passenger using the SRS with minimal difficulty. The release mechanism must be located on the front or side of the harness in a place easily accessible to and visible by the individual using the SRS and must prevent inadvertent release. Also, the release mechanism cannot require the use of a knife to cut the restraint, the use of any other additional tool, or the assistance of any other individual to release the SRS. This final rule also requires the SRS to not impede egress from the aircraft in an emergency after being released.

This final rule requires the SRS to be connected to an FAA-approved airframe attachment point or points rated equal to or greater than the combined weight of all the individuals using an SRS attached to that same point, but it cannot be connected to any airframe attachment point located in the flightdeck. Additionally, the rule requires that the SRS lanyard secures around the torso of the individual using the SRS and ensures the torso of the individual remains inside the aircraft at all times. The rule also prohibits the SRS from connecting to any seatbelt or shoulder harness attachment point unless the attachment point is FAA-approved, and nothing may attach to the SRS that is not relevant to its function. In addition, the SRS must fit the

individual using it based on the sizing criteria for which the SRS is rated.

This final rule also requires operators conducting flight operations where passengers use an SRS to provide an enhanced passenger safety briefing. Further, this rule requires passengers who seek to use an SRS during flight operations to demonstrate their ability to use, secure, and release the FAA-approved safety belts and, if installed, shoulder harnesses, as well as their ability to release quickly the SRS with no assistance and with minimal difficulty. A passenger who cannot meet the demonstration requirements of the rule is prohibited from using an SRS; however, they would be permitted to participate in the flight if they occupy an FAA-approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about them during operations when the doors are opened or removed or when otherwise required by regulations. Only those passengers who have reached their fifteenth birthday can use an SRS during flight operations, and no individual using an SRS can occupy a seat in the flightdeck. In addition, this final rule prohibits individuals who occupy a child restraint system from also using an SRS. It also prohibits a child who is less than two years old from being held (1) by an adult who is using an SRS or (2) when the aircraft doors are opened or removed even if the adult is properly secured by an FAA-approved safety belt.

Finally, the rule outlines the responsibilities of the PIC, including determining whether an SRS complies with the requirements of the rule and whether SRS may be used during flight operations.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I of 49 U.S.C., specifically section 106, describes the authority of the FAA Administrator. Subtitle VII of 49 U.S.C., Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA promulgates this rulemaking under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

III. Background

A. General Overview of Comments

The FAA received and considered 10 comments on the NPRM, four of which were from organizations: Condon & Forsyth, Helicopter Association International (HAI), the NTSB, and Tuckamore Aviation. Four of the commenters supported the rule with no changes, five commenters expressed support but also proposed changes, and one commenter opposed the proposed rule in its entirety.

B. Differences Between the NPRM and the Final Rule

This rule finalizes the NPRM as proposed with a few revisions to maximize clarity or after consideration in response to comments. The FAA is updating § 91.108 paragraphs (b)(2), (c)(2), (e)(1)(i), and the definition of "supplemental restraint system" to include "FAA-approved" airframe attachment point to ensure that the SRS can only be attached to an airframe attachment point when the FAA has determined that point complies with the applicable part 21 approval requirements. The FAA is also adding a prohibition that the SRS cannot be connected to any seatbelt or shoulder harness attachment point(s) unless the attachment is FAA-approved as described in § 91.108 paragraph (e)(1)(i). The FAA is amending the proposed regulatory text to prohibit anything from attaching to the SRS that is not relevant to its function. The FAA also is moving the SRS definition from § 91.108 to § 1.1. Finally, the FAA made some grammatical changes to the regulatory text that are technical in nature and that do not substantively change the previous intent of the provisions.

IV. Discussion of Comments and the Final Rule

A. Prohibitions Applicable to SRS and Doors Opened or Removed Flight Operations (§ 91.108(a) and (b))

The FAA proposed in § 91.108(a) that, except as provided in this rule, no person may conduct a civil aircraft operation in which any individual on board is secured with an SRS. The FAA also proposed in § 91.108(b) that no person may operate a civil aircraft with the doors opened or removed unless (1) each individual on board occupies an approved seat or berth with a safety belt and, if installed, shoulder harness during all phases of flight or (2) each individual occupies an approved seat or berth with a safety belt and, if installed, shoulder harness during movement on the surface, takeoff, and landing and is

In this rule, the agency uses that distinction when referring specifically to a crewmember or a passenger. When the distinction between a crewmember and a passenger is not applicable, the agency uses the word "individual" when referring to anyone who occupies an SRS.

⁹ Under 14 CFR 91.3, the PIC is the final authority as to the operation of the aircraft. The PIC may determine it is unsafe to allow the use of SRS during a phase of flight that would otherwise be allowed.

secured for the remainder of the flight by an SRS. As part of the proposal, the FAA applied some of the requirements to all “individuals” using an SRS, not just passengers.

Tuckamore Aviation commented that the rule should only apply to passengers and not crewmembers because it introduces conflicting definitions and requirements to existing safety guidance, established equipment use, and practices and procedures established by other government agencies for crewmembers. Further, Tuckamore Aviation commented that all public aircraft operations need to be exempt from proposed 14 CFR 91.108.

The FAA disagrees with Tuckamore Aviation’s assertion that the rule should only apply to passengers and not crewmembers. Applying the rule to all individuals on board the aircraft will help mitigate the risks associated with using SRS, particularly during operations with doors opened or removed, and will ensure the highest level of safety when conducting such operations. The safety risks involved in operations using SRS do not apply only to passengers—they apply to all individuals on board, including the crew. As a result, to ensure the safety of all individuals secured by an SRS during civil aircraft operations, the FAA finalizes the language as proposed and applies the requirements of the rule (with the exception of the passenger briefing and demonstration) to all individuals, not just passengers onboard the aircraft.

The FAA agrees with Tuckamore that all public aircraft operations (PAO) should be exempt from the rule, but it disagrees with Tuckamore’s characterization of PAO. The status of an aircraft operation is either civil or public. If an aircraft is operating under public status, § 91.108 would not apply. If an aircraft is operating under civil status, § 91.108 would apply unless the operator applies for an exemption. Contrary to Tuckamore’s assertion, operations conducted by civil aircraft under contract with a valid government entity do constitute PAO as long as the contracting entity has filed a declaration letter with the local Flight Standards District Office (FSDO). Otherwise, the FAA considers the operator to be operating under civil status. Moreover, operations by a PAO contractor are, and must be, distinguishable from their civil aircraft operations. There is no mixed status of both civil and public aircraft operations. PAO status is determined on a flight-by-flight basis, and the operator should determine the nature of the flight prior to the operation to determine the applicability of § 91.108 to its

operation.¹⁰ As a result of the foregoing, the FAA adopts the language as proposed and applies § 91.108 to civil aircraft operations, thereby excluding public aircraft operations. The FAA removed the word “registered” from proposed § 91.108(a) and (b)(1) as it is redundant to the rule’s application to civil aircraft—this revision does not change the applicability of this section.

Finally, the FAA notes that it amended the language in § 91.108 paragraphs (a) and (b)(2). In paragraph (a), the FAA made a technical amendment by adding a cross-reference to the definition of “supplemental restraint system” under § 1.1, further highlighting that the term is formally defined under § 1.1.¹¹ The FAA also amended paragraph (b)(2) by adding a reference to an “FAA-approved” airframe attachment point. This change reflects a similar change made in paragraph (e)(1)(i) in response to comments, and it highlights the fact that an SRS can only be attached to an airframe attachment point when the FAA has determined that point complies with the applicable part 21 approval requirements.¹² As a result, the FAA is adopting the language in paragraphs (a) and (b)(2) as amended.

B. Harness and Lanyard (§ 91.108(c)(1) and (2))

The FAA proposed that each SRS have a harness that secures around the individual’s torso and a lanyard that connects the harness to an airframe attachment point or points, ensuring that the individual’s torso remains inside the aircraft at all times. The FAA did not receive comments on this proposed provision; however, as with paragraph (b)(2), the FAA has included “FAA-approved” in reference to the attachment points for the same reasons cited previously. Therefore, the FAA is adopting the language in paragraph (c)(1) as proposed and the language in paragraph (c)(2) as amended.

C. Impede Egress in an Emergency After Being Released (§ 91.108(c)(3))

The FAA proposed that an SRS must not impede egress from the aircraft in an emergency after being released. The FAA did not receive comments on this

proposed provision and adopts the language as proposed.

D. Quick Release Requirements (§ 91.108(c)(4))

As part of the SRS design requirements, the FAA proposed an SRS have a release mechanism that (1) an individual can quickly operate with minimal difficulty, (2) is attached to the front or side of the harness in a location easily accessible to and visible by the individual using it, (3) prevents inadvertent release, and (4) requires that the supplemental restraint system can be released without the use of a knife to cut the restraint, any other additional tool, or the assistance of any other individual to release the SRS.

The NTSB commented that the final rule should include standards that are specific to the operational environment in which an SRS is intended to be used to prevent certain quick release mechanisms from being susceptible to inadvertent release by neighboring occupants if they are seated close to each other.

The FAA has determined that the language in the rule is appropriately scoped to encompass any type of inadvertent release and in any type of operational environment. “Prevents inadvertent release” includes inadvertent release by the occupant of the SRS as well as any people proximate to the occupant of the SRS. The FAA amends § 91.108(c)(4)(iv), which previously set forth the requirement in the negative. This paragraph now states that an SRS must have a release mechanism that “can be released without the use of a knife to cut the restraint, and without any additional tool or the assistance of any other individual.” This grammatical change is only technical in nature and does not substantively change the previous intent of the provision. The FAA did not make any other changes to paragraph (c)(4) and adopts the language as amended.

E. Who May Provide the SRS (§ 91.108(d))

The FAA proposed to allow an individual to provide an SRS for use during a flight. The FAA explained that, in some cases, an individual (e.g., professional photographer, fire suppression technician, wildlife net gunner, etc.) may have access to an SRS and want to use it on different operators’ aircraft. For an individual providing their own SRS, the FAA proposed that they must confirm with the PIC, either verbally or in writing, as determined by the PIC, the SRS’s continued serviceability and readiness for its intended purposes. In addition,

¹⁰ See Public Aircraft Operations statutes, 49 U.S.C. 40102(a)(41) and 49 U.S.C. 40125; see also *Public Aircraft Operations—Manned and Unmanned*, AC 00–1.1B (Sept. 21, 2018), https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_00-1.1B.pdf.

¹¹ For discussion on moving the SRS definition from § 91.108 to § 1.1, see section IV.R (“Definition (§ 1.1)”) of this preamble.

¹² See section IV.F (“Attachment Points”) for further discussion on the FAA-approval process.

the FAA proposed to require that each individual providing their own SRS complies with the sizing criteria for which the SRS is rated.

Two commenters, including Tuckamore Aviation, commented that individuals providing their own SRS for a flight should be required to present written confirmation of their SRS's serviceability, readiness, and size rating compliance. The commenters stated it is reasonable to expect an individual to have a written record of the inspection or an authorized release certificate under a maintenance release and that it is unreasonable to expect the aircraft operator or PIC to accept a verbal confirmation.

The FAA disagrees with the commenters. The rule is intended to provide the PIC flexibility in determining what method they will use for confirmation of the system's continued serviceability and readiness for its intended purposes. If a PIC determines written confirmation is necessary, they have the discretion to require that type of confirmation before the individual can occupy the SRS during flight operations.

The FAA also received a comment from Tuckamore Aviation stating that verification of continued serviceability and readiness of an SRS should be the responsibility of whoever is providing the SRS, whether it is the owner/operator or the individual.

The FAA agrees with Tuckamore Aviation. An individual providing their own SRS should be responsible for ensuring the system's continued serviceability and readiness for its intended purpose. That requirement is outlined in § 91.108(d)(1). The FAA also agrees that an operator that provides any SRS for their aircraft operations should be responsible for ensuring the SRS's serviceability and readiness because they are in the best position to make these determinations. As mentioned in the NPRM, one way to determine the SRS's serviceability and readiness is by ensuring the SRS is inspected and maintained in accordance with the manufacturer's instructions.¹³ It would be unreasonable to place this onus on the PIC, who is not responsible for maintaining and inspecting SRS that an operator or individual provides.

The same rationale for paragraph (d)(1) also applies to paragraph (d)(2). The FAA determined that, in addition to an individual providing their own SRS, an operator that provides an SRS should be the responsible entity for ensuring that the individual who will occupy the SRS complies with the sizing criteria for

which the system is rated. Whoever provides the SRS is ultimately in the best position to know an SRS's sizing criteria and to determine whether the individual who will occupy the system meets those criteria. As a result, the FAA will require an operator and an individual providing their own SRS to (1) confirm with the PIC, either verbally or in writing, that the system is serviceable and ready for its intended purpose, and (2) ensure the individual who will occupy the SRS complies with the sizing criteria for which the system is rated. The FAA therefore amends the language in paragraphs (d)(1) and (2) as described to ensure responsibility is placed on the appropriate entity.

F. Attachment Points (§ 91.108)(e)(1)(i) Through (iii))

The FAA proposed under § 91.108(e)(1)(i) requiring a qualified individual to attach the SRS lanyard to an airframe attachment point(s) with a rated strength equal to or greater than the total weight of the occupant (or the combined weight if there is more than one occupant attached to an attachment point). The FAA received four comments regarding attachment points, how they are identified, and if they are FAA-approved.

Two commenters, including Tuckamore Aviation, commented that an approved airframe attachment point should be limited to existing hard points or mooring points identified by aircraft original equipment manufacturers (OEMs), a Supplemental Type Certificate (STC) hard point, or approved through engineering analysis. The commenters noted that weight of passengers considers only static loading and that the FAA should use the limit load requirements of either 14 CFR part 27 or part 29.

Another commenter stated that specific language defining exactly what type of anchor point may be used with an SRS would be beneficial. The commenter recommended that the FAA only allow "hard points" or "anchor points" specifically designed for restraint systems to be used in conjunction with an SRS and to not allow seat mounts, seat frames, etc., to be used with an SRS.

The FAA agrees with the commenters that clarification on the type of airframe attachment point is necessary. In order to ensure that an SRS will provide restraint to the user when in use, pilots and operators need to know how to identify an approved airframe attachment point. The FAA has revised the regulatory text to only allow an SRS to be connected to an FAA-approved airframe attachment point or points

rated equal to or greater than the weight of the individual using the supplemental restraint system (or the combined weight if there is more than one supplemental restraint system attached to an attachment point). Adding "FAA-approved" ensures that the SRS can only be attached to an airframe attachment point when the FAA has determined that point complies with the applicable part 21 approval requirements.¹⁴ The FAA removed the word "strength" from paragraph (e)(1)(i) and instead focuses on the weight of the individual. Focusing on the weight of the individual reflects the fact that attachment point ratings are developed for all possible load conditions as long as the weight of the individual does not exceed the weight for which the attachment point is rated. Ultimately, the FAA has determined that any FAA-approved attachment point that is rated for a given individual's weight may be safely used for all load conditions in accordance with the airworthiness requirements (e.g., applicable part 21 approval requirements).¹⁵ Thus, the attachment point will have sufficient strength to safely restrain the individual using an SRS for all flight load conditions. The FAA acknowledges that the commenter suggested that SRS only be allowed to attach to hard points or anchor points specifically designed for SRS. The FAA has determined that adding "FAA-approved" to the rule language achieves the same objective by specifying that the attachment points must have been evaluated by the FAA to allow an SRS to be attached to it. As a result of the foregoing, the FAA

¹⁴ The FAA approval process under the airworthiness regulations (e.g., parts 27 and 29) would include evaluation of the design, strength, cabin safety requirements, and any other safety regulations determined to be applicable by the FAA. FAA approval confirms that the attachment point complies with the applicable regulatory requirements. A certificated aircraft must comply with the applicable airworthiness standards for certification under part 21, and parts installed on a certificated aircraft (e.g., FAA-approved attachment points) are evaluated to determine whether they meet the applicable part 21 approval requirements.

¹⁵ The weight limits for aircraft attachment points are placarded within the aircraft, and the aircraft weight and center of gravity limitations are outlined in the aircraft flight manual. Under § 91.103 (Preflight action), prior to flight, each pilot is responsible for being familiar with pertinent information concerning the flight—that typically includes information outlined in the aircraft flight manual. In addition, § 91.9 (Civil aircraft flight manual, marking, and placard requirements) requires persons to comply with the operating limitations specified in the approved aircraft flight manual. Consequently, it is the PIC's responsibility to ensure that all occupants on board meet the attachment point limitations outlined for that aircraft.

¹³ See 88 FR 81005.

finalizes the language in paragraph (e)(1)(i) as amended.

The FAA proposed under § 91.108(e)(1)(ii) that no SRS may be connected to any airframe attachment point located in the flightdeck. The FAA did not receive comments on this specific proposed provision; however, it did receive comments regarding prohibiting individuals seated in the flightdeck from using an SRS. For a discussion of those comments, see section IV.N. of this preamble. Because the FAA did not receive comments regarding airframe attachment points in the flightdeck, the FAA is adopting the language as proposed.

In the final comment pertaining to attachment points, the NTSB expressed concern that operators may use seat belt attachment points for SRS unless specifically prohibited, which may increase loads on seat belt and shoulder harness attachment points during emergency landing conditions. The NTSB urged the FAA to prohibit SRS from being attached to seat belt attachment points on the airframe.

The FAA agrees. In response to the NTSB's concern about attaching an SRS to a seatbelt or shoulder harness attachment point, the FAA added a requirement for FAA approval under § 91.108(e)(1)(iii) prohibiting an SRS from attaching to any seatbelt or shoulder harness attachment point(s) unless the attachment point is FAA-approved, meaning the attachment point or points is rated equal to or greater than the weight of the individual using the supplemental restraint system (or the combined weight if there is more than one supplemental restraint system attached to an attachment point). This change ensures that an SRS is attached only to attachment points that the FAA has determined comply with the applicable part 21 approval requirements. Therefore, the FAA finalizes the new language in paragraph (e)(1)(iii) as amended.

G. Sizing Criteria (§ 91.108(e)(2))

The FAA proposed that the SRS must fit the individual using it based on the sizing criteria for which the SRS is rated. The FAA did not receive comments on this proposed provision. Therefore, the FAA is adopting the language as proposed.

H. SRS Function (§ 91.108(e)(3))

In addition to the other points raised by the NTSB, the NTSB commented that the proposed rule did not address whether operators and individuals may secure additional items to the SRS that are not relevant to its function. The NTSB believed the final rule should

prohibit any items that are not relevant to the function of the SRS from being secured to it.

The FAA agrees with the NTSB. Any items attached to the SRS that are not relevant to its function could inhibit proper function of the SRS, could prevent quick release of the SRS, and could impede egress. As a result, the FAA has added a new paragraph (e)(3) that states, "Nothing may attach to the supplemental restraint system that is not relevant to its function as defined under § 1.1 of this chapter." Adding this paragraph will help ensure that nothing is attached to the SRS that interferes with the system's proper function or interferes with an individual's ability to quickly egress the aircraft.

I. Pilot in Command (§ 91.108(f)(1) Through (5))

The FAA proposed that regardless of who provides the SRS, the PIC has the overall responsibility to ensure that the SRS meets the requirements of § 91.108, and the PIC cannot permit an individual to use an SRS that does not meet the requirements of the rule. The FAA also proposed that the PIC must ensure the SRS's continued serviceability and readiness for its intended purpose (if provided by the operator or PIC) and ensure any individual using an SRS provided by the operator or PIC complies with the SRS sizing criteria. Finally, the FAA proposed that the PIC has final authority regarding whether the SRS may be used during flight operations and whether to authorize an individual to release the FAA-approved safety belt and, if installed, shoulder harness and remain secured only by the SRS.

As mentioned in section IV.E of this preamble, Tuckamore Aviation commented that the operator/owner or individual providing the SRS should be responsible for ensuring its continued serviceability and readiness for its intended purpose. The FAA agrees for the reasons cited previously and has revised paragraph (f)(2) accordingly, which mirrors the amendments in paragraph (d)(1). The FAA amends that paragraph to indicate that before each takeoff, the PIC must receive confirmation from the operator or any individual providing an SRS of the system's continued serviceability and readiness for its intended purpose. The PIC would no longer be responsible for ensuring the SRS is adequately maintained and inspected; instead, the PIC is simply responsible for receiving confirmation from the operator or any individuals that their SRS are serviceable and ready for use. The FAA did not receive comments on paragraphs

(f)(1), (3), (4), or (5). As a result of the foregoing, the FAA is adopting the language in paragraphs (f)(1) and (f)(3) through (5) as proposed and is adopting the language in paragraph (f)(2) as amended.

J. Passenger Briefing (§ 91.108(g)(1) and (2))

The FAA proposed to require a passenger briefing on how to use, secure, and release an SRS during a flight. The FAA also proposed to require that each passenger has been briefed on means of direct communication and notification between crewmembers and passengers. The FAA did not receive comments on this proposed provision. Therefore, the FAA is adopting the language as proposed.

K. Passenger Demonstration (§ 91.108(h)(1) and (2))

The FAA proposed a requirement that all passengers using an SRS demonstrate to the PIC, a crewmember, or other qualified person designated by the operator their ability to use, secure, and release the FAA-approved safety belts and, if installed, shoulder harnesses, as well as their ability to release the SRS quickly without assistance and with minimal difficulty. The FAA did not receive comments on this proposed provision. Therefore, the FAA is adopting the language as proposed.

L. Individuals Unable To Meet the Demonstration Requirements of the Enhanced Safety Briefing (§ 91.108(i)(1))

The FAA proposed that if an individual cannot demonstrate that they are able to use, secure, and release the FAA-approved safety belt and, if installed, shoulder harness, and able to release quickly the SRS with no assistance and with minimal difficulty, the individual would be prohibited from occupying or using an SRS during the flight. The FAA did not receive comments on this proposed provision; however, the FAA intended paragraphs (i)(1)(i) and (ii) to be required separately rather than together and therefore amends the conjunction between (i)(1)(i) and (ii) from "and" to "or." The failure to meet either of the two conditions is grounds for prohibiting the use of an SRS by that individual. The FAA therefore amends the regulatory text and is adopting the language in paragraph (i)(1) as amended. In addition, because the FAA has moved the definition of SRS from § 91.108 to § 1.1, the FAA revised the introductory text under § 91.108(i) to reference § 1.1 instead of

paragraph (l) and adopts the revised text as final.¹⁶

M. Individuals Under the Age of 15 (§ 91.108(i)(2))

In § 91.108(i)(2), the FAA proposed prohibiting anyone less than 15 years of age from using an SRS. Condon & Forsyth recommended that paragraph (i)(2) be deleted in its entirety because Condon & Forsyth believed it is arbitrary, overly broad, and unnecessary due to the requirements of proposed § 91.108(h) (*Passenger demonstration*) and § 91.108(e)(2), which requires an SRS to fit the individual using it based on the sizing criteria for which the SRS is rated.

The FAA disagrees with the commenter. Evacuation in an emergency landing is a highly stressful event. The purpose of the age restriction is to ensure that occupants of an SRS are able to release themselves in an emergency as well as not impede egress from the aircraft for themselves or the other occupants. In the *Exit Row Seating* rule, the FAA determined that 15 years of age is sufficient to perform the complex task of opening an emergency exit in an exit row and that younger individuals cannot be relied upon to perform a complex task in an emergency.¹⁷ In that final rule, the FAA cited a study entitled “Survival in Emergency Escape from Passenger Aircraft,” which reviewed human factors relating to survival and the behavior of the passengers.¹⁸ The final rule also cited a memorandum based on the Civil Aerospace Medical Institute’s (CAMI) “Accident/Incident Bio-Medical Data Reports” containing over 3,000 entries.¹⁹ The study concluded that survival depends largely on the ability of the passenger to exit the aircraft, and the memorandum stated that extreme youth is a factor that generally impedes rapid evacuation.²⁰

The FAA determined that the scenarios and analysis in the *Exit Row Seating* final rule are applicable to the release of an SRS in emergency conditions. The FAA has ample data from CAMI showing that children may not have the capacity to act quickly in an emergency, further supporting the FAA’s position that children under 15 years of age should not be encumbered by an SRS when needing to escape during an emergency. The inability of a child to egress in an emergency as a

result of an SRS would not only endanger the child, it could also endanger other individuals in the aircraft. In addition, since the *Exit Row Seating* rule took effect over thirty years ago, there have been no data showing that 15 years of age is an inappropriate metric for aircraft emergencies. The FAA therefore responds to the commenter that its determination of 15 years of age was not arbitrary, overly broad, or capricious because it was based on previous studies, data, and observations. Moreover, there is no precedent for individuals younger than 15 to act in an emergency and in a high-stress environment where critical decisions must be made in a matter of seconds. Because the FAA does not have other data supporting the proposition that children at any age younger than 15 possess the capacity to act quickly in an emergency, prescribing a rule that allows children of any specific age below 15 years to use an SRS would be arbitrary and capricious.

N. Individuals Seated in the Flightdeck (§ 91.108(i)(3))

The FAA proposed prohibiting anyone sitting in the flightdeck from using an SRS. The FAA received three comments regarding these prohibitions. Condon & Forsyth recommended that proposed § 91.108(i)(3) be deleted in its entirety since Condon & Forsyth believed it is arbitrary, overly broad, and fails to adequately address the very narrow and specific issue of flight/engine control interference for civil aircraft/rotorcraft that utilize floor-mounted engine controls. Alternatively, Condon & Forsyth proposed § 91.108(i)(3) should be limited in scope to any aircraft/rotorcraft that utilize floor-mounted engine controls like those found in the AS350B series helicopter.

Two commenters also stated that in certain aircraft, the flightdeck (cockpit) is well separated from the PIC position, either by a console or an aftermarket supplemental type certificated separation barrier that is designed to ensure no interference with flight or other controls in the flightdeck. The commenters further noted if there are no flight controls and/or if they are locked out in the area of the flightdeck (cockpit), the SRS should be permitted to be attached to an attachment hard point in this area.

The FAA disagrees with the commenters. In the NPRM, the FAA specifically stated that the flightdeck prohibition is based on a review of past accidents and incidents where unsecured items, including those with straps and lanyards, have a history of interfering with flight and engine

controls. In the Liberty Helicopters accident, a tether caught on and activated the floor-mounted engine fuel shutoff lever, resulting in the in-flight loss of engine power and subsequent ditching. Further, airworthiness standards codified at 14 CFR parts 23, 25, 27, and 29, which require that flight and engine controls not be subject to inadvertent operation, do not address circumstances when carry-on objects, tethers, or straps would inadvertently move a control. Consequently, crewmembers or passengers in the flightdeck should not be attached to or carry equipment that could snag on controls. Inadvertent activation of the fuel shutoff lever is only one type of accidental interference with flight controls that warrants concern.

Additional examples are discussed in the NPRM preamble.²¹ Modifications to provide separation for a specific instrument or flight control have not been shown to protect from interference with all flight instruments or controls. With an SRS, an individual in the flightdeck has a greater range of motion, allowing many more potential actions that could interfere with the controls as compared to an individual restrained only by the FAA-approved safety belt. The FAA has determined that allowing any seating of an individual occupying an SRS in the flightdeck imposes an unacceptable level of risk to the aircraft operation and the individuals on board the aircraft, and it would not prevent an accident similar to the Liberty Helicopters accident. As a result, the FAA maintains the prohibition and adopts § 91.108(i)(3) as final.

O. Passengers Who Occupy or Use an Approved Child Restraint System (§ 91.108(i)(4))

The FAA proposed to prohibit anyone occupying or using a child restraint system from also using an SRS. The FAA did not receive comments on this proposed provision. Therefore, the FAA is adopting the language as proposed.

P. Lap-Held Child (§ 91.108(j)(1) and (2))

The FAA proposed prohibiting a child who has not reached their second birthday from being held by an adult during civil aircraft operations when the adult uses an SRS or during any operation in which the doors are opened or removed. The FAA did not receive comments on this proposed provision. Therefore, the FAA is adopting the language as proposed.

¹⁶ For discussion on moving the SRS definition from § 91.108 to § 1.1, see section IV.R (“Definition (§ 1.1)”) of this preamble.

¹⁷ *Exit Row Seating*, final rule, 55 FR 8054, 8066 (Mar. 6, 1990).

¹⁸ See 55 FR 8058–8059.

¹⁹ See 55 FR 8059.

²⁰ *Id.*

²¹ See 88 FR 80997, 81006 (Nov. 21, 2023).

Q. Excluded Operations (§ 91.108(k)(1) Through (3))

The FAA proposed excluding certain operations from complying with § 91.108. First, under paragraph (k)(1), the FAA proposed excluding operations conducted under part 105 (“Parachute Operations”) or part 133 (“Rotorcraft External-Load Operations”). Second, under paragraph (k)(2), operators that are subject to the requirements of this rule, particularly paragraph (b)(1)—which requires each individual on board to be properly secured by either a safety belt/shoulder harness or an SRS—may operate an aircraft with the doors opened or removed even with flightcrew members on board who are subject to the requirements of § 91.105 (“Flight crewmembers at stations”) or § 135.171 (“Shoulder harness installation at flight crewmember stations”). Third, under paragraph (k)(3), the FAA proposed that the requirements under paragraph (b)(2), requiring an individual to be properly secured by an SRS before releasing their safety belt/shoulder harness, would not apply to flightcrew members subject to the requirements of §§ 91.105 or 135.171 to the extent they need to unfasten their shoulder harnesses in accordance with those sections.

An individual commented that consideration needs to be made for rotorcraft external load operations (part 133) where a crewmember is working with an open or removed door, *i.e.*, essential crewmember, *e.g.*, spotter, or winch operator for Class D or Class B human external cargo rotorcraft-load combination (RLC). The FAA intentionally excluded part 133 from this rulemaking because that part has its own unique certification and operating rules. As a result, changes to part 133 are not within the scope of this rulemaking.

Another commenter mentioned that for certain parachute operations, the rule needs to be considered for personnel working unseated and not belted into a seat or berth if the door is removed or opened. As with part 133, the FAA intentionally excluded part 105 from this rulemaking because that part has its own unique operating rules. As a result, changes to part 105 are not within the scope of this rulemaking.

The FAA makes technical amendments to paragraphs (k)(2) and (k)(3). Specifically, the FAA determined the regulatory text should state “§§ 91.105 or 135.171” instead of “§§ 91.105 and 135.171” (emphasis added). The intent of this provision is to allow an operator to conduct a flight with doors opened or removed under

§ 91.108(b)(1) even if there are flight crewmembers on board who are subject to *either* § 91.105 or § 135.171—not just those flight crewmembers who would be subject to *both* regulations. This grammatical change is only technical in nature and does not substantively change the previous intent of the provisions. The FAA did not make any other changes to paragraph (k). As a result of the foregoing, the FAA adopts the language in paragraphs (k)(1) through (3) as amended.

R. Definition (§ 1.1)

The FAA proposed under § 91.108(l) to define an SRS as any device that is not installed on the aircraft pursuant to an FAA approval, used to secure an individual inside an aircraft when that person is not properly secured by an FAA-approved safety belt and, if installed, shoulder harness, or an approved child restraint system. A supplemental restraint system consists of a harness secured around the torso of the individual using the SRS and a lanyard that connects the harness to an approved airframe attachment point inside the aircraft.

The FAA did not receive comments on this proposed provision; however, to reflect a similar change made in paragraph (e)(1)(i) in response to comments, the FAA has added “FAA-” in front of “approved airframe attachment point” to highlight the fact that an SRS can only be attached to an airframe attachment point that the FAA has determined complies with the applicable part 21 approval requirements. In addition, the FAA has moved the definition from § 91.108 to § 1.1 (“General definitions”) because “supplemental restraint system” is also referenced in parts 135 and 136. Placing the definition in § 1.1 will make it easier to find and will clarify that the definition applies to other parts that use the term, not just part 91. Therefore, the FAA is adopting the language as amended and placing it within § 1.1.

S. Miscellaneous Amendments

Tuckamore Aviation commented that there are many unique missions conducted by helicopters that may require waiver of this proposed rule and that the proposed regulations should not apply to all SRS being used in different operations.

The FAA disagrees. As explained in the NPRM, the FAA has determined that waivers are inappropriate in this rule. The waiver process does not allow the FAA to conduct the same level of analysis as the exemption process, which allows the FAA to analyze in more detail whether a proposed

operation outlined in a petition for exemption would not adversely affect safety or provides an equivalent level of safety compared to the regulatory requirement. Moreover, the FAA did not receive comments providing information that would support allowing this rule to be waivable. As a result, the FAA will not add § 91.108 to the list of waivable regulations under § 91.905.

The FAA received a comment from an individual proposing the withdrawal of the proposed rule and not allowing individuals to move about the aircraft. The commenter instead suggested adding a new paragraph to existing § 91.107 to prohibit SRS operations.

The FAA disagrees with the commenter. Section 91.108(a) prohibits persons from conducting a civil aircraft operation with individuals on board secured with an SRS unless the other requirements of the section have been met. The FAA has determined that these requirements help mitigate the identified safety risks during operations when SRS are used. Under this rule, operations with an SRS will be conducted with an acceptable level of safety. Finally, a blanket prohibition of SRS would be overly broad, arbitrary, and capricious because the FAA has already determined through the Emergency Order of Prohibition that some aircraft operations may be safely conducted while individuals are using SRS. As a result, the FAA is finalizing § 91.108 as amended, allowing operations conducted with SRS under certain circumstances as long as the requirements in the rule are met.

V. Regulatory Notices and Analyses

Federal agencies consider the impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (“Modernizing Regulatory Review”), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final

rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$183 million using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, as amended; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary

obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

A. Summary of the Regulatory Impact Analysis

The FAA estimates that for safety benefits to equal or exceed the costs of the final rule, based on a 20-year analysis, two accidents of the same severity as the Liberty Helicopters accident would need to be mitigated. The estimated safety benefit in present value, from mitigating one part 91 and one part 135 helicopter accident (*i.e.*, an accident in year 10 and an accident in year 20 of the analysis period) will range from \$26.8 million to \$40.2 million at a 7 percent discount rate, from \$45.4 million to \$68.0 million at a 3 percent discount rate, and from \$52.2 million to \$78.3 million at a 2 percent discount rate.

The cost of the rule to operators, pilots, and passengers comes from purchasing harnesses and lanyards that meet specific requirements as set forth in this rule, conducting a pre-flight safety briefing on the use of the SRS, and requiring passengers to demonstrate their ability to remove the SRS in the event of an emergency. The FAA will also incur costs for periodic surveillance of parts 91 and 135 SRS operations. The estimated present value cost to the FAA over 20 years is \$1,240 at a 7 percent discount rate, \$1,263 at a 3 percent discount rate, and \$1,449 at a 2 percent discount rate. The estimated present value total cost to industry and the FAA for these requirements over 20 years is \$22.3 million at a 7 percent discount rate, \$31.7 million at a 3 percent discount rate, and \$34.9 million at a 2 percent discount rate. Estimated safety benefits and costs are shown in the table below.

TABLE 1—TOTAL BENEFITS AND COSTS OVER 20 YEARS
[Millions of USD]*

Provisions		Safety benefits		Costs	Safety benefits		Costs	Safety benefits		Costs
		Low	High		Low	High		Low	High	
		7 Percent present value			3 Percent present value			2 Percent present value		
91.108—Supplemental restraint systems, including operations with doors opened or removed (assuming an accident occurs in year 10).	Part 135 Part 91	\$17.8 9.0	\$26.7 13.6	\$19.4 2.9	\$26.0 19.4	\$39.0 29.0	\$27.5 4.1	\$28.7 23.5	\$43.0 35.3	\$30.4 4.5
Total .....	.....	26.8	40.2	22.3	45.4	68.0	31.7	52.2	78.3	34.9
Annualized .....	.....	2.5	3.8	2.1	3.0	4.6	2.1	3.2	4.8	2.1

* Table values have been rounded. Totals may not add due to rounding.

In 2018, in response to the Liberty Helicopters accident, the FAA issued an Emergency Order of Prohibition, which prohibited the use of supplemental passenger restraint systems (SPRS) that cannot be released quickly in an emergency in doors-off flight operations. The FAA also estimates the cost and benefit of the rule using the Emergency Order of Prohibition as the baseline. The FAA estimates that the undiscounted cost of the rule, above the Emergency Order of Prohibition, is \$22.9 million (\$11.8 million at 7 percent present value, \$16.8 million at 3 percent present

value, or \$18.9 million at 2 percent present value). When annualized, at a 7 percent, 3 percent, or 2 percent discount rate, the cost is approximately \$1.1 million. The costs come entirely from the demonstration by passengers of the ability to release the device. The FAA considers that a passenger demonstrating the ability to release themselves from the device adds to the efficacy of the rule above the Emergency Order of Prohibition. However, the FAA is unable to quantify the incremental safety benefits gained by the passenger demonstration.

1. Who is potentially affected by this rule?

This rule affects all flights with doors opened or removed and all operations with individuals on board who choose to use an SRS, except for operations conducted under part 105, Parachute Operations, or conducted under part 133, Rotorcraft External-Load Operations, and public aircraft operations. The FAA identified the following, from Flight Standards' Web-based Operations Safety System (June 2021), as the population that could be affected:

TABLE 2—POTENTIAL AFFECTED OPERATORS

CFR	Number of operators	Number of rotorcraft	Number of operators	Number of aircraft
	Rotorcraft		Fixed Wing	
91	405	1,051	716	1,894
135	472	2,917	1,728	8,411

However, based on the number of requests for SRS Letters of Authorization, the FAA narrowed the population to 26 part 91 operators and 40 part 135 operators over the next 20 years.

General Assumptions:

- The present value discount rate of two, three, and seven percent is used as required by the Office of Management and Budget.²²

- Period of Analysis: 20 years to capture replacement of an SRS occurring every 10 years.²³

- The estimated average number of passengers per flight is between 3 to 5 passengers. The FAA used 4 passengers in the analysis.

- Estimated time to create and update content for enhanced passenger safety briefing:²⁴ 2 hours per operator. Assume updates occur every 10 years to align with the replacement cycle of harnesses and lanyards.

- Estimated pilot time to complete enhanced safety briefing:²⁵ 0.03 hours (2 minutes)

- Estimated time for passenger competency demonstration:²⁶ 0.02 hours (1 minute)

Baseline: There were no requirements for an SRS prior to 2018 when the FAA issued Emergency Order of Prohibition No. FAA–2018–0243. Since the Emergency Order of Prohibition is temporary, the baseline used in this analysis is pre-Emergency Order. However, the Emergency Order requires harnesses and lanyards that fulfill the same requirements as the final rule; therefore, operators already incur the cost of the harness and lanyard. Operators will primarily incur the additional cost of the passenger demonstration and briefing under the rule. This is analyzed as a second

baseline. The extension of the Emergency Order of Prohibition was considered as an alternative, and the cost and benefits are estimated in the alternative section below.

2. Benefits of This Rule

The benefits of this rule include preventing future accidents similar to the Liberty Helicopters accident. The NTSB final safety report identified the probable cause of this accident as Liberty Helicopters' use of an SRS system. The SRS caught on and activated the engine fuel shutoff lever, located in the flightdeck, and resulted in the loss of engine power and the subsequent ditching. That same SRS, worn by passengers on that flight, also contributed to the severity of the accident by hindering the passengers' quick egress from the aircraft. This rule will prohibit use of an SRS in the flightdeck, address the inadvertent activation of the fuel shutoff lever, and implement SRS requirements that will reduce the likelihood of passengers being unable to remove an SRS when needed in an emergency.

The Liberty Helicopters accident resulted in five fatalities, one minor injury, and a substantially damaged aircraft. The analysis assumes that two accidents of similar magnitude would occur in the 20-year time horizon, one under part 91 and one under part 135. While the SRS operation requirements, passenger briefing, and passenger demonstration set forth in the rule would have lessened the severity of the accident, the NTSB determined the probable cause of the accident to be the inadvertent activation of the floor-mounted engine fuel shutoff lever by the passenger harness/tether system.²⁷ Prohibiting the use of an SRS in the flightdeck will help mitigate the risk factor that initiated the accident. The benefits include avoided casualties and aircraft damage. Multiplying the five casualties by a value of statistical life (VSL) of \$11.6 million yields a total of \$58.0 million as the social cost of these fatalities.²⁸ The pilot also sustained minor injuries at an avoided minor injury rate of \$34,800, and the

helicopter, an Airbus AS350 B2, suffered substantial damage valued at \$210,243.²⁹ Adding the value of avoided casualties, including the pilot's injuries, to aircraft damage gives a total potential loss of \$58.2 million that enhanced safety measures are expected to avert.

The FAA Office of Accident Investigation and Prevention evaluated how effective the proposed requirements would be at addressing the NTSB urgent safety recommendation and any other factors that may have contributed to the Liberty Helicopters accident. Based on that assessment, the FAA used a range for the effectiveness rate of 0.6 to 0.9.³⁰ Multiplying the effectiveness rates by the estimated potential loss of \$58.2 million, mentioned above, yields an estimated range of \$34.9 to \$52.4 million for one averted accident. Assuming an accident occurs every 10 years over a 20-year time horizon (*i.e.*, an accident in year 10 and year 20 of the analysis period), the present value of benefits ranges from \$26.8 million to \$40.2 million at a 7 percent discount rate, \$45.4 million to \$68.0 million at a 3 percent discount rate, and \$52.2 to \$78.3 million at a 2 percent discount rate.

3. Costs Relative to Pre-Emergency Order of Prohibition

This rule will prohibit flight operations with an SRS unless the SRS meets specific requirements. Although these requirements will be under part 91, they will affect any operation with an SRS except for operations conducted under part 105, Parachute Operations, and operations conducted under part 133, Rotorcraft External-Load Operations. This subsection examines the costs relative to the regulatory environment before the Emergency Order of Prohibition when no rules specifically addressed aircraft operations conducted with the use of SRS.

This rule will require the SRS (which would consist of a harness and lanyard, at a minimum) to have an accessible front or side release mechanism that can be quickly operated with minimal difficulty during an emergency. The rule

²² Office of Management and Budget, OMB Circular A–4 (2023), guidance for the development of regulatory analysis.

²³ A sample of harnesses provided for consideration of an SRS LOA, such as Yates 363 and 338, have a maximum life span of 10 years. See Product manuals. Available at <http://yatesgear.com/en/special-forces-full-body-spig-harness> and <http://yatesgear.com/en/ars-heli-ops-harness>.

²⁴ Part 135 Operating Requirements: Commuter and On-Demand Operations and Rules Governing Persons on Board such Aircraft, Paperwork Reduction Act Supporting Statement, (OMB No. 2120–0039); at 8 (Apr. 9, 2019) (estimate of time and volume of operators and passenger briefings pursuant to § 135.117, Briefing of passengers before flight), available at <https://www.federalregister.gov/documents/2022/04/05/2022-07066/agency-information-collection-activities-requests-for-comments-clearance-of-a-renewed-approval-of->

²⁵ *Id.*

²⁶ This estimate is a combination of the time identified in the Emergency Order and the FAA's assertion that a passenger will need to release the SRS in under a minute to be able to evacuate a helicopter in an emergency.

²⁷ National Transportation Safety Board. (March 11, 2018) *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight Airbus Helicopters AS350 B2, N350LH* (Report No. NTSB/AAR–19/04 or PB2020–100100). Retrieved from <https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.

²⁸ Departmental Guidance on Valuation of a Statistical Life in Economic Analysis, Issued Date: 3/23/2021 <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>.

²⁹ Economic Values for FAA Investment and Regulatory Decisions, A Guide: 2021 Update, Section 5, Table 5–10: General Aviation Restoration Costs (\$2018). These numbers are adjusted to reflect 2020 dollars. https://www.faa.gov/regulations-policies/policy_guidance/benefit_cost.

³⁰ *Id.* at Appendix A at 61 (stating, High effectiveness—The JIMDAT-assigned values in which enhancements that are judged to have a “low” probability of preventing an accident receive a numerical value ranging from 0.1 to 0.4, reflecting a one in ten chance of preventing the accident to a 40% chance. Similarly, “medium” may receive numerical ratings of 0.4 to 0.6 and “high” may receive up to 0.95).

will require the lanyard to be connected to an FAA-approved airframe attachment point or points that are not in the flightdeck and that are rated equal to or greater than the weight of the individual (or the combined weight if there is more than one SRS attached to an attachment point). The SRS lanyard must ensure the torso of the person using the SRS remains inside the aircraft at all times. Additionally, for operations with doors opened or removed, each person will need to occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during all phases of flight; or occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during movement on the surface, takeoff, and landing, in

accordance with § 91.107 and during other phases of flight, the individual will use an SRS. This rule will also require operators to provide passengers with an enhanced safety briefing that includes a passenger’s satisfactory demonstration of competency to release quickly the SRS with no assistance. The rule also implements certain requirements regarding persons who may seek to participate in such flights. Passengers unable to demonstrate their ability to use, secure, and release their seatbelt/shoulder harness or their ability to release quickly from an SRS; passengers under 15 years of age; individuals seated in the flightdeck; and passengers occupying an approved child restraint system will be prohibited from using the SRS. Furthermore, children may not be held in an adult’s lap if the adult uses

an SRS or if the aircraft doors are opened or removed. The FAA intends these requirements to ensure the safety of all aircraft occupants on such flights. The cost of the rule to operators, passengers, and pilots will arise out of purchasing harnesses and lanyards that meet specific requirements as set forth in this rule, a pre-flight safety briefing on the use of the SRS, and passengers demonstrating their ability to remove the SRS in the event of an emergency. The cost to the FAA comes from approving the addition of SRS to part 135 passenger safety briefing cards and for periodic surveillance of parts 91 and 135 SRS operations. The estimated cost of these requirements is \$22.3 million at 7 percent present value, \$31.7 million at 3 percent present value, and \$34.9 million at 2 percent present value, as shown in the table below.

TABLE 3—RULE TOTAL COST OVER 20 YEARS *

Requirements	Part 91	Part 135	Total
Harness + Replacement	\$172,608	\$623,616	\$796,224
Lanyard + Replacement	43,152	155,904	199,056
Create Briefing	14,572	19,774	34,346
Passenger Briefing (Pilot + Passenger)	16,840,356	2,139,920	18,980,276
Passenger Demonstration (Pilot + Passenger)	20,342,887	2,584,989	22,927,876
FAA costs	583	898	1,481
Total Cost	37,414,159	5,525,101	42,939,259
Total Cost at 7 Percent Present Value	19,361,893	2,933,645	22,295,537
Total Cost at 3 Percent Present Value	27,541,440	4,109,635	31,651,075
Total Cost at 2 Percent Present Value	30,365,509	4,500,554	34,866,063

* Table values have been rounded. Totals may not add due to rounding.

4. Costs Relative to Post-Emergency Order of Prohibition

After the FAA published the Emergency Order of Prohibition, operators were required to comply with many of the requirements of this rule. This subsection measures the costs that are above and beyond the costs of complying with the Emergency Order of Prohibition.

There are three main differences between this rule and the Emergency Order of Prohibition. First, the Emergency Order of Prohibition does not prohibit passengers using an SRS from being seated in the flightdeck, while this rule will prohibit this seating arrangement. The FAA estimates minimal cost from this prohibition.

Second, the Emergency Order of Prohibition applies only to operations conducted for compensation or hire. This rule will apply to all civil

operations except operations under parts 105 and 133. The FAA does not have precise data on operations using an SRS that are not for compensation or hire, and so assumes there would be a negligible number.

Finally, the Emergency Order of Prohibition does not require a passenger demonstration of the passenger’s ability to release the SRS. The FAA estimates the undiscounted costs, beyond the Emergency Order of Prohibition, to be \$22.9 million (\$11.8 million at 7 percent present value, \$16.8 million at 3 percent present value, or \$18.9 million at 2 percent present value). At any of these three discount rates, the annualized cost is approximately \$1.1 million. These costs come entirely from the value of passenger and pilot time spent on the demonstration.

5. Alternatives Considered

The FAA considered proposing the Emergency Order of Prohibition as the rule but applying it to all civil operations. The Emergency Order of Prohibition prohibits the use of an SRS that cannot be released quickly in an emergency during flight operations for compensation or hire with the doors opened or removed. The Emergency Order of Prohibition requires: a supplemental harness that meets specific safety requirements, an application for an LOA to include a link to a video (roughly 8 seconds long) demonstrating the user’s ability to release themselves from the supplemental harness without assistance, a preflight briefing on the release of the SRS, and FAA review and approval of the application. The table below summarizes the costs of each of these requirements.

TABLE 4—EMERGENCY ORDER OF PROHIBITION TOTAL COST OVER 20 YEARS *

Requirements	Part 91	Part 135	Total
Cost of Harness + Application + Video + Safety Briefing	\$4,747,142	\$1,225,615	\$5,972,757
FAA Cost	2,399	4,107	6,506
Total Cost	4,749,541	1,229,722	5,979,263
Total Cost at 7 Percent Present Value	4,394,485	986,054	5,380,539

* Table values have been rounded. Totals may not add due to rounding.

The FAA considered proposing the above requirements in this rule, but after careful review of the NTSB final accident report and the information gathered through the Emergency Order of Prohibition, the FAA determined that it could tailor the requirements to increase the likelihood that passengers would be able to quickly release the supplemental restraint in the event of an emergency. For example, the Emergency Order of Prohibition does not address the use of an SRS in the flightdeck. Additionally, this rule will require operators to conduct an enhanced safety briefing and passengers to complete a demonstration. Passengers in the Liberty Helicopters accident received a briefing on how to release their supplemental restraints but were unable to release them during the accident. Requiring passengers to demonstrate successfully their ability to release the SRS would ensure passengers not only understand how to release themselves from the SRS during an emergency but also increase the likelihood that they would be able to release themselves from the SRS during an emergency. The passenger demonstration requirement will be necessary to achieve the effectiveness estimate of 0.6 to 0.9, as discussed in the main analysis of the rule. However, uncertainty exists regarding the incremental reduction in the effectiveness of a regulatory alternative that would not require passengers to demonstrate proficiency in using the SRS.

Please see the RIA available in the docket for more details.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small

businesses and 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 FAA published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule to aid the public in commenting on the potential impacts to small entities. The FAA considered the public comments in developing the final rule and this Final Regulatory Flexibility Analysis (FRFA). A FRFA must contain the following:

(1) A statement of the need for, and objectives of, the rule;

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. Need for and Objectives of the Rule

This rule addresses safety issues that contributed to the Liberty Helicopters accident to ensure the safety of similar operations. The operator-provided harness/tether system the passengers used on that flight, while intended as a safety measure when the aircraft was in flight, hindered the passengers' egress from the aircraft. This rule addresses the safety issue by implementing specific requirements for individuals using an SRS or participating in flights with doors opened or removed.

For flights with doors opened or removed, each person will be required to either occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during all phases of flight; or occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during movement on the surface, takeoff, and landing, and during other phases of flight, the individual uses an SRS.

For flights using an SRS, this rule will require the harness and lanyard, at a minimum, to have an accessible front or side release mechanism that can be operated quickly with minimal difficulty during an emergency. As proposed, the lanyard must be connected to an FAA-approved airframe attachment point or points that are not in the flightdeck and that are rated equal to or greater than the weight of the occupant (or the combined weight if there is more than one SRS attached to an attachment point). This rule will require the lanyard to ensure the torso of the person using the SRS remains inside the aircraft. Additionally, operators will be required to provide passengers with an enhanced safety briefing, and passengers must demonstrate the capability to release quickly the SRS with no assistance. Passengers under 15 years of age; individuals seated in the flightdeck; passengers occupying an approved child restraint system; or passengers unable to demonstrate their ability to use, secure, and release the safety belt/shoulder harness or their ability to release

quickly from the SRS will be prohibited from using the SRS.

2. Significant Issues Raised in Public Comments

No comments relating to small entities were raised by the public.

3. Response to SBA Comments

No comments were received from the SBA.

4. Description and Estimate of the Number of Small Entities

This rule will affect flights with doors opened or removed and all operations with individuals on board who choose to use an SRS. A search of the Web-based Operations Safety System (WebOPSS) database, as of June 2021, indicates that the rule will affect 1,121 part 91 operators and 2,200 part 135

operators. These flights include sightseeing, motion picture and television filming, electronic news gathering, power line inspection, game management, and fire suppression, for example. The Small Business Administration (SBA) defines charter nonscheduled passenger air transport (NAICS 481211) with less than 1,500 employees or scenic and sightseeing transportation (NAICS 487990) with less than \$8.0 million in revenue as small businesses.³¹ Census data indicates that revenue for the scenic and sightseeing transportation industry (NAICS 4879), which includes airplane and helicopter operations, was roughly \$502.5 million for 220 establishments, and for nonscheduled chartered passenger air transportation (NAICS 481211), there are 28,261 employees for 1,604 firms.³² Based on census data and the SBA

definition of a small business, a substantial number of operators affected by this rule would be considered small businesses.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The cost of the rule will include purchasing harnesses and lanyards that meet specific requirements as set forth in this rule, a preflight safety briefing on the use of the SRS, and passengers' satisfactory demonstration of their ability to use, secure, and release their safety belt/shoulder harness and their ability to quickly release their SRS without assistance and with minimal difficulty. The estimated cost for these requirements per year for a part 91 operator is \$71,949 and \$6,905 for a part 135 operator, as shown in the table below.

TABLE 5—ESTIMATED COST PER OPERATOR *

Provisions	Part 91 ³³	Part 135 ³⁴
Harness + Replacement	\$6,639	\$15,590
Lanyard + Replacement	1,660	3,898
Create + Update Briefing	560	494
Passenger Briefing (Pilot + Passenger)	647,706	53,498
Passenger Demonstration (Pilot + Passenger)	782,419	64,625
Total Over 20 Years	1,438,984	138,105
Estimated Yearly Cost Per Operator	71,949	6,905

* Table values have been rounded. Totals may not add due to rounding.

6. Significant Alternatives Considered

The FAA considered proposing to codify the requirements of the Emergency Order of Prohibition applied to all civil operations but determined to propose adding the requirement for operators to brief passengers on the SRS and verify that passengers could release the SRS in an emergency.

The Emergency Order of Prohibition currently prohibits the use of an SRS during flights with doors opened or removed unless it complies with the process referenced in FAA Order 8900.4. FAA Order 8900.4 requires harnesses and lanyards that fulfill the same requirements this rule would require; therefore, operators already incur the cost of the harness and lanyard. Under this rule, operators will primarily incur the additional cost of the enhanced safety briefing. However, the majority of the cost comes from the passenger briefing and the passenger demonstration and is directly tied to the passenger count. Based on the foregoing,

this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for

U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and, therefore, no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$183.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

³¹ United States Small Business Administration, *Table of Size Standards* (2019), available at <https://www.sba.gov/document/support-table-size-standards>.

³² United States Census Bureau, *Transportation and Warehousing: Geographic Area Series: Summary Statistics for the U.S., States, Metro Areas, Counties, and Places* (2012), available at <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

³³ Total cost per requirement is divided by 26 part 91 operators.

³⁴ Total cost per requirement is divided by 40 part 135 operators.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following new information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted this information collection requirement to OMB for its review. The FAA notes that

when the FAA submitted this information collection associated with the NPRM to OMB for its review, OMB assigned control number 2120–0820. The FAA has submitted information collection 2120–0820 to OMB for final approval to allow the FAA to collect this information.

Summary: This rule will require operators conducting operations using SRS, including during operations with doors opened or removed, to present updated safety information to passengers.

Public Comments: The FAA did not receive any comments on the information collection requirements.

Use: Part 91 and 135 operators must create and conduct an enhanced passenger safety briefing.

Respondents: As of June 2019, the FAA estimates that 21 part 91 operators

(based on the number of approved Letter of Authorization holders and the A049 population) and 31 part 135 operators will choose to offer flights with use of an SRS over the next 20 years.

Frequency: Operators who choose to offer flights using an SRS must initially develop an enhanced passenger safety briefing pertaining to the SRS. The FAA also anticipates that operators will need to periodically update their briefings every ten years based on a typical SRS replacement period.

Annual Burden Estimate: The total burden hours are calculated by multiplying the number of enhanced passenger safety briefings and subsequent updates by 2 hours per briefing. As shown in the table below, this sums to 90 hours for part 91 operators and 134 hours for part 135 operators over 3 years.

TABLE 6—INFORMATION COLLECTION BURDENS

Year	Number of operators		Time to develop or update briefing (hours per briefing)	Total hour burden	
	Part 91	Part 135		Part 91	Part 135
1	21	31	2	42	62
2	0	0	2	0	0
3	0	1	2	0	2
Total .....	.....	.....	.....	42	64
Average Over 3 Years .....	.....	.....	.....	14	21

For part 91 operators, the FAA assumes that a pilot, with an hourly wage of \$75.90, will be the person developing and updating the content of the briefing. At \$75.90, the total cost burden is \$3,188 (\$2,602 at 7 percent present value) over a 3-year period. For part 135 operators, the Director of Operations, at an hourly wage of \$68.66,

can be the person responsible for developing the briefing. The total cost burden for part 135 operators over a 3-year period is \$4,394 (\$3,578 at 7 percent present value) for developing the content of the briefing.

Pilots will also brief passengers on the content of the enhanced passenger briefing prior to each flight. The

estimated number of flights per year is multiplied by 2 minutes per briefing for parts 91 and 135 annual burden hours to brief passengers. The total burden hours over 3 years, as shown in the table below, sums to 8,177 hours for part 91 operators and 962 hours for part 135 operators.

TABLE 7—TOTAL HOUR BURDEN FOR ENHANCED SAFETY BRIEFING

Year	Number of flights		Time to present the enhanced safety briefing (hours per briefing)	Total hour burden	
	Part 91	Part 135		Part 91	Part 135
1	89,935	10,475	0.03	2,698	314
2	90,845	10,684	0.03	2,725	321
3	91,780	10,897	0.03	2,753	327
Total .....	.....	.....	.....	8,177	962
Average Over 3 Years .....	.....	.....	.....	2,726	321

A pilot presenting the briefing is estimated to earn an hourly wage of \$75.90. At \$75.90, the total cost burden over a 3-year period for part 91 operators is \$620,598 (\$506,593 at 7 percent present value) and \$72,989 (\$59,581 at 7 percent present value) for part 135 operators.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs) to the maximum extent practicable. The FAA

has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no conflicts with these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental

assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

This rulemaking action provides a framework for civil aircraft operations conducted with SRS, including during operations with doors opened or removed. It does not affect the frequency of aircraft operations in the airspace of the United States. The FAA has reviewed the implementation of the rulemaking action and determined it is categorically excluded from further environmental review. Possible extraordinary circumstances that would preclude the use of a categorical exclusion have been examined, and the FAA has determined that no such circumstances exist. After careful and thorough consideration of the rulemaking action, the FAA finds that it does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it is not a “significant energy action” under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

VIII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found on the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 91

Air carrier, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.1 by adding in alphabetical order the definition of “Supplemental restraint system” to read as follows:

§ 1.1 General definitions.

* * * * *

Supplemental restraint system means any device that is not installed on the aircraft pursuant to an FAA approval, used to secure an individual inside an aircraft when that person is not properly secured by an FAA-approved safety belt and, if installed, shoulder harness, or an approved child restraint system. It consists of a harness secured around the torso of the individual using the supplemental restraint system and a lanyard that connects the harness to an FAA-approved airframe attachment point inside the aircraft.

* * * * *

PART 11—GENERAL RULEMAKING PROCEDURES

■ 3. The authority citation for part 11 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102, and 51 U.S.C. 50901–50923.

■ 4. Amend § 11.201 in the table in paragraph (b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control number
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651, 2120–0820.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 5. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 6. Amend § 91.107 by revising paragraph (a)(3)(i) to read as follows:

§ 91.107 Use of safety belts, shoulder harnesses, and child restraint systems.

(a) * * *

(3) * * *

(i) Be held by an adult, except as outlined in § 91.108(j), who is occupying an approved seat or berth, provided that the person being held has not reached his or her second birthday and does not occupy or use any restraining device;

* * * * *

■ 7. Add § 91.108 to read as follows:

§ 91.108 Use of supplemental restraint systems.

(a) *Use of supplemental restraint systems.* Except as provided in this section, no person may conduct an operation in a civil aircraft in which any individual on board is secured with a supplemental restraint system, as defined in § 1.1 of this chapter.

(b) *Doors opened or removed flight operations.* Except as provided under paragraph (k) of this section:

(1) No person may operate a civil aircraft with the doors opened or removed unless—

(i) Each individual on board occupies an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual or an approved child restraint system properly secured to an approved seat or berth with a safety belt and, if installed,

shoulder harness in accordance with § 91.107(a)(3)(iii) or § 135.128(a)(2) of this chapter, during all phases of flight; or

(ii) Each individual on board—

(A) Occupies an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during movement on the surface, takeoff, and landing; and

(B) Is secured during the remainder of the flight using a supplemental restraint system in accordance with, and that meets the requirements of, this section.

(2) Prior to releasing an FAA-approved safety belt and, if installed, shoulder harness during an operation with the doors opened or removed, an individual must be properly secured by a supplemental restraint system that is connected to an FAA-approved airframe attachment point. An individual cannot release their safety belt and, if installed, shoulder harness until the pilot in command authorizes them to do so.

(c) *Supplemental restraint system design requirements.* Each supplemental restraint system must:

(1) Have a harness that secures around the torso of the individual using the supplemental restraint system;

(2) Have a lanyard that connects the harness to an FAA-approved airframe attachment point or points inside the aircraft and that ensures the torso of the individual using the supplemental restraint system remains inside the aircraft at all times;

(3) Not impede egress from the aircraft in an emergency after being released; and

(4) Have a release mechanism that—

(i) Can be quickly operated by the individual using the supplemental restraint system with minimal difficulty;

(ii) Is attached to the front or side of the harness in a location easily accessible to and visible by the individual using the supplemental restraint system;

(iii) Prevents inadvertent release; and

(iv) Can be released without the use of a knife to cut the restraint, and

without any additional tool or the assistance of any other individual.

(d) *Who may provide the supplemental restraint system.* The supplemental restraint system may be provided by the operator or by the individual using the supplemental restraint system. An operator or individual providing a supplemental restraint system must:

(1) Confirm with the pilot in command, either verbally or in writing, as determined by the pilot in command, the system's continued serviceability and readiness for its intended purpose; and

(2) Ensure the individual who will occupy the supplemental restraint system complies with the sizing criteria for which the system is rated.

(e) *Supplemental restraint system operational requirements.* The following are supplemental restraint system operational requirements:

(1) A qualified person designated by the operator must—

(i) Connect the supplemental restraint system to an FAA-approved airframe attachment point or points rated equal to or greater than the weight of the individual using the supplemental restraint system (or the combined weight if there is more than one supplemental restraint system attached to an attachment point);

(ii) Not connect the supplemental restraint system to any airframe attachment point located in the flightdeck; and

(iii) Not connect the supplemental restraint system to any safety belt or shoulder harness attachment point(s) unless the attachment point is FAA-approved as described in paragraph (e)(1)(i) of this section.

(2) A supplemental restraint system must fit the individual using it based on the sizing criteria for which the supplemental restraint system is rated.

(3) Nothing may attach to the supplemental restraint system that is not relevant to its function as defined under § 1.1 of this chapter.

(f) *Pilot in command.* The pilot in command—

(1) Has the overall responsibility to ensure that the supplemental restraint system meets the requirements of this section and must not permit an individual to use a supplemental restraint system that does not meet the requirements of this section;

(2) Must receive confirmation from the operator or any individual providing the supplemental restraint system of the system's continued serviceability and readiness for its intended purpose before each takeoff;

(3) May only permit an individual to use a supplemental restraint system provided by the operator or the pilot in command if that individual complies with the sizing criteria for which the supplemental restraint system is rated;

(4) Has final authority regarding whether the supplemental restraint system may be used during flight operations; and

(5) Has final authority to authorize an individual to release the FAA-approved safety belt and, if installed, shoulder harness and remain secured only by the supplemental restraint system.

(g) *Passenger briefing.* Before each takeoff, the pilot in command must ensure that each passenger who intends to use a supplemental restraint system has been briefed on:

(1) How to use, secure, and release the supplemental restraint system properly. This requirement is not necessary for an individual providing their own supplemental restraint system, but that individual must meet the passenger demonstration requirements in paragraph (h) of this section.

(2) Means of direct communication between crewmembers and passengers during normal and emergency operating procedures regarding—

(i) The use of headset and intercom systems, if installed;

(ii) How passengers will be notified of an event requiring action, including emergencies, egress procedures, and other unforeseen circumstances;

(iii) How each passenger will be notified when the passenger is permitted to release the FAA-approved safety belt and, if installed, shoulder harness, and move within the aircraft using the supplemental restraint system;

(iv) How each passenger will be notified when the passenger must return to their seat and secure the FAA-approved safety belt and, if installed, shoulder harness; and

(v) When and how to notify a crewmember of safety concerns.

(h) *Passenger demonstration.* After the briefing required by paragraph (g) of this section, prior to ground movement,

any passenger intending to use a supplemental restraint system must demonstrate to the pilot in command, a crewmember, or other qualified person designated by the operator, the following:

(1) The ability to use, secure, and release the FAA-approved safety belt and, if installed, shoulder harness, and

(2) The ability to accomplish all actions required for quick release of the supplemental restraint system without assistance and with minimal difficulty.

(i) *Individuals not permitted to use supplemental restraint systems.* The following individuals are not permitted to use a supplemental restraint system, as defined in § 1.1 of this chapter:

(1) Any passenger who cannot demonstrate—

(i) That they are able to use, secure, and release the FAA-approved safety belt and, if installed, shoulder harness; or

(ii) That they are able to release quickly the supplemental restraint system with no assistance and with minimal difficulty.

(2) Any individual who is less than 15 years of age.

(3) Any individual seated in the flightdeck.

(4) Any passenger who occupies or uses an approved child restraint system.

(j) *Lap-held child.* Notwithstanding any other requirement of this chapter, a child who has not reached their second birthday may not be held by an adult during civil aircraft operations when:

(1) The adult uses a supplemental restraint system; or

(2) The aircraft doors are opened or removed.

(k) *Excluded operations.* Unless otherwise stated:

(1) This section does not apply to operations conducted under part 105 or 133 of this chapter and does not apply to the persons described in § 91.107(a)(3)(ii) of this chapter.

(2) Operators subject to the requirements of paragraph (b)(1) of this section may operate an aircraft with doors opened or removed, notwithstanding any flight crewmembers on board who are subject to the requirements of §§ 91.105 or 135.171 of this chapter and who need to unfasten their shoulder harnesses in accordance with those sections.

(3) Paragraph (b)(2) of this section does not apply to any flight crewmembers subject to §§ 91.105 or 135.171 of this chapter to the extent that the flight crewmembers need to unfasten their shoulder harnesses in accordance with those sections.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 8. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 9. Amend § 135.117 by adding paragraph (g) to read as follows:

§ 135.117 Briefing of passengers before flight.

* * * * *

(g) If any passengers on board a flight conducted under this part are secured with a supplemental restraint system, the pilot in command of that flight must ensure those passengers are briefed in accordance with § 91.108(g) of this chapter.

■ 10. Amend § 135.128 by revising paragraph (a)(1) to read as follows:

§ 135.128 Use of safety belts and child restraint systems.

(a) * * *

(1) Be held by an adult, except as outlined in § 91.108(j) of this chapter, who is occupying an approved seat or berth, provided the child has not reached his or her second birthday and the child does not occupy or use any restraining device; or

* * * * *

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 11. The authority citation for part 136 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 12. Amend § 136.7 by adding paragraph (c) to read as follows:

§ 136.7 Passenger briefings.

* * * * *

(c) If any passengers on board a flight conducted under this part are secured with a supplemental restraint system, the pilot in command of that flight must ensure those passengers are briefed in accordance with § 91.108(g) of this chapter.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Michael Gordon Whitaker,
Administrator.

[FR Doc. 2024–18545 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. FAA–2024–0895; Special Conditions No. 29–057–SC]

Special Conditions: Bell Textron Inc. (Bell) Model 525 Helicopter; Static Longitudinal Stability Compliance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bell Model 525 helicopter. This helicopter will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category helicopters. This design feature is a four-axis full authority digital fly-by-wire (FBW) flight control system (FCS) that provides for aircraft control through pilot input or coupled auto pilot modes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Gregory Thumann, Performance and Environment Unit, AIR–621A, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Road, Wichita, KS 67209; telephone and fax (405) 666–1052; email Gregory.G.Thumann@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2011, Bell applied for a type certificate for a new 14 CFR part 29 transport category helicopter designated as the Model 525. Bell applied for multiple extensions to its certification application, with the most recent occurring on September 21, 2023. The helicopter is a medium twin-engine

rotorcraft. The maximum takeoff weight is 20,500 pounds, with a maximum capacity of 16 passengers and a crew of 2.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bell must show that the Model 525 meets the applicable provisions of part 29, as amended by Amendments 29–1 through 29–55 thereto. The Bell Model 525 certification basis date is December 31, 2019.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 29) do not contain adequate or appropriate safety standards for the Bell Model 525 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bell Model 525 helicopter must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Feature

The Bell Model 525 helicopter will incorporate the following novel or unusual design feature: a four-axis full authority digital FBW FCS that provides aircraft control through pilot input or coupled auto pilot modes in addition to degraded modes.

Discussion

For a conventional rotorcraft having mechanical linkages from the primary cockpit flight controls to the rotor, static longitudinal stability means that a pull force on the controller (*i.e.*, cyclic) will result in a reduction in speed relative to the trim speed, and a push force will result in a higher speed relative to the trim speed. Longitudinal stability is required by the regulations for the following reasons:

- Airspeed change cues are provided to the pilot through increased and decreased forces on the controller.
- Short periods of unattended control of the rotorcraft do not result in

significant changes in attitude, airspeed, or load factor.

- A predictable pitch response is provided to the pilot.
- An acceptable level of pilot workload, to attain and maintain trim speed and altitude, is provided to the pilot.
- Longitudinal stability provides gust stability.

The pitch control movement of the controller (*i.e.*, cyclic) for the FBW FCS is an attitude command, which results in a rotor movement to attain the commanded pitch attitude. The flight path commanded by the initial cyclic input will remain stick-free until the pilot gives another command. This control function is applied during normal control laws within the approved flight envelope. The relevant regulations in part 29, which are §§ 29.173(b), 29.175 for visual flight rules (VFR) operations, and Appendix B to part 29 sections IV and VII—Airworthiness Criteria for Helicopter Instrument Flight, are inadequate for the Bell 525 because the longitudinal flight control laws for the Bell 525 provide neutral and negative static stability, rather than positive static stability, within the normal operational envelope. As detailed in § 29.173(b) and considered in Advisory Circular (AC) 29.173A, “Static Longitudinal Stability” (AC 29.173A), which is contained in AC 29–2C, “Certification of Transport Category Rotorcraft” (AC 29–2C), and the positive control force stability requirements in Appendix B to part 29, sections IV and VII, the slope of the control position (*i.e.*, cyclic) versus airspeed curve must be positive (*i.e.*, provide positive static stability) throughout the full range of altitude for which certification is requested and with the throttle and collective pitch held constant.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

In lieu of meeting the requirements of §§ 29.173(b), 29.175 for VFR operations and the airworthiness criteria for helicopter instrument flight requirements of Appendix B to part 29, sections IV and VII, the special conditions require the rotorcraft to be shown to have suitable longitudinal stability and acceptable rotorcraft handling qualities. The suitable static longitudinal stability must be primarily based on a positive control movement, which is described as “control sense of motion” in AC 29.173A contained in AC 29–2C. Additionally, the static

longitudinal stability and rotorcraft handling qualities are determined through an assessment of pilot workload, cues, and pilot compensation for specific test procedures performed during the flight test evaluation.

The language “must be primarily based on a positive control movement” reflects a pilot’s perception of aircraft control where the first concern is that the control movements are primarily positive in control movement. Once that is established, the pilot must observe that the second concern of “rotorcraft handling qualities” is not degraded or mis-aligned where the anticipated flight behavior is not what the pilot is witnessing. The special conditions address the concern that these highly computer-controlled control systems can cause the pilot to become disconnected or out-of-sync with the aircraft’s control. Such a situation can lead to control input errors and undesirable feedback that can in turn result in loss of control.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 29–24–01–SC for the Bell Model 525 helicopter, which was published in the **Federal Register** on May 22, 2024 (89 FR 44928). The FAA received one response from the applicant, Bell.

Bell observed that the language in proposed special conditions No. 29–24–01–SC could be interpreted as negating the entirety of section VII of appendix B to part 29, which is not the FAA’s intent. Bell recommended clarifying the reference to specify section VII(a)(2)(iv) of appendix B to part 29 and adding an additional descriptive phrase in order to avoid an implied exclusion of the remaining applicable parts of section VII. The FAA concurs with Bell’s request and accepts the suggested language as proposed by Bell with minor edits for appropriate presentation.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Bell Model Bell 525 helicopter. Should Bell apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Bell Model 525

is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only a certain novel or unusual design feature on one model of helicopter. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bell Textron Inc. (Bell) Model 525 helicopter.

In lieu of meeting the requirements of §§ 29.173(b), 29.175 for VFR operations and the airworthiness criteria for helicopter instrument flight requirements of Appendix B to part 29, sections IV and VII(a)(2)(iv), as relating to the aircraft’s static longitudinal stability requirements, the Federal Aviation Administration (FAA) establishes the following special conditions as part of the type certification basis for Bell Model 525 helicopters.

The rotorcraft must be shown to have suitable longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The showing of suitable static longitudinal stability must be primarily based on a positive control movement in addition to acceptable rotorcraft handling qualities, both of which are determined by assessing pilot workload, cues, and pilot compensation for specific test procedures during the flight test evaluation.

Issued in Kansas City, Missouri, on August 14, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–18547 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1265; Airspace Docket No. 24–ANM–85]

RIN 2120–AA66

Establishment of Class E Airspace; White Sulphur Springs Airport, White Sulphur Springs, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at White Sulphur Springs Airport, White Sulphur Springs, MT, to support the airport’s transition from visual flight rules (VFR) operations to instrument flight rules (IFR) operations.

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:

Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

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 establishes Class E airspace to support the airport's transition from VFR operations to IFR operations.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2024–1265 in the **Federal Register** (89 FR 45615; May 23, 2024), proposing to establish Class E airspace at White Sulphur Springs Airport, MT. 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—and prior to their planned publication date of Oct 31, 2024—the two instrument approach procedures developed for the airport were modified. As these procedures are the driving factor for the establishment of airspace within this action, the procedure modifications created a need to expand the airspace from that originally proposed. The north extension will now encompass an area approximately 6 x 16 miles in size, while the south extension now encompasses an area approximately 9 x 13 miles in size. This expanded airspace will more appropriately contain arriving IFR aircraft below 1,500 feet above the surface based on the modified procedures.

Incorporation by Reference

Class E5 airspace areas are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at White Sulphur Springs Airport, MT.

The airport is transitioning from VFR operations to IFR operations and requires Class E airspace extending upward from 700 feet above the surface to contain departing IFR aircraft until reaching 1,200 feet above the surface and arriving IFR aircraft below 1,500 feet above the surface. The Class E airspace is centered on the airport reference point within a 5-mile radius and would include extensions to the north and south of the airport to provide additional containment for rising terrain in the vicinity.

Regulatory Notices and Analyses

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

Environmental Review

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

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 part 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.

* * * * *

ANM MT E5 White Sulphur Springs, MT [New]

White Sulphur Springs Airport, MT
(Lat. 46°29'44″N, long. 110°54'43″W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the airport, within 2.9 miles either side of the airport's 015° bearing extending to 15.8 miles north of the airport, and within 4.6 miles either side of the airport's 197° bearing extending to 13 miles south of the airport.

* * * * *

Issued in Des Moines, Washington, on August 15, 2024.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2024–18771 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0485; Airspace
Docket No. 23–ASW–16]

RIN 2120–AA66

Amendment of Jet Route J–183, United States Area Navigation (RNAV) Routes Q–4 and T–254, and Very High Frequency Omnidirectional Range (VOR) Federal Airways V–76, V–161, V–565, and V–568; Establishment of RNAV Route T–499; and Revocation of VOR Federal Airway V–558 in the Vicinity of Llano, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route J–183, United States Area Navigation

(RNAV) Routes Q-4 and T-254, and Very High Frequency Omnidirectional Range (VOR) Federal Airways V-76, V-161, V-558, V-565, and V-568; and establishes RNAV Route T-499. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Llano, TX (LLO), VOR/ Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Llano VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

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, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; 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.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2024-0485 in the **Federal Register** (89 FR 17763; March 12, 2024), to amend Jet Route J-183, RNAV Routes Q-4 and T-254, and VOR Federal Airways V-76, V-161, V-565, and V-568; establish RNAV Route T-499; and revoke VOR Federal Airway V-558 due to the planned decommissioning of the VOR portion of the Llano, TX, VORTAC NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

After publishing the NPRM in the **Federal Register**, the FAA realized the proposed amendments to V-76 and V-558 would inadvertently remove the air traffic service provided by the conventional airways between the Centex, TX, VORTAC and the Industry, TX, VORTAC while the NAVAIDS remain operational. Since V-76 and V-558 overlap between the Centex and Industry VORTACs, the FAA decided to continue with the intended removal of the V-76 airway segment and to retain the V-558 airway segment. As such, instead of removing V-558 in its entirety as proposed in the NPRM, the FAA is removing only the portion of the airway between the Llano, TX, VORTAC and the Centex, TX, VORTAC. As amended, V-558 will continue to provide VOR Federal airway service between the Centex VORTAC and the Industry VORTAC.

Subsequent the NPRM, the FAA published a rule for Docket No. FAA-2023-2493 in the **Federal Register** (89 FR 51403; June 18, 2024), amending V-161 by removing the airway segment between the International Falls VOR/ Distance Measuring Equipment (DME) and the Winnipeg, Manitoba (MB), Canada, VORTAC. As amended, the airway was changed to extend between the Three Rivers, TX, VORTAC and the Tulsa, OK, VORTAC, and between the Butler, MO, VORTAC and the Gopher, MN, VORTAC. That airway amendment becomes effective September 5, 2024, and is included in this rule.

Incorporation by Reference

Jet Routes are published in paragraph 2004, United States RNAV Routes (Q-routes) are published in paragraph 2006, VOR Federal airways are published in paragraph 6010(a), and United States RNAV Routes (T-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 amending Jet Route J-183, RNAV Routes Q-4 and T-254, and VOR Federal Airways V-76, V-161, V-558, V-565, and V-568; and establishing RNAV Route T-499. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Llano, TX, VORTAC. The ATS route actions are described below.

J-183: J-183 extends between the El Paso, TX, VORTAC and the College Station, TX, VORTAC. The route segment between the Pecos, TX, VOR/ DME and the College Station VORTAC is removed. As amended, the route is changed to now extend between the El Paso VORTAC and the Pecos VOR/DME.

Q-4: Q-4 extends between the BOILE, CA, Fix and the El Paso, TX, VORTAC. The route is extended eastward from the El Paso VORTAC to the College Station, TX, VORTAC to mitigate the removal of the J-183 route segment addressed above. In addition, the ZEBOL, AZ, Waypoint (WP) is removed from the route description because it does not denote a turn point of one degree or more and there is no published holding at the WP. Lastly, minor editorial corrections are made to the route description to list the state in which each route point is located, spell out the names of the navigational aids, and update the geographic coordinates of each route point to be expressed in degrees, minutes, seconds, and hundredths of a second. As amended, the route is changed to now extend between the BOILE Fix and the College Station VORTAC.

V-76: V-76 extends between the Lubbock, TX, VORTAC and the Industry, TX, VORTAC. The airway segment between the San Angelo, TX, VORTAC and the Industry VORTAC is removed. As amended, the airway is changed to now extend between the Lubbock VORTAC and the San Angelo VORTAC.

V-161: V-161 extends between the Three Rivers, TX, VORTAC and the

Tulsa, OK, VORTAC; and between the Butler, MO, VORTAC and the Gopher, MN, VORTAC. The airway segment between the Center Point, TX, VORTAC and the Millsap, TX, VORTAC is removed. As amended, the airway is changed to now extend between the Three Rivers VORTAC and the Center Point VORTAC, between the Millsap VORTAC and the Tulsa VORTAC, and between the Butler VORTAC and the Gopher VORTAC.

V-558: V-558 extends between the Llano, TX, VORTAC and the Industry, TX, VORTAC. The airway segment between the Llano VORTAC and the Centex, TX, VORTAC is removed. As amended, the airway is changed to now extend between the Centex VORTAC and the Industry VORTAC.

V-565: V-565 extends between the Llano, TX, VORTAC and the Lufkin, TX, VORTAC. The airway segment between the Llano VORTAC and the Centex, TX, VORTAC is removed. As amended, the airway is changed to now extend between the Centex VORTAC and the Lufkin VORTAC.

V-568: V-568 extends between the Corpus Christi, TX, VORTAC and the Llano, TX, VORTAC; and between the Millsap, TX, VORTAC and the Wichita Falls, TX, VORTAC. The airway segment between the Stonewall, TX, VORTAC and the Llano VORTAC is removed. As amended, the airway is changed to now extend between the Corpus Christi VORTAC and the Stonewall VORTAC, and between the Millsap VORTAC and the Wichita Falls VORTAC.

T-254: T-254 extends between the College Station, TX, VORTAC and the Lake Charles, LA, VORTAC. The route is extended westward from the College Station VORTAC to the San Angelo, TX, VORTAC to mitigate a portion of the V-76 airway segment removed between the San Angelo VORTAC and the Llano, TX, VORTAC. The route extension includes the DILLO, TX, WP; the KALLA, TX, Fix; and the DOWWD, TX, WP. Additionally, the Lake Charles VORTAC route point is replaced with the KNZLY, LA, WP in the immediate vicinity of the Lake Charles VORTAC. Lastly, minor editorial corrections are made to the route description to update the geographic coordinates of each route point to be expressed in degrees, minutes, seconds, and hundredths of a second. As amended, T-254 now

extends between the San Angelo VORTAC and the KNZLY WP.

T-499: T-499 is a new RNAV route established between the Corpus Christi, TX, VORTAC and the DILLO, TX, WP. This new T-route provides RNAV routing between the Corpus Christi, TX, area and the Llano, TX, area to mitigate the removal of the V-568 airway segment addressed above. The full T-499 route description is listed in the regulatory text of this rule.

All NAVAID radials listed in the VOR Federal airway descriptions in the regulatory text of this rule are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act (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 5-6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at

3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. 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. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J-183 [Amended]

From El Paso, TX; to Pecos, TX.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q-4 BOILE, CA to College Station, TX (CLL) [Amended]

BOILE, CA	FIX	(Lat. 34°25'20.78" N, long. 118°01'33.07" W)
HEDVI, AZ	WP	(Lat. 33°32'23.00" N, long. 114°28'14.00" W)
SCOLE, AZ	FIX	(Lat. 33°27'45.80" N, long. 114°04'54.40" W)
SPTFR, AZ	WP	(Lat. 33°23'49.00" N, long. 113°43'29.00" W)

SKTTR, AZ	WP	(Lat. 32°17'38.00" N, long. 109°50'44.00" W)
El Paso, TX (ELP)	VORTAC	(Lat. 31°48'57.28" N, long. 106°16'54.78" W)
Pecos, TX (PEQ)	VOR/DME	(Lat. 31°28'09.53" N, long. 103°34'29.12" W)
DILLO, TX	WP	(Lat. 30°47'46.76" N, long. 098°47'13.91" W)
College Station, TX (CLL)	VORTAC	(Lat. 30°36'18.01" N, long. 096°25'14.45" W)

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V-76 [Amended]

From Lubbock, TX; INT Lubbock 188° and Big Spring, TX, 286° radials; Big Spring; to San Angelo, TX.

* * * * *

V-161 [Amended]

From Three Rivers, TX; to Center Point, TX. From Millsap, TX; Bowie, TX; Ardmore,

OK; Okmulgee, OK; to Tulsa, OK. From Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; to Gopher, MN.

* * * * *

V-558 [Amended]

From Centex, TX; to Industry, TX.

* * * * *

V-565 [Amended]

From Centex, TX; College Station, TX; to Lufkin, TX.

* * * * *

V-568 [Amended]

From Corpus Christi, TX; INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San Antonio; to Stonewall, TX. From Millsap, TX; to Wichita Falls, TX.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T-254 San Angelo, TX (SJT) to KNZLY, LA [Amended]

San Angelo, TX (SJT)	VORTAC	(Lat. 31°22'29.84" N, long. 100°27'17.53" W)
DILLO, TX	WP	(Lat. 30°47'46.76" N, long. 098°47'13.91" W)
KALLA, TX	FIX	(Lat. 30°43'15.88" N, long. 098°04'38.46" W)
DOWWD, TX	WP	(Lat. 30°44'58.33" N, long. 097°06'12.22" W)
College Station, TX (CLL)	VORTAC	(Lat. 30°36'18.01" N, long. 096°25'14.45" W)
EAKES, TX	WP	(Lat. 30°33'18.00" N, long. 095°18'29.00" W)
CREPO, TX	WP	(Lat. 30°16'54.00" N, long. 094°14'43.00" W)
KNZLY, LA	WP	(Lat. 30°08'29.48" N, long. 093°06'19.37" W)

* * * * *

T-499 Corpus Christi, TX (CRP) to DILLO, TX [New]

Corpus Christi, TX (CRP)	VORTAC	(Lat. 27°54'13.56" N, long. 097°26'41.57" W)
CARTI, TX	FIX	(Lat. 28°09'46.08" N, long. 098°02'51.29" W)
LEMIG, TX	FIX	(Lat. 28°58'37.91" N, long. 098°30'03.52" W)
San Antonio, TX (SAT)	VORTAC	(Lat. 29°38'38.51" N, long. 098°27'40.74" W)
Stonewall, TX (STV)	VORTAC	(Lat. 30°12'24.33" N, long. 098°42'20.72" W)
DILLO, TX	WP	(Lat. 30°47'46.76" N, long. 098°47'13.91" W)

* * * * *

Issued in Washington, DC, on August 16, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024-18731 Filed 8-21-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA-2024-F-3879]

Food Additives Permitted in Feed and Drinking Water of Animals; Fermented Ammoniated Condensed Whey

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to update the

production organism *Lactobacillus bulgaricus* that has been scientifically reclassified to *Lactobacillus delbrueckii*. This action is being taken to improve the accuracy and clarity of the regulations.

DATES: This rule is effective August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Chelsea Cerrito, Center for Veterinary Medicine, Division of Animal Food Ingredients, Food and Drug Administration, 12225 Wilkins Ave., Rockville, MD 20852, 240-402-6729, Chelsea.Cerrito@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is amending the food additive regulation at 21 CFR 573.450 *Fermented ammoniated condensed whey* for use in animal feed to update the production organism *Lactobacillus bulgaricus* that has been scientifically reclassified to *Lactobacillus delbrueckii*. This action is being taken to improve the accuracy and clarity of the regulations.

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice

and public comment are unnecessary because this amendment to the regulations provides only technical changes to update scientific nomenclature and is nonsubstantive.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 573.450 [Amended]

■ 2. In § 573.450, in paragraph (a), remove “*Lactobacillus bulgaricus*” and in its place add “*Lactobacillus delbrueckii*”.

Dated: August 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–18824 Filed 8–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice: 12464]

RIN 1400–AF77

Visas: Visa Ineligibility

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (“Department”) is amending a regulation relating to the effect of certain pardons on criminal-related grounds of visa ineligibility.

DATES: This final rule is effective on August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Jami Thompson, Office of Visa Services, Bureau of Consular Affairs, Department of State; telephone (202) 485–7586, VisaRegs@state.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of State (“Department”) is amending its regulations at 22 CFR 40.21(a)(5), and 22 CFR 40.22(c) regarding the effect of a pardon on a visa applicant’s ineligibility under section 212(a)(2)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(2)(A)) and INA section 212(a)(2)(B) (8 U.S.C. 1182(a)(2)(B)), respectively. The current regulation at 22 CFR 40.21(a)(5) provides that an alien is not ineligible for a visa under INA section 212(a)(2)(A) if a full and unconditional pardon has been granted by the President of the United States, by a governor of a state of the United States, or by certain other specified officials. Similarly, the current regulation at 22 CFR 40.22(c) provides that an alien is not ineligible for a visa under INA section 212(a)(2)(B) based on having been convicted of two or more offenses, if a full and unconditional pardon has been granted by the President of the United States, by a governor of a state of the United States, or by certain other specified officials. The Seventh Circuit Court of Appeals recently examined the regulation at 22 CFR 40.21(a)(5), finding that it conflicts with INA’s provisions in section 212(a)(2)(A)(i) governing inadmissibility based on conviction or admission of certain crimes, which do not include an

exception or waiver to that inadmissibility for applicants who receive a pardon.

. . . the [INA] is clear that a pardon does not make an otherwise inadmissible noncitizen admissible, even if a pardon can save a resident noncitizen from being removed . . . and where agency regulations conflict with statutory text, statutory text wins out every time. We simply cannot square [22 CFR 40.21(a)(5)] with the text and structure of the INA as it was amended in 1990.

Wojciechowicz v. Garland, 77 F.4th 511, 514, 518 (7th Cir. 2023) (internal citations and parentheticals omitted). The Department agrees with the Seventh Circuit’s opinion in *Wojciechowicz* as it applies to gubernatorial pardons and finds that the court’s analysis regarding the lack of underlying authority in the INA giving effect to such pardons also extends to the Department’s regulation at 22 CFR 40.22(c) regarding ineligibility for multiple criminal convictions.

B. Legal Background

The Department first promulgated these rules in 1959 at 22 CFR 41.91(a)(9)–(10).¹ At the time the regulations were first promulgated, the Immigration and Nationality Act of 1952, as amended (“1952 Act”), provided that noncitizens were excludable² from the United States and ineligible for visas if they had been convicted of a crime involving moral turpitude or two or more criminal offenses. Unlike the 1952 Act’s provisions on grounds of deportation, which did provide that the criminal-related ground of deportation “shall not apply” to individuals who had received a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, the 1952 Act did not include a provision on the effect of a pardon on excludability. Section 222(a) of the 1952 Act did, however, speak to the possible relevance of a previous pardon or amnesty to an individual’s eligibility for an immigrant visa, requiring that all immigrant visa applicants provide such information among a range of other specified fields.

While the 1952 Act did not expressly include a provision on the effect of a pardon on excludability, the Board of Immigration Appeals (BIA) held in 1954 that such pardons also remove

excludability under now-INA section 212(a)(2)(A)(i). *Matter of H—*, 6 I&N Dec. 90, 96 (BIA 1954) (“As long as there is a full and unconditional pardon granted by the President or by a Governor of a State covering the crime which forms the ground of deportability, *whether in exclusion or expulsion*, the immunizing feature of the pardon clause applies . . .”) (emphasis added).

Following promulgation of the Department’s 1959 rule, amendments to the Immigration and Nationality Act and multiple court decisions have removed any ambiguity about whether there is a statutory basis to except individuals from inadmissibility under INA section 212(a)(2)(A)(i) or INA section 212(a)(2)(B) based on a gubernatorial pardon. Congress revised the grounds of deportation relating to convictions of crimes involving moral turpitude and aggravated felonies under section 602(a) of the Immigration Act of 1990 (“IMMACT 90”) and, among the revisions, added a new clause to that ground expressly authorizing waivers of that ground in cases of certain pardons, including gubernatorial pardons. In the same Act, Congress similarly revised the INA’s ground of inadmissibility in INA section 212(a)(2)(A)(i) for conviction of certain crimes to include a separate clause of exceptions to that ground and did not include any such language excepting applicants from ineligibility if their relevant conviction had been pardoned. Congress also subsequently amended INA section 222(a) to no longer expressly require that all immigrant visa applicants provide information on a previous pardon or amnesty.³

In more recent years, courts have also consistently reached the opposite conclusion of *Matter of H—* regarding the effect of a pardon on a conviction that leads to criminal-related inadmissibility, like the court’s findings in *Wojciechowicz*. Each court that has considered the effect of a gubernatorial pardon on admissibility has uniformly found that Congress did not include an exception to inadmissibility under INA section 212(a)(2)(A)(i) based on having received a pardon as it had done in the corresponding section outlining the criminal grounds for deportation. For example, in *Balogun vs. U.S. Attorney General*, a case involving a gubernatorial pardon, the Eleventh Circuit held that because the criminal-related inadmissibility ground “does not have a pardon provision like [8 U.S.C.]

¹ See 24 FR 6678 (Aug. 18, 1959).

² The 1952 Act referred to “classes of aliens [that] shall be ineligible to receive visas and [that] shall be excluded from admission into the United States” (emphasis added). The Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, introduced the language of “inadmissible aliens” as part of a broader reorganization of the INA.

³ Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, Section 205(a).

section 1227 does,” the logical conclusion was that Congress must not have “intended to extend the pardon waiver to inadmissible aliens.” *Balogun v. U.S. Atty. Gen.*, 425 F.3d 1356, 1362 (11th Cir. 2005). The Ninth Circuit subsequently reached the same conclusion in another case involving a gubernatorial pardon, with the court finding that the “statutory language dealing with pardons applies only to aliens who are charged based upon convictions under [8 U.S.C. 1227]. . . . It does not apply to aliens charged with inadmissibility under [8 U.S.C. 1182(a)].” *Aguilero-Montero v. Mukasey*, 548 F.3d 1248, 1250 (9th Cir. 2008).

Consistent with these courts’ uniform findings on the issue, the BIA has also consistently reached the opposite conclusion of *Matter of H—*, and specifically held that the statutory language on effects of pardons applies only to the criminal-related grounds of deportation and not inadmissibility.⁴ See, e.g., *Matter of Suh*, 23 I&N Dec. 626, 628 (BIA 2003); *Matter of Dillingham*, 21 I&N Dec. 1001 (BIA 1997).

While the Department agrees with the uniform findings from the courts and the BIA that the text and structure of the INA do not provide a basis for a pardon waiver of inadmissibility under INA section 212(a)(2)(A)–(B), these cases do not address the constitutional authority of the President to pardon an offense against the United States, and the effect of such pardons on a criminal-related inadmissibility. Irrespective of express statutory authority to waive the effects of a criminal conviction, a pardon granted by the President of the United States removes the attachment of all consequences based on the offense. See U.S. Const. art. II, § 2; *Effects of a Presidential Pardon*, 19 Op. O.L.C. 160 (1995) (quoting *Ex Parte Garland*, 71 U.S. (4 Wall.) 333, 380 (1866)). Consequently, this rule retains language in both regulations regarding the effect on ineligibility under INA section 212(a)(2)(A)–(B) by reason of a conviction for which the President of

the United States has granted a full and unconditional pardon.

This rulemaking also removes references to the effect of a pardon granted by either the former High Commissioner for Germany acting pursuant to Executive Order 10062 or the U.S. Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. These executive orders were issued in 1949 and 1955, respectively, and pertained to the functions and authorities of the United States in Germany following World War II. Actions undertaken pursuant to these executive orders are now generally obsolete given the time that has passed since the United States occupied Germany. As these provisions pertain to adjudication of visa applications from individuals granted pardons under these executive orders, the provisions are now obsolete and are being removed in the interest of keeping Department regulations clear and up to date.

Regulatory Findings

A. Administrative Procedure Act

The Department is publishing this notice as an interpretative rule which, under the Administrative Procedure Act (APA), is not subject to the general requirement for public notice and comment or the requirement for a 30-day delayed effective date. 5 U.S.C. 553(b)–(c), (d)(2). “[T]he critical feature of interpretive rules is that they are issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers.” *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 97 (2015) (quoting *Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 99 (1995)). As explained above, this rule amends the existing regulation to implement the plain meaning of statutory authorities and the President’s constitutional authority regarding the effect of pardons on inadmissibility under INA sections 212(a)(2)(A)(i) and 212(a)(2)(B). Any rule that is “based on an agency’s power to exercise its judgment as to how best to implement a general statutory mandate” is likely legislative. See *United Tech. Corp. v. EPA*, 821 F.2d 714, 720 (D.C. Cir. 1987). This rule, however, conveys the Department’s interpretation of Congress having expressly *not* provided an exception to inadmissibility based on a pardon, reflecting a plain reading of the inadmissibility ground in INA section 212(a)(2)(A)(i) that multiple courts have shared; therefore, because it is not based in any exercise of the Department’s judgment or discretion regarding these authorities, it is an interpretative rule.

Moreover, whether a rule is legislative or interpretative is assessed by reviewing a range of factors related to: (1) whether the agency would not have an adequate basis to perform duties in the absence of the rule; (2) whether the agency has published the rule in the Code of Federal Regulations; (3) whether the agency has explicitly invoked a legislative authority; or (4) whether the rule effectively amends a prior legislative rule. *Am. Mining Cong. v. Mine Safety Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993). If any of the answers to these questions are affirmative, then the rule is considered legislative and not interpretative. *Id.*

None of the factors in *American Mining* apply to this rule. First, even absent this rulemaking, the lack of any ambiguity regarding the effect of a gubernatorial pardon on a conviction of a crime involving moral turpitude makes clear that the Department lacks authority to except applicants from ineligibility under INA section 212(a)(2)(A)–(B), regardless of this rule. Second, while this rule will result in an amended regulation that is published in the Code of Federal Regulations, the changes are not based in legislative authority, which the court in *American Mining* explained is the purpose of assessing publication there. See *id.* at 1109 (“[A]n agency seems likely to have intended a rule to be legislative if it has the rule published in the Code of Federal Regulations[.]”). Third, the Department is not invoking its general legislative authority to support or justify this rule, as it is merely restating existing statutory and Constitutional authority with respect to the effect of pardons. *Id.* at 1110; *Fertilizer Institute v. EPA*, 935 F.2d 1303, 1308 (D.C. Cir. 1991). Finally, this rule does not amend a prior legislative rule, as a rule does not become an amendment of a prior legislative rule merely because it clarifies an authority being interpreted. See *Id.* at 1112 (“If that were so, no rule could pass as an interpretation of a legislative rule unless it were confined to parroting the rule or replacing the original vagueness with a rule.”). The existing rule appears based on implementation of a 1954 BIA decision for which courts have consistently reached the opposite conclusion regarding authority in the INA to give effect to a pardon on a conviction of a crime involving moral turpitude. See *Matter of H—* at 96. Consequently, the prior rule appears to have also been interpretative and not legislative.

As this rule amends visa policy, which is a foreign affairs function of the United States, it is also exempt from both the notice and comment and

⁴ *Wojciechowicz*, as well as other judicial and administrative decisions confronting the impact of a pardon on inadmissibility, involved pardons not issued by the President of the United States. This rule implements *Wojciechowicz*’s interpretation of the INA vis-à-vis a gubernatorial pardon, which the court found conflicted with the Department’s regulation at 22 CFR 40.21(a)(5). The Department therefore need not address whatever separation of powers concerns may or may not exist regarding the INA and the President’s Article II pardon authority. See *Aristy-Rosa v. Att’y Gen.*, 994 F.3d 112, 117 (9th Cir. 2021) (“These separation of powers concerns are absent here, however, because *Aristy-Rosa*’s case concerns only a state pardon[.]”); see also *Aguilera-Montero*, 548 F.3d at 1255 n.9.

delayed effective date requirements of 5 U.S.C. 553 per subsection (a)(1).

B. Regulatory Flexibility Act

As this rulemaking is not required to be published for notice and comment under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act. Nonetheless, as this rule only directly impacts visa applicants, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (5 U.S.C. 801 *et seq.*). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

D. Executive Orders 12866, 13563, and 14094

Executive Orders (E.O.) 12866, 13563, and 14094 do not apply to this rule, as it pertains to a foreign affairs function.⁵ Notwithstanding the above, the Department has submitted this rule to OIRA for review and OIRA has deemed this rule not to be a significant regulatory action. For the reasons stated above, as this rule affects only visa applicants, the Department is confident this rule will not result in significant impacts to U.S. persons, including U.S. citizens or lawful permanent residents.

E. Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

F. Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

G. Other

The Department has also considered this rule under the Unfunded Mandates

Reform Act of 1995 and Executive Orders 12372, 13132, and 13272 and affirms this rule is consistent with the applicable mandates or guidance therein.

List of Subjects in 22 CFR Part 40

Administrative practice and procedure, Aliens, Foreign relations, Immigration, Passports and visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR 40 is amended as follows:

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

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

Authority: 8 U.S.C. 1104, 1182, 1183a, 1641

- 2. Revise § 40.21(a)(5) to read as follows.

§ 40.21 Crimes involving moral turpitude and controlled substance violators.

(a) * * *

(5) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States. A legislative pardon, a pardon by the Governor of a State of the United States, or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I).

* * * * *

§ 40.22 [Amended]

- 3. Revise § 40.22(c) to read as follows.

§ 40.22 Multiple criminal convictions.

* * * * *

(c) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(B) by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States. A legislative pardon, a pardon by the Governor of a State of the United States, or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove

a ground of ineligibility under INA 212(a)(2)(B).

* * * * *

Julie M. Stuft,

Deputy Assistant Secretary for Visa Services,
Consular Affairs, Department of State.

[FR Doc. 2024–18659 Filed 8–21–24; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9993]

RIN 1545–BQ64

Transfer of Certain Credits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: This document includes corrections to the final regulations (Treasury Decision 9993) published in the **Federal Register** on Tuesday, April 30, 2024. Treasury Decision 9993 contains final regulations concerning the election under the Inflation Reduction Act of 2022 to transfer certain tax credits.

DATES: These corrections are effective on August 22, 2024 and for dates of applicability, see §§ 1.6418–1(r), 1.6418–2(g), 1.6418–3(f), 1.6418–4(d), and 1.6418–5(j).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James Holmes at (202) 317–5114 and Jeremy Milton at (202) 317–5665 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9993) subject to these corrections are issued under section 6418 of the Internal Revenue Code.

Corrections of Publication

Accordingly, FR Doc. 2024–08926 (TD 9993), appearing on page 34770 in the **Federal Register** of Tuesday, April 30, 2024, is corrected as follows:

1. On page 34772, in the first column, in the fourth line from the top of the first partial paragraph, the language “apples” is corrected to read “applies”.

2. On page 34774, in the first column, the seventeenth line from the top of the second full paragraph, is corrected to read “the IRS confirm that the proposed”.

3. On page 34781, in the first column, the fourth line from the top of the

⁵ See E.O. 12866 Sec. 3(d)(2) (excepting from the definition of regulation those rules “that pertain to a . . . foreign affairs function of the United States”).

second partial paragraph, is corrected to read “that referred to the “average transfer”.

4. On page 34793, in the third column, the second line from the top of the second full paragraph, is corrected to read “defined an excessive credit transfer”.

5. On page 34798, in the second column, in the second line from the bottom of the third full paragraph, the language “credit” is corrected to read “credits”.

6. On page 34799, in the third column, the first line of the first full paragraph is corrected to read, “The Treasury Department and the IRS solicited”.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

§ 1.6418-1 [Corrected]

Par. 2. Section 1.6418-1 is amended in paragraph (b) by removing the language “§ 1.6417-1(b)” and adding the language “§ 1.6417-1(c)” in its place.

Par. 3. Section 1.6418-2 is amended:

- 1. In the introductory text of paragraph (b)(4)(iii), by removing the language “((b)(6)(i))” and adding the language “(b)(6)(i)” in its place.
- 2. By revising the sixth sentence of paragraph (b)(4)(iii)(C).
- 3. In paragraph (b)(5)(ii)(C) by removing the language “707(b)(1))” and adding the language “707(b)(1)” in its place.

The revision reads as follows:

§ 1.6418-2 Rules for making transfer elections

- (b) * * *
- (4) * * *
- (iii) * * *
- (C) * * * As a result of the \$40X decrease in the credit determined, C reduces the \$20X of section 45Y credit retained by C to \$0X, and reduces the amount of section 45Y credit transferred to D, E, and F to \$30X, \$24X, and \$6X, respectively (their respective pro rata shares of the reduced amount). * * *

Par. 4. Section 1.6418-3 is amended:

- 1. In paragraph (d)(2), by removing the language “specific” from the second sentence and adding “specified” in its place.
- 2. Revising the second sentence of paragraph (e)(3)(ii).

The revision reads as follows:

§ 1.6418-3 Additional rules for partnership and S corporations.

- (e) * * *
- (3) * * *
- (ii) * * * Under § 1.704-1(b)(4)(ii), for an eligible credit that is not an investment tax credit and that arises from receipts of a partnership, allocations of credit are deemed to be in accordance with the partners’ interests in the partnership if the credit is allocated in the same proportion as the partners’ distributive shares of the receipts that give rise to the credit. * * *

§ 1.6418-4 [Corrected]

Par. 5. Section 1.6418-4 is amended in paragraph (c)(4), by removing the language “applicable” in the first sentence and adding the language “eligible” in its place.

§ 1.6418-5 [Corrected]

Par. 6. Section 1.6418-5 is amended:

- 1. In paragraph (b)(3)(ii), by removing the language “payments” in the last sentence and adding the language “payment” in its place.
- 2. In paragraph (d)(3)(i), by removing the language “eligible transferee” in the last sentence and adding the language “transferee taxpayer” in its place.
- 3. In paragraph (d)(3)(iii), by removing the language “be” in the first sentence and adding the language “been” in its place.

Oluwafunmilayo A. Taylor,
Section Chief, Publications and Regulations
Section, Associate Chief Counsel, (Procedure
and Administration).

[FR Doc. 2024-18576 Filed 8-21-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 13J and 55B

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 13J and 55B, each of which was previously made available on OFAC’s website.

DATES: GL 55B was issued on June 26, 2024. See SUPPLEMENTARY INFORMATION for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Compliance, 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC’s website: <https://ofac.treasury.gov>.

Background

On June 26, 2024, OFAC issued GL 55B to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the “Regulations”). GL 55B has an expiration date of June 28, 2025. On July 10, 2024, OFAC issued GL 13J, also authorizing transactions otherwise prohibited by the Regulations. Each GL was made available on OFAC’s website (www.treas.gov/ofac) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 13J

Authorizing Certain Administrative Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, certifications, or tax refunds to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*, provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation

of such U.S. persons or entities, through 12:01 a.m. eastern daylight time, October 9, 2024.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective July 10, 2024, General License No. 13I, dated April 12, 2024, is replaced and superseded in its entirety by this General License No. 13J.

Bradley T. Smith,
Director, Office of Foreign Assets Control.

Dated: July 10, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 55B

Authorizing Certain Services Related to Sakhalin-2

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the determination of November 21, 2022 made pursuant to section 1(a)(ii) of Executive Order 14071 (“Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin”) related to the maritime transport of crude oil originating from the Sakhalin-2 project (“Sakhalin-2 byproduct”) are authorized through 12:01 a.m. eastern daylight time, June 28, 2025, provided that the Sakhalin-2 byproduct is solely for importation into Japan.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective June 26, 2024, General License No. 55A, dated September 14, 2023, is replaced and superseded in its entirety by this General License No. 55B.

Bradley T. Smith,
Director, Office of Foreign Assets Control.

Dated: June 26, 2024.

Lisa M. Palluconi,

*Acting Director, Office of Foreign Assets
Control.*

[FR Doc. 2024–18750 Filed 8–21–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0730]

RIN 1625–AA00

Safety Zone; Grosse Tete Passenger Ferry, Iberville LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters within a 300 yard radius of the Grosse Tete passenger ferry at MM 46 of the Port Allen Route, Iberville, LA. The safety zone is needed to protect ferry operations for crossing school students during morning and afternoon commutes as a result of the Grosse Tete bridge closure. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans.

This rule is effective without actual notice from August 22, 2024 through noon on October 9, 2024. For the purposes of enforcement, actual notice will be used from noon on August 9, 2024, through August 22, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0730 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Benjamin Adrien, Marine Safety Unit Baton Rouge, U.S. Coast Guard; telephone: (225) 281–2875, email: benjamin.d.adrien@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule

without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to Grosse Tete bridge allision and associated ferry operations. It is impracticable to publish an NPRM because we must establish this safety zone on August 9th, 2024.

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 immediate action is needed to mitigate potential safety hazards associated with the bridge closure and passenger ferry operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP New Orleans has determined a safety zone is needed for the safety of passenger ferry operations at the Grosse Tete bridge on the Port Allen Route MM 46, Iberville, LA. The safety zone is needed to protect and facilitate local school students during morning and afternoon commutes across the Port Allen Route via passenger ferry on Monday through Friday at 6 a.m. to 8 a.m. and 2:30 p.m. to 4:30 p.m. except on Federal holidays.

IV. Discussion of the Rule

This rule establishes a temporary safety zone for all navigable waters within a 300 yard radius of the Grosse Tete passenger ferry at MM 46 of the Port Allen Route, Iberville, LA. The zone will be effective Monday through Friday from 6 a.m. to 8 a.m. and 2:30 p.m. to 4:30 p.m. except on Federal holidays. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

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

This regulatory action determination is based on the size, location, duration, and scope of the safety zone. The safety zone is limited in size and duration as it covers a 300 yard radius of the Grosse Tete passenger ferry at MM 46 of the Port Allen Route, Iberville, LA. The zone will be effective Monday through Friday from 6 a.m. to 8 a.m. and 2:30 p.m. to 4:30 p.m. except on Federal holidays. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within a 300 yard radius of the Grosse Tete passenger ferry at MM 46 of the Port Allen Route, Iberville, LA. The zone will be effective Monday through Friday from 6 a.m. to 8 a.m. and 2:30 p.m. to 4:30 p.m. except on Federal Holidays. This type of action is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0730 to read as follows:

§ 165.T08–0730 Safety Zone; Grosse Tete Passenger Ferry, Iberville, LA.

(a) *Locations.* The following is a temporary safety zone:

(1) All waters within a 300 yard radius of the Grosse Tete passenger ferry at 30°16′0.22″ N, 091°19′16.91″ W, on the Port Allen Route at MM 46, Iberville, LA.

(2) The points are in NAD 83.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit,

anchor, or remain within the safety zone unless authorized by the COTP New Orleans or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP New Orleans or designated representative.

(2) Persons who must notify or request authorization from the COTP may do so by telephone at (504) 365-2540 or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This rule will be enforced from 12 p.m. on August 9, 2024, through 12 p.m. on October 9, 2024.

Dated: August 9, 2024.

G.A. Callaghan,

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

[FR Doc. 2024-18869 Filed 8-21-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

Processing Certain Claims for Payment for Transportation, Care, and Services

AGENCY: Department of Veterans Affairs.

ACTION: Notification of guidance.

SUMMARY: This notification informs the public of the Department of Veterans Affairs' (VA) interpretation of law and regulations regarding timely filing for certain claims for payment for transportation, care and services affected by a cybersecurity incident.

DATES: The guidance is effective August 22, 2024. Claims submitted pursuant to this document must be received by VA by October 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Joseph Duran, Policy Directorate, 16IVCEO3, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; 303-370-1637. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Factual Background: On February 21, 2024, a cybersecurity incident impacted Change Healthcare (CHC). CHC serves as a clearinghouse for a number of claims for payment related to ambulance transportation and health care services under a contract with VA. This incident prevented providers and entities from submitting claims electronically to VA. As of May 8, 2024, VA is able to receive all claims electronically. Between

February 21, 2024, and May 8, 2024, VA had limited or no ability to receive and process claims because of this incident. During this period of more than 70 days, providers and entities were unable to, or were limited in their ability to, submit claims to VA for services for which VA would normally have processed payment that were provided either before or during this period.

Legal Background: Entities seeking payment from VA for ambulance transportation and health care services are required to comply with timely filing requirements established by several different provisions of law and regulation.

Section 1703D(b) of title 38, United States Code (U.S.C.), requires health care entities or providers that furnish hospital care, medical services, or extended care services under chapter 17, title 38, U.S.C., to submit to VA claims for payment for furnishing such services not later than 180 days after the date on which the entity or provider furnished the services.

Section 17.126 requires claimants to file a claim for reimbursement for emergency services for service-connected care within 2 years of the date the care or services were rendered, or, in the case of care or services rendered prior to VA adjudication allowing service-connection, within two years of the date the veteran was notified by VA of the allowance of the award of service connection.

Section 17.1004(d) of title 38, Code of Federal Regulations (CFR), requires claimants to file a claim for reimbursement for emergency services for non-service-connected care within 90 days of the latest of the date the veteran was discharged from the facility that furnished emergency treatment; the date of death (but only if death occurred during transportation to a facility for emergency treatment or if the death occurred during the stay in the facility that included the provision of emergency treatment); or the date the veteran finally exhausted, without success, action to obtain payment or reimbursement for the treatment from a third-party.

Sections 17.1225 and 17.1230 of title 38, CFR, require providers of emergent suicide care and emergency transportation for emergent suicide care, respectively, to submit to VA a standard billing form and other information as required no later than 180 calendar days from the date the services or transportation was furnished.

Section 70.20(b) of title 38, CFR, requires claimants to apply for payment of beneficiary travel within 30 calendar days after completing beneficiary travel

that does not include a special mode of transportation. For travel that includes a special mode of transportation (including ambulances), claimants must apply for payment of beneficiary travel and obtain approval from VA prior to the travel; if prior approval has not been granted, claimants must apply for payment within 30 calendar days after the travel is completed. VA may pay for transportation for emergency treatment under separate authorities as well.

Section 17.276 of title 38, CFR, requires claims under the Civilian Health and Medical Program of VA (CHAMPVA) program to be filed not later than one year after the date of service or the date of discharge (for inpatient care), or within 180 days following beneficiary notification of authorization in the case of retroactive approval for medical services or supplies, generally. Requests for extensions must be submitted in writing, and VA may grant exceptions if it determines there was good cause for missing the filing deadline.

Section 17.903 of title 38, CFR, requires claims for the Children of Women Vietnam Veterans and the Spina Bifida program to be filed not later than one year after the date of service or the date of discharge (for inpatient care), or within 180 days following beneficiary notification of authorization in the case of retroactive approval for medical services or supplies, generally.

Other claims, including those for medical care provided through reimbursement agreements with the Indian Health Service, Tribal health programs, and Urban Indian Organizations under 25 U.S.C. 1645 and 38 U.S.C. 8153, are subject to timely filing requirements and were also affected by the CHC outage. Timely filing under these reimbursement agreements generally requires claims submission within one year of the date of service.

Legal Issue: The plain text of these statutes and regulations, with the exception of 17.276, does not include exceptions for established timely filing requirements. If VA applied these statutes and regulations without exception, it would be forced to deny claims affected by the CHC outage as not timely filed and thus not payable. This would expose veterans to personal liability in some cases for these services through no fault of their own. It also would result in inequitable outcomes, where entities and providers furnished services on behalf of VA but were unable to be paid for reasons beyond either VA's or their control.

Legal Interpretation: In light of this issue, VA is publicly stating its

interpretation of these statutes and regulations that affected providers and entities are not subject to the timely filing requirements established by the statutes and regulations described in this document, subject to the terms and conditions articulated in this document.

VA's legal basis for this position is its interpretation of these statutes and regulations in light of the common law. The Supreme Court has noted that, "where a common law principle is well established . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident'." See *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991).

The common law principle of force majeure refers to situations that free parties from obligations if an extraordinary event directly preventing one or both parties from performing occurs. Impossibility is another provision in common law that generally provides relief from requirements under similar conditions and would apply here as well. Under the doctrines of both force majeure and impossibility, the event precipitating that state must have been unanticipated and beyond the control of the parties. VA has determined the CHC outage satisfies these requirements.

The concepts of force majeure and impossibility originated in the common law and still apply today. VA finds no evidence that in section 1703D(b), for example, Congress intended a statutory purpose inconsistent with the application of these common law principles. The purpose of section 1703D broadly was to ensure prompt payment of entities or providers furnishing care and services on VA's behalf. Congress stated clearly that "VA's ability to timely and accurately process payments to community providers is critical to the [Community Care] Program's success and to ensuring access to community care for the increasing number of veterans who rely on it." H. Rpt. 115–671, Part 1, May 11, 2018, p. 7. Interpreting provisions in this statute to deny the timely and accurate payment of entities or providers when submission delays were not the fault of VA or the entities or providers would be plainly contrary to this intent and would damage the credibility and reliability of the Veterans Community Care Program and VA benefits more broadly.

VA similarly interprets its regulations regarding timely filing by applying the same canon of statutory interpretation described above. The Supreme Court has held that the canons of statutory

interpretation should be applied to Federal regulations as well. See, e.g., *Kisor v. Wilkie*, 588 U.S. ____ (2019) ("And before concluding that a rule is genuinely ambiguous, a court must exhaust all the 'traditional tools' of construction.")

VA has contracts or agreements for much of the care and services that are furnished on its behalf, and these contracts or agreements generally include well-established exceptions for situations of force majeure or impossibility. Where applicable, VA is exercising its contractual flexibility, but where not, VA's interpretation here should provide appropriate relief to entities or providers affected by the CHC outage.

In determining that force majeure and impossibility precluded the timely submission of claims, we similarly interpret that VA is relieved of obligations it may have otherwise incurred, as the common law relieved both parties of their obligations. In general, if VA fails to pay a valid, submitted claim, it owes interest for late payment. However, because VA was unable to accept claims, no late payment period could begin that would result in interest liability. Consequently, VA will not pay interest on any claims a provider attempted to submit to VA during the outage described above. However, if VA fails to pay claims submitted now, it will be liable for interest payments under relevant provisions of law.

The vast majority of provisions in law and regulation concerning VA health care benefits do not affect or implicate common law principles, but the timely filing requirements do. Consequently, VA's interpretation here that common law principles apply are limited to the statutes and regulations identified in this document.

Requirements for Timely Filing: Impacted entities or providers seeking payment may submit impacted claims for payment by October 31, 2024. Impacted claims covered by this document that are received after October 31, 2024, will not be considered timely filed and will be denied. This will provide Impacted entities or providers approximately 60 days' notice from publication of this document to file claims, which VA believes to be a sufficient period of time for claims submission in this situation.

For purposes of this document, "impacted entities and providers" are those who submit medical (including transportation) or dental claims directly to VA for payment. "Impacted claims" are claims from impacted entities and providers that would be considered not

timely filed based on the dates of service and the dates of the claim submission. Impacted entities and providers may submit impacted medical, (including transportation) claims, to electronic data interchange (EDI) payor ID 12115 for services provided to veterans, dental claims to EDI payor ID 12116 for services provided to veterans, medical claims to EDI payor ID 84146 for services provided to family members of veterans, and dental claims to EDI payor ID 84147 for services provided to family members of veterans. Transportation claims that are not submitted to payor ID 12115 are not applicable to this document and should continue to be submitted according to normal procedures and requirements. Medical claims whose timely filing period expired between February 21, 2024, and March 23, 2024, for payor IDs 12115 and 84146, and dental claims whose timely filing period expired between February 21, 2024, and May 8, 2024, for payor IDs 12116 and 84147, will be considered timely filed if such claims are submitted to VA by October 31, 2024.

Claims must be submitted to VA as they normally would be (e.g., location, content, etc.) in accordance with standard submission protocols.

Impacted claims may include: claims for non-emergent medical care furnished to veterans with a date of service between February 21, 2023, and March 23, 2024; claims for dental care furnished to veterans with a date of service between February 21, 2023, and May 8, 2024; claims for emergency care furnished to veterans with a date of service between February 21, 2022, and March 23, 2024; claims for transportation furnished to veterans with a date of service between February 21, 2022, and March 23, 2024; claims for medical care furnished to eligible family members under the Civilian Health and Medical Program of VA (CHAMPVA), Spina Bifida Health Care Benefits Program (SBHCBP) or Children of Women Vietnam Veterans (CWVV) Health Care Benefits Program with a date of service between February 21, 2023, and March 23, 2024; and claims for dental care furnished to eligible family members under CHAMPVA, SBHCBP or CWVV with a date of service between February 21, 2023, and May 8, 2024.

The dates of service identified above reflect the earliest and latest possible qualifying dates. The general descriptions above reflect various legal authorities, each of which may include additional requirements regarding timely filing, and VA will apply additional requirements as needed. For

example, VA can reimburse claims for emergency care furnished to veterans under several different statutory authorities, including 38 U.S.C. 1703, 1720J, 1725, and 1728. VA's regulations provide for different timely filing requirements under these authorities. Section 1728 and its implementing regulations require eligible entities or providers to submit a claim within two years of the date of service. Given the outage for medical claims between February 21, 2024, and March 23, 2024, for such claims, a provider could have attempted to submit a claim on February 21, 2024, for emergency care furnished to a veteran on February 21, 2022, and that claim could have been considered timely and potentially approved by VA (if other conditions were met). However, under section 1725 and its implementing regulations (specifically, 17.1004, as described above), claims must be submitted to VA within 90 days of the later of any of several dates or events. If VA determined that a claim for services furnished on February 21, 2022, that is submitted based on this document is not payable under section 1728 but only payable under section 1725, that claim would be considered not timely filed. VA does not expect providers to know under what authority they are filing claims; VA will process received claims, as it does today, to determine which authority is appropriate. If providers believe VA has denied a claim incorrectly, they are free to appeal that decision, as they can today.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on August 15, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

[FR Doc. 2024-18651 Filed 8-21-24; 8:45 am]

BILLING CODE 8320-01-P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102-5, 102-36, 102-38, 102-39, 102-40, 102-41, and 102-42

[FMR Case 2024-01; Docket No. GSA-FMR-2024-0001; Sequence No. 1]

RIN 3090-AK79

Federal Management Regulation; Updating the FMR With Diversity, Equity, Inclusion, and Accessibility Language

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule that makes technical amendments to the Federal Management Regulation (FMR) regarding gender neutrality. These technical amendments result in more inclusive language by replacing gender-specific pronouns (e.g., he, she, his, her) with non-gendered pronouns. GSA is also correcting minor grammatical and administrative errors in FMR parts 102-5 and 102-42. These changes are grammatical and technical in nature and do not result in added costs or associated policy changes.

DATES: This final rule is effective on October 21, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. William Garrett, Director, Personal Property Policy Division, Office of Government-wide Policy, at 202-368-8163 or personalpropertypolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite "FMR Case 2024-01."

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order (E.O.) 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, dated January 20, 2021, establishes a policy "to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation." The Federal Government must be a model for diversity, equity, inclusion, and accessibility, where all employees are treated with dignity and respect. Therefore, GSA has undertaken a review of FMR parts 102-5 and 102-33 through 102-42.

Consistent with the American Psychological Association (APA) Style Guide, 7th Edition, Publication Manual Section 5.5 guidance on "Gender and Pronoun Usage", GSA is replacing gender-specific pronouns, such as he, she, his, or her, with more inclusive and respectful terminology to all segments of society. Other terms that do not use gender-specific language, such as Administrator, Architect, employee, and purchaser, have also been used as appropriate.

II. Discussion of the Final Rule

A. Summary of Significant Changes

This final rule is technical in nature and does not significantly change any definition, operation, or interpretation of the FMR.

B. Expected Cost Impact to the Public

There is no expected cost impact to the public due to these technical changes to the FMR.

III. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs 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 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) amends Section 3(f) of E.O. 12866 and supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this rule is not a significant regulatory action, and therefore, it was not reviewed under Section 6(b) of E.O. 12866.

IV. Congressional Review Act

OIRA has determined that this rule is not a "major rule" under 5 U.S.C. 804(2). Title II, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801-808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, unless excepted, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This rule is excepted from CRA reporting requirements prescribed under 5 U.S.C. 801 as it relates to agency management or personnel under 5 U.S.C. 804(3)(B).

V. Regulatory Flexibility Act

This final rule will not 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.* This final rule is also excepted from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Parts 102–5, 102–36, 102–38, 102–39, 102–40, 102–41, and 102–42.

Home-to-work transportation, Excess and surplus Government property, Government property management.

Robin Carnahan,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 102–5, 102–36, 102–38, 102–39, 102–40, 102–41, and 102–42 as set forth below:

PART 102–5—HOME-TO-WORK TRANSPORTATION

- 1. The authority citation for 41 CFR part 102–5 continues to read as follows:

Authority: 40 U.S.C. 121(c); 31 U.S.C. 1344(e)(1).

§ 102–5.30 [Amended]

- 2. Amend § 102–5.30 by—
 - a. In the definition of “field work”, removing from the first sentence the words “his/her regular” and adding the words “their regular” in its place;
 - b. In the definition of “home”, removing the words “his/her place of work” and adding the words “their place of work” in its place;
 - c. In the definition “home-to-work”, removing the words “his/her home” and adding the words “their home” in its place; and

- d. In the definition “work”, removing “his/her official” and adding “their official” in its place.

■ 3. In § 102–5.35:

- a. Revise the section heading; and;
- b. Remove the phrase “authorized home-to-work” wherever it appears and add, in its place, the phrase “authorized for home-to-work”.

The revision reads as follows:

§ 102–5.35 Who is authorized for home-to-work transportation?

* * * * *

§ 102–5.70 [Amended]

- 4. Amend § 102–5.70 by removing from paragraph (a) “his/her work” and adding “their work” in its place.
- 5. Amend § 102–5.75 by—
 - a. Revising paragraph (b);
 - b. Removing from paragraph (c) the phrase “his/her official” and adding in its place the phrase “their official”; and
 - c. Revising the note to the section.

The revisions read as follows:

§ 102–5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?

* * * * *

- (b) When the employee’s workday begins at their work; or

* * * * *

Note to § 102–5.75: For instances where an employee is authorized for home-to-work transportation under the field work provision, but performs field work only on an intermittent basis, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed. Although some employees’ daily workstation is not located in a Government office, these employees are not performing field work. Like all Government employees, employees working in a “field office” are responsible for their own commuting costs.

- 6. Amend § 102–5.90 by:
 - a. Revising the section heading; and
 - b. Removing from the phrase “the employee home-to-work” wherever it appears and adding in its place “home-to-work”.

The revision reads as follows:

§ 102–5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee’s home or work rather than authorize home-to-work transportation?

* * * * *

- 7. Amend § 102–5.105 by revising the first sentence to read as follows:

§ 102–5.105 May others accompany an employee using home-to-work transportation?

Yes, an employee authorized for home-to-work transportation may share

space in a Government passenger carrier with other individuals, provided that the passenger carrier does not travel additional distances as a result and such sharing is consistent with the employee’s Federal agency’s policy.
* * *

PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

- 8. The authority citation for 41 CFR part 102–36 continues to read as follows:

Authority: 40 U.S.C. 121(c).

§ 102–36.5 [Amended]

- 9. Amend § 102–36.5 by removing the phrases “he deems” and “his functions” and adding the phrases “the Administrator deems” and “their functions” in their places, respectively.

§ 102–36.40 [Amended]

- 10. Amend § 102–36.40 by removing from the definition “Federal agency” the phrase “his/her direction” and adding the phrase “the Architect’s direction” in its place.

§ 102–36.60 [Amended]

- 11. Amend § 102–36.60 by removing from paragraph (d) the phrase “his direction” and adding the phrase “the Architect’s direction” in its place.

§ 102–36.115 [Amended]

- 12. Amend § 102–36.115 by removing from paragraph (a)(1) the phrase “he/she represents” and adding the phrase “they represent” in its place.

§ 102–36.155 [Amended]

- 13. Amend § 102–36.155 by removing from paragraph (d) the phrase “his obligations” and add the phrase “their obligations” in its place.

PART 102–38—SALE OF PERSONAL PROPERTY

- 14. The authority citation for 41 CFR part 102–38 continues to read as follows:

Authority: 40 U.S.C. 545 and 40 U.S.C. 121(c).

§ 102–38.110 [Amended]

- 15. Amend § 102–38.110 by removing the phrase “(or his/her designee)” and adding the phrase “(or designee)” in its place.

§ 102–38.195 [Amended]

- 16. Amend § 102–38.195 by removing the phrase “uses his/her own” and adding the phrase “does not use an authorized” in its place.
- 17. Amend § 102–38.240 by

- a. Revising the section heading; and
- b. In paragraph (b) removing the phrase “his/her bid” and adding the phrase “their bid”.

The revision reads as follows:

§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw their bid?

* * * * *

§ 102–38.255 [Amended]

- 18. Amend § 102–38.255 by removing from paragraph (a) the phrase “his/her bid” and adding the phrase “their bid” in its place.

§ 102–38.260 [Amended]

- 19. Amend § 102–38.260 by removing the words “his/her designee” and adding the word “designee” in its place.

PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

- 20. The authority citation for 41 CFR part 102–39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 40 U.S.C. 503.

§ 102–39.20 [Amended]

- 21. In § 102–39.20 amend the definition of “Federal agency” by removing the words “his/her direction” and adding, in their place, the words “the Architect’s direction.”

PART 102–40—UTILIZATION AND DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

- 22. The authority citation for 41 CFR part 102–40 continues to read as follows:

Authority: 40 U.S.C. 121(c).

§ 102–40.135 [Amended]

- 23. In § 102–40.135 in paragraph (b) amend the certification paragraph by removing the words “he/she is” and adding in their place the words, “the purchaser is”.

§ 102–40.145 [Amended]

- 24. In § 102–40.145, paragraph (a) amend the certification by—
 - a. Removing from first paragraph the words “certifies that he/she” and adding in their place the words “certifies that they”; and
 - b. Removing from the second paragraph the words “he/she is licensed” and adding in their place the words “they are licensed”.

§ 102–40.160 [Amended]

- 25. Amend § 102–40.160 by:

- a. In paragraph (c)(1), in the certification, removing the words “his/her bid” and adding in the place the words “their bid”; and
- b. In paragraph (c)(2), in the certification, removing the words “he/she is” and adding in their place the words “they are”.

§ 102–40.165 [Amended]

- 26. Amend § 102–40.165 by:
 - a. In paragraph (d)(1), in the certification, removing the words “his/her bid” and adding in their place the words “their bid”;
 - b. In paragraph (d)(2):
 - i. In the introductory text, removing the words “his/her license” and adding in their place the words “the bidder’s license”; and
 - c. In the certification removing the words “he/she is legally” and “his/her license” and adding their place the words “they are legally” and “the bidder’s license”, respectively.

§ 102–40.170 [Amended]

- 27. In § 102–40.170 amend paragraph (g) by removing from certification the words “that he/she is” and adding in their place the words “that the purchaser or donee is”.

§ 102–40.190 [Amended]

- 28. In § 102–40.190 amend paragraph (b) by removing the words “his or her professional” and adding in their place the words “their professional”.

PART 102–41—DISPOSITION OF SEIZED, FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

- 29. The authority citation for 41 CFR part 102–41 continues to read as follows:

Authority: 40 U.S.C. 121(c).

- 30. Amend § 102–41.135 by revising the section heading to read as follows:

§ 102–41.135 How much reimbursement do we pay the former owner when they file a claim for unclaimed personal property that we no longer have?

* * * * *

PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

- 31. The authority citation for 41 CFR part 102–42 continues to read as follows:

Authority: 40 U.S.C. 121(c); sec. 515, 5 U.S.C. 7342 (91 Stat. 862).

§ 102–42.10 [Amended]

- 32. In § 102–42.10 amend definition of “Employee” in paragraph (7) by

removing the words “his or her spouse are separated” and adding in their place the words “the individual’s spouse are legally separated”.

§ 102–42.20 [Amended]

- 33. Amend § 102–42.20 by—
 - a. In paragraph (a) introductory text removing the words “he/she is not” and adding in their place the words “the employee is not”; and
 - b. In paragraphs (a)(1) and (b)(1) removing the words “his/her employing” and adding in their place the words “their employing”.

[FR Doc. 2024–18460 Filed 8–21–24; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2023–0025]

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a February 12, 2019 petition for rulemaking submitted by Mr. Stevan Panin (“petitioner”) requesting that NHTSA amend Federal Motor Vehicle Safety Standard (FMVSS) No. 104 or create a new FMVSS to require the year-round use of a standardized winter specification windshield washer fluid to prevent accidents allegedly caused by obstructed visibility from frozen windshield washer fluid. NHTSA is denying this petition for rulemaking because the agency does not believe the petitioner has demonstrated there is an unmet safety need related to windshield washer fluid, or that a mandated standardized winter-specification windshield washer fluid would effectively decrease or prevent crashes and injuries or fatalities.

DATES: August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Cynthia Collado, Safety Standards Engineer, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590, Telephone: 202–366–6294; or Natasha Reed, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New

Jersey Ave. SE, Washington, DC 20590,
Telephone: 202–366–2992.

SUPPLEMENTARY INFORMATION:

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- IV. Conclusion

I. Background

Under the National Traffic and Motor Vehicle Safety Act (the Safety Act), 49 U.S.C. Chapter 301, as amended, the National Highway Traffic Safety Administration (NHTSA) has the authority to issue Federal Motor Vehicle Safety Standards (FMVSS) for new motor vehicles and motor vehicle equipment. Each FMVSS must be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

Petitions for rulemaking are governed by 49 CFR part 552. Pursuant to section 552.6, the agency conducts a technical review of the petition, which may consist of an analysis of the material submitted together with information already in possession of the agency. In deciding whether to grant or deny a petition, the agency considers this technical review as well as appropriate factors, which include, among others, allocation of agency resources and agency priorities.¹

II. Petition for Rulemaking

The petitioner, Mr. Stevan Panin, submitted a letter and rulemaking petition dated February 12, 2019, regarding 49 CFR 571.104, “Windshield wiping and washing systems,” expressing concern that the use of summer and non-standardized winter-specification windshield washer fluid during colder temperatures causes vehicular injuries and fatalities because of reduced or zero visibility. The petitioner explained that summer-specification windshield washer fluid, if left in a vehicle during colder temperatures, freezes at around 32 degrees Fahrenheit, leading to frozen fluid smeared on windshields and reduced or eliminated visibility. The petitioner also stated that summer-specification windshield washer fluid may freeze the windshield washer system in colder temperatures

(including the lines, pump, and reservoir), resulting in a potentially damaged windshield washer system, smeared road grime across the windshield, and reduced or no visibility due to the wipers actuating with no spraying washer fluid. Finally, the petitioner stated that there have been manufacturing problems at winter-specification fluid production plants, resulting in winter-specification windshield washer fluid that does not meet the manufacturer's internal requirements and freezes at much higher temperatures than specified.

To address these concerns the petitioner requested that NHTSA eliminate summer-specification windshield washer fluid and mandate the use of standardized winter-specification windshield washer fluid throughout the entire year by modifying FMVSS No. 104 or creating a new FMVSS. The petitioner stated that standardized winter-specification windshield washer fluid should be designed with a low enough freezing point to function properly in the coldest winter temperatures encountered in the U.S., down to minus 40 degrees Fahrenheit, to eliminate the issue of reduced or zero visibility caused by frozen washer fluid on the windshield and/or the freezing of the entire windshield washer system.

Finally, the petitioner suggested that ethanol should be used as a windshield washer fluid additive in lieu of methanol to lower the freezing point for winter use and to address the potential hazards associated with the current use of methanol in windshield washer solvents. The petitioner explained that unlike methanol, a poisonous substance with potentially severe health consequences if ingested or inhaled, ethanol is not poisonous if ingested, does not cause blindness, and poses reduced harm when inhaled as vapor. Additionally, the petitioner suggested that ethanol may offer cost-effectiveness compared to methanol.

III. NHTSA's Analysis and Decision

After thorough review of the petition requesting implementation of a revised or new FMVSS mandating the year-round use of winter washer fluid, NHTSA is denying the petition based on the lack of sufficient data necessary to proceed under the Motor Vehicle Safety Act. The following reasons detail the rationale for the agency's decision.

A. The Petitioner Fails To Present Evidence of an Unmet Motor Vehicle Safety Need

The Safety Act requires that prescribed motor vehicle safety

standards meet a motor vehicle safety need.² According to the petitioner, there is an unmet safety need for vehicles that use summer-specification windshield washer fluid during cold temperatures and for vehicles that use winter-specification windshield washer fluid that does not meet temperature freezing requirements. However, the petitioner fails to provide any evidence to quantify the extent and scale of the alleged safety issue, such as the nature, cause, size, and potential severity of the alleged hazard. Instead, after asserting that the use of summer-specification and non-compliant winter-specification windshield washer fluid causes increased injuries and fatalities, the petitioner provides only anecdotal information about such incidents, with no data demonstrating their frequency or severity.

Additionally, although the petitioner raises concerns that colder temperatures may cause windshield washer fluid to freeze on the windshield or within the windshield washer system, the petitioner does not acknowledge FMVSS No. 103, “Windshield defrosting and defogging systems,” which requires vehicles to have adequate defroster systems meeting minimum performance requirements for windshield clearance in below-freezing conditions, down to minus 40 degrees Fahrenheit. NHTSA notes that a properly functioning and compliant defroster is specifically designed to prevent accumulation of frost and frozen precipitation on the windshield by actively raising the windshield's temperature. FMVSS No. 103 also requires that the washer system not fail permanently if it does freeze. Further, for internal combustion engines, as the vehicle's engine reaches operating temperature, the heat generated under the hood helps to maintain the windshield washer system at an elevated temperature during travel, minimizing the risk of washer fluid freezing in the system and preventing the system from operating (this may not be the case for electric vehicles, which may or may not have a heating element to prevent fluid from freezing).

Finally, NHTSA acknowledges that the petitioner suggested as a “side note” that methanol should be substituted for ethanol in winter-specification windshield washer fluid because of methanol's potentially dangerous effects on humans. To the extent that the petitioner is suggesting that ethanol should be required under FMVSS No. 104 or under a new FMVSS, the petitioner does not relate that suggestion

¹ 49 CFR 552.8.

² 49 U.S.C. 30111.

to an unmet vehicle safety need, as required by 49 U.S.C. 30111(a).

Based on the above reasons, NHTSA believes that the petitioner has failed to demonstrate a clear need for safety attributable to summer-specification or allegedly non-compliant winter-specification windshield washer fluid. While we agree that failure of the windshield washing system could result in reduced windshield visibility, the petitioner did not provide evidence demonstrating the scope of this potential safety problem or whether such a problem could be attributable to winter-specification windshield washer fluid, nor is it clearly established by available safety data. Accordingly, NHTSA has concluded that the petitioner has not shown an unmet safety need that would justify the mandate to use of year-round standardized winter-specific windshield washer fluid, as required by 49 U.S.C. 30111(a). NHTSA notes that it will not hesitate to exercise its defect and recall authority should any windshield washing system fail and create an unreasonable risk to safety.³

B. The Petitioner Fails To Demonstrate That a Standardized Winter-Specification Windshield Washer Fluid Would Effectively Address an Unmet Motor Vehicle Safety Need

Even if an unmet motor vehicle safety need exists, the Safety Act requires that an FMVSS meet the motor vehicle safety need.⁴ The petitioner states that reduced or zero windshield visibility can cause accidents resulting in bodily injury and fatalities. The petitioner then suggests that an easily implemented solution to solve this problem is the elimination of summer-specification windshield washer fluid and standardization of winter-specification windshield washer fluid. However, the petitioner's primary support for this suggestion is a personal anecdotal description of an incident in which the petitioner states his windshield washer fluid froze in cold temperatures, obscuring his windshield's visibility and requiring him to pull over and wait for his windshield defroster system to thaw the frozen washer fluid. The petitioner states his belief that this incident occurred because summer-specification windshield washer fluid was added to his car's washer fluid reservoir in a warmer state and froze after he returned to a colder climate. Other than this personal anecdote, the petitioner provides no supporting data or research linking frozen windshield washer fluid

to crashes or fatalities to demonstrate that banning summer-specification windshield washer fluid and mandating standardized winter-specification windshield washer fluid would effectively prevent fatalities or injuries. Further, the petitioner provides no supporting data substantiating the scope of the alleged safety issue, nor any evidence that the proposed solution would remedy the alleged safety issue. Absent such supporting data or evidence, NHTSA cannot find that requiring year-round standardized winter-specification windshield fluid would effectively prevent fatalities and injuries.

IV. Conclusion

For the foregoing reasons NHTSA is denying the petition based on the lack of sufficient information and evidence discussed above. The petitioner has not demonstrated a safety need and a solution that would justify NHTSA reallocating its limited resources from rulemakings that are mandated by Congress and others that have a demonstrated safety need with solutions available to resolve those needs.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95, 501.5, and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2024–18714 Filed 8–21–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2024–0038]

RIN 2127–AL90

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends Federal Motor Vehicle Safety Standard (FMVSS) No. 208, “Occupant crash protection,” updating the child restraint systems (CRSs) listed in the standard. NHTSA uses the CRSs to test the performance of advanced air bag suppression and low risk deployment systems in either suppressing or deploying the air bag in a low-risk

manner in the presence of a CRS. The amendments will ensure that the CRSs used by NHTSA to test advanced air bags are representative of the current CRS market and will make it easier for vehicle manufacturers and test laboratories to acquire CRSs for testing purposes.

DATES:

Effective date: October 21, 2024.

Petition for reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by October 7, 2024.

Compliance date: This final rule adopts a phase-in of the revised appendix. The phase-in begins on September 1, 2025, when forty percent of a manufacturer's applicable light vehicles must comply with the revised appendix. By September 1, 2026, all applicable light vehicles must comply with the revised appendix. We are also allowing optional early compliance.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT:** In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a submission containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512). Please see further information in the Regulatory Notices and Analyses section of this preamble.

Privacy Act: The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal**

³ 49 U.S.C. 30118.

⁴ *Id.*

Register published on April 11, 2000 (65 FR 19477–78) or you may visit <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Carla Rush, Office of Crashworthiness Standards (telephone: 202–366–6345). For legal issues, you may call Matthew Filpi, Office of Chief Counsel (telephone: 202–366–2992). Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

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I. Executive Summary

This final rule amends FMVSS No. 208 to update the child restraint systems (CRSs) listed in appendix A–1 of the standard. The CRSs in appendix A–1 are used by NHTSA to test advanced air bag suppression or low risk deployment systems to ensure that they mitigate the risk of harm to children and infants by either suppressing or deploying the air bag in a low-risk manner in the presence of a child in a CRS. NHTSA is updating appendix A–1 to reflect the changes to the availability of CRSs in the marketplace since 2008 when the appendix was last updated.

The amendments finalized in this rule will replace all the CRSs listed in appendix A–1. This final rule will allow a phase-in of the amendment to give manufacturers reasonable time to certify their advanced air bag systems using the new CRSs, with optional early compliance permitted. To effectuate the phase-in using the regulatory framework of FMVSS No. 208, this update will move the CRSs that are now in appendix A–1 to appendix A and reference the new proposed CRSs in appendix A–1.

This final rule will allow the agency to test advanced air bags with CRSs that are more representative of the current CRS market. Furthermore, since the last significant update to the appendix was in 2008, many CRS models listed in the current appendix have been discontinued and are difficult and time-consuming to acquire. This update to appendix A–1 will make it easier for vehicle manufacturers and test laboratories to acquire the CRSs for testing purposes.

II. Background

A. Background on Air Bag Systems

NHTSA Has Required Air Bag Systems in Vehicles since the Late 1990s, but Early Air Bag Systems Risked Injury to Certain Populations. To prevent or mitigate the risk of injuries or fatalities in frontal crashes, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant crash protection,¹ requires passenger vehicles to be equipped with seat belts and frontal air bags. Although FMVSS No. 208 did not require frontal air bags on passenger cars until model year (MY) 1998 and on

multipurpose passenger vehicles and light trucks until MY 1999, air bags were already in widespread use by the early 1990s. These early-generation air bags were highly effective in protecting occupants in frontal crashes but caused a number of injuries and fatalities to certain occupants who were especially vulnerable to air bag-related risks. Frontal air bags posed the largest threat to occupants vulnerable to air bag-related risks.

Since the introduction of air bag systems into vehicles, NHTSA has maintained two consistent messages relating to children and air bag systems. First, NHTSA has consistently recommended that children under the age of 13 be seated in the back seat of vehicles. If consumers were to always seat their children—whether positioned in a CRS or not—in the back seats of their vehicles, air bags would pose very little risk to children. Frontal air bags pose a bigger risk to children than side curtain air bags, which pose very little threat to any occupant. Since vehicle back seats are only equipped with side curtain air bags, the risk of harm from air bags is significantly reduced for children sitting in the back seat. However, there are scenarios when a child needs to be seated in the front seat of a vehicle, and there are scenarios where a caretaker may simply decide that the child will be safe sitting in the front seat of a vehicle. To ensure that children (and others who may be harmed by air bag systems) who are seated in the front seat of vehicles are protected from air bag-related harm, NHTSA has long maintained that the long-term solution was the development and widespread implementation of advanced air bag systems that can sense the weight and size of the occupant seated and adjust air bag deployment to protect at-risk passengers. However, during the 1990s, when air bag-related injuries and fatalities emerged as a safety problem, advanced air bags were still a nascent technology.

To provide time for the development and dissemination of advanced air bag systems into new vehicle production, and to address safety concerns posed by pre-advanced air bag systems in vehicles already on the road, NHTSA implemented an array of measures designed to protect those passengers most susceptible to air bag-related injuries. Although early air bag systems posed threats to several different populations, a particular focus of these measures was to protect children from air bag-related injuries and fatalities. Early data indicated that children were at particularly significant risk of harm from air bags. The data indicated that

¹ 49 CFR 571.208.

children who were both seated in CRSs and seated without CRSs were at risk of serious injury or death when seated in a position with a frontal air bag. Because of the agency's significant concern for the safety of children, NHTSA took multiple actions throughout the 1990s to protect children from potential harm from air bags.

NHTSA's Recommendations Targeted at Behavioral Changes to Protect Children from Air Bag Systems. First, the agency began providing CRS recommendations informing caretakers how and where they should equip child restraints in a vehicle. NHTSA's recommendation has always been to place CRSs in the back seat of vehicles. There are different CRSs for children of different ages, and NHTSA's recommendations change based off of the child's age and size.² It is important to note that NHTSA recommends that the child be properly restrained in the back seat of a vehicle for all these different stages.

NHTSA used several communications to further the agency's goal of changing behavior to protect children from early air bag systems. For example, in the early 1990s, the agency conducted testing that showed that using a rear-facing child restraint in the front seat of a vehicle where frontal air bags were active presented a significant risk to child occupants. In December of 1991, the agency issued a Consumer Advisory warning owners of rear-facing child restraints to not use such devices in the front seat of a vehicle equipped with a passenger air bag. Throughout the 1990s, NHTSA released several additional News Releases on this issue. On October 27, 1995, after several fatalities of children seated in air bag-equipped seating positions, NHTSA issued a warning in a press release, titled "SAFETY AGENCY ISSUES WARNING ON AIR BAG DANGER TO CHILDREN." In the press release, the agency warned that children sitting in air bag-equipped seating positions not restrained by a seat belt could be seriously injured or killed by an air bag. During the late 1990s, the agency also published several articles in widely circulated journals and periodicals on the dangers air bags pose to children. The agency has continued this education campaign by publishing information on NHTSA's website on the dangers air bags pose to children.

NHTSA Regulatory Action Taken to Protect Children from Early Air Bag Systems. In addition to efforts to change caretaker behavior, NHTSA has also

taken regulatory action on this issue. In 1993, the agency issued a final rule that, in part, required vehicles equipped with air bags to include labels on sun visors providing specific cautions, including a warning not to install rear-facing child seats in the front passenger seat. The agency took further regulatory action in 1994, when it required rear-facing child restraints manufactured on or after August 15, 1994, to include a warning label against using the restraint in any vehicle seating position equipped with a frontal air bag. Finally, in 1995 and 1997, NHTSA took regulatory action targeted at vehicle technology when the agency created a process for vehicle owners to petition the agency to allow vehicle owners or lessees to have an air bag on-off switch installed in their vehicle.³ Although on-off switches have been an effective tool in protecting children from air bag systems, as discussed above, the agency has consistently viewed advanced air bag systems as the best protection for children seated in air bag-equipped seating positions. Air bag on-off switches carry a significant risk of misuse, as individuals who would typically benefit from the protection of air bag systems may forget to turn a system back on after turning it off for a child passenger. The agency believed the advent of advanced air bag technology would essentially resolve this misuse risk by being able to sense the occupant seated in an air bag-equipped seat and activating or deactivating the system based on the occupant.

B. Background on Advanced Air Bag Systems

On May 12, 2000, NHTSA issued the Advanced Air Bag Rule⁴ to reduce the frequency and severity of air bag-related injuries to small adults and young children. To this end, the Advanced Air Bag Rule amended FMVSS No. 208 to add new performance requirements for the front passenger air bag in the presence of a child in a CRS.

Although the Advanced Air Bag rule was targeted at protecting all individuals from potential harm from air bags, specific requirements were included that were targeted at protecting children. The Advanced Air Bag Rule allows manufacturers to provide child protection using one of three compliance options. The first option requires the front passenger air bag system to automatically suppress when a child (whether in a CRS or not) is present ("suppression"). The second

option requires that the front passenger air bag deploys only at a low level of force when a child (whether in a CRS or not) is present ("low risk deployment" or "LRD"). For these first two options, the vehicle must provide passenger-side protections for child-sized test dummies in various positions, including in a CRS. The third compliance option requires the tracking of the passenger occupant's motion and suppresses the air bag if they are too close to the air bag ("dynamic automatic suppression system" or "DASS"). To comply using dynamic automatic suppression, a manufacturer must develop an acceptable test procedure, which must be adopted into FMVSS No. 208 through an expedited rulemaking procedure. To date, no manufacturer has attempted to certify using the DASS option. FMVSS No. 208 permits vehicle manufacturers to choose different compliance options for different performance tests and is technology neutral with regard to how a vehicle complies.

For tests that involve air bag performance in the presence of anthropomorphic test dummies in CRSs, manufacturers are required to certify that their vehicles will comply with the advanced air bag requirements when tested by NHTSA. FMVSS No. 208 sets out requirements that advanced air bag systems must meet to comply with the standard when tested with several different anthropomorphic test dummies. For the purposes of advanced air bag suppression systems, the standard outlines test procedures for testing with the 12-month-old CRABI dummy, the 3-year-old child dummy, and the 6-year-old child dummy.⁵ The standard allows NHTSA to test suppression systems with any of these dummies and also includes procedures for testing the suppression systems with these dummies equipped in CRSs to ensure suppression systems can differentiate between an adult sitting in an air bag equipped seat and a CRS restraining a child. For each of the test procedures explaining how to test with each respective dummy, the standard identifies which subpart in appendix A-1 to reference in determining which CRSs to test with. For example, for the 3-year-old dummy automatic suppression test, the standard instructs the tester that the system must function with the dummy restrained in any child restraint specified in sections C and D of appendix A-1.

As part of that test procedure in FMVSS No. 208, NHTSA listed the CRSs that the agency would test within

² <https://www.nhtsa.gov/vehicle-safety/car-seats-and-boosters-seats>.

³ 62 FR 62406.

⁴ 65 FR 30680.

⁵ FMVSS No. 208 S20; S21; S23.

appendix A of FMVSS No. 208. NHTSA intended for the CRSs listed in appendix A to be representative of the array of available CRSs on the market across many CRS manufacturers. To keep appendix A up to date, NHTSA amended it in final rules issued in December 2001⁶ and November 2003⁷ to replace certain CRSs that were no longer in production and to add two LATCH-compatible CRSs, respectively.⁸

Two CRS-related appendices appear at the end of FMVSS No. 208: appendix A and appendix A–1. NHTSA most recently updated appendix A in a final rule issued in November 2008.⁹ As part of this final rule, NHTSA created “appendix A–1” to facilitate phasing in the requirement to certify vehicles with the updated CRSs.¹⁰ Appendices A and A–1 both still remain at the end of FMVSS No. 208, and, as discussed in greater detail below, this final rule updates both appendices.

C. Appendix A–1’s Current Framework

The CRSs listed in appendix A–1 are broken up into four subparts. Subpart A lists “car bed” CRSs that the agency can use to test the suppression system of a vehicle that has been certified as complying with S19 of FMVSS No. 208. Subpart B lists rear-facing infant CRSs that the agency can use to test the suppression system or the LRD capabilities of a vehicle that is certified as complying with S19 of FMVSS No. 208. Subpart C lists forward-facing toddler and convertible CRSs¹¹ that the agency can use to test the suppression system or the LRD capabilities of a vehicle that has been certified as complying with S19 or S21 of FMVSS

No. 208. Subpart D lists CRSs that are or can be used as a belt-positioning seat (commonly called belt-positioning booster seats (BPPs)) (e.g., combination and 3-in-1 CRSs) and that the agency can use to test the suppression system or the LRD capabilities of a vehicle that has been certified as complying with S21 or S23 of FMVSS No. 208.¹²

NHTSA’s Self-Certification System and Appendix A–1. The Motor Vehicle Safety Act prohibits the manufacturing, selling, and importing of motor vehicles and motor vehicle equipment that do not comply with the FMVSS.¹³ Accordingly, one of NHTSA’s most important priorities is ensuring that motor vehicles and motor vehicle equipment on the market comply with the FMVSS. NHTSA can enforce compliance with the FMVSS through statutorily created recall authority as well as by levying civil penalties.¹⁴

To determine whether motor vehicle equipment complies with the FMVSS, NHTSA must test that equipment. NHTSA publishes its test procedures for each FMVSS so the public is aware of how NHTSA will determine compliance with the relevant FMVSS. Although NHTSA publishes its test procedures, the Motor Vehicle Safety Act makes clear that manufacturers have the responsibility to certify their own motor vehicles and motor vehicle equipment for compliance with the FMVSS.¹⁵ This self-certification regime puts the onus on manufacturers to police themselves when introducing motor vehicles or motor vehicle equipment into the market, which means that although NHTSA publishes its own test procedures, manufacturers are free to test their products for compliance in other ways. In other words, NHTSA’s test procedures are publicly available as part of the FMVSS, but manufacturers are under no obligation to compliance test using NHTSA’s procedures—a manufacturer’s only obligation is to certify compliance, but it may do so using its own testing methods. Appendix A–1 is part of the test procedures of FMVSS No. 208.

Appendix A–1 informs manufacturers which CRSs NHTSA will test with when the agency compliance tests advanced

air bag systems. Manufacturers are under no obligation to test with the CRSs that NHTSA tests with, meaning that appendix A–1 sets merely a floor for the CRSs a manufacturer may test with. In fact, when the agency decided to include appendix A–1 as part of FMVSS No. 208, it did so with the expectation that manufacturers would test more than just the seats included in the appendix, as a manufacturer’s priority should be ensuring that its advanced air bag systems function properly with all CRSs on the market.

III. Development of the 2020 NPRM

On October 29, 2020, NHTSA published an NPRM to update appendix A–1.¹⁶ The purpose of this proposed update was to ensure that the list of seats included in appendix A–1 reflects the current CRS market. The CRS market is constantly changing, with companies releasing new versions of seats, new models of seats, and novel seat designs every year. Because the appendix was last updated in 2008, many of the seats in the appendix are no longer sold by manufacturers. This means that both NHTSA and manufacturers have to find second-hand versions of many of the seats listed in the current appendix for compliance testing. Over time, it has become increasingly difficult to procure some of the seats in the appendix. Furthermore, there are certain trends in the CRS market that the current seats listed in the appendix do not account for. For example, as discussed in more detail below, data indicate that CRSs have become heavier overall. This change could pose a potential issue for advanced air bag system sensing technology, as sensors may not be able to detect the difference between an adult seated in an air bag-equipped seat and a heavy child restraint with a child seated in the restraint. Under the current list, NHTSA would not be testing many of those heavier seats to ensure compliance with FMVSS No. 208. The agency not only wanted to make the CRSs in the appendix easier to procure, but also wanted to ensure that the seats included in the appendix were a representative sample of the current CRS market.

NHTSA’s Methodology in Choosing the Proposed CRSs. When deciding which seats to replace and include in the proposed update to appendix A–1, NHTSA considered whether a particular CRS had been a high-volume model, whether it had mass and dimensions that are representative of many CRSs on the market, whether its mass and

⁶ 66 FR 65375.

⁷ 68 FR 65179.

⁸ FMVSS No. 225 requires certain vehicles produced after September 1, 2002, to be equipped with lower anchorage systems to ensure their proper location and strength for the effective securing of child restraints. These systems are commonly referred to as Lower Anchors and Tethers for Children (LATCH).

⁹ 73 FR 66786.

¹⁰ The phase-in had the practical effect of permitting up to 50 percent of a manufacturer’s carry-over vehicles to continue to certify to the existing appendix for a period. A manufacturer had the choice to have new model vehicles or carry-over vehicles of established models, or both, comprise the 50 percent of vehicles that can be phased in to the requirement to certify to the revised appendix A. The ability to carry over a percentage of vehicles for a year was designed to alleviate compliance burdens on manufacturers.

¹¹ A convertible CRS is a type of CRS with an internal harness to secure the child that can be used rear-facing and forward-facing. It is used rear-facing with infants (or small toddlers if the CRS weight recommendations allow it), and, forward-facing with older and larger children. The CRS manufacturer instructs the consumer when to turn the convertible CRS around to face forward, based on the weight of the child (“turnaround” weight).

¹² “Belt-positioning seat” is defined in FMVSS No. 213 S4 as “a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child’s torso in a forward impact.” A combination CRS can be used forward-facing or as a booster seat. A 3-in-1 CRS is a convertible CRS that can be used as a booster seat.

¹³ 49 U.S.C. 30112.

¹⁴ 49 U.S.C. 30120.

¹⁵ 49 U.S.C. 30115.

¹⁶ 85 FR 68541, “Occupant crash protection.”

dimensions represented outliers, and whether a variety of CRS manufacturers were represented in the appendix. The agency also assessed whether the assortment of CRSs in the appendix ensured that NHTSA would be adequately testing the robustness of air bag automatic suppression systems under real world conditions. Additionally, NHTSA conducted a systematic evaluation of the CRSs currently in appendix A, and of data collected through the agency's Ease of Use (EOU) program.¹⁷

The agency assessed child restraint system physical dimensions and weight (mass) to identify which CRSs have dimensions that were representative of the average restraint in today's market, and which were possible outliers (see docketed Technical Assessment for data). In looking for outliers, the agency considered CRSs with dimensions and weight that were markedly outside of those of the "average" CRS. The goal in identifying outliers was to ensure the updated appendix was fully representative of the current CRS market. Additionally, the agency identified which CRSs had high production totals (based on confidential manufacturer data) to determine which CRSs were likely to have the greatest market share.

In choosing which CRSs to include in the updated appendix, the agency sought to ensure that advanced air bag systems would be designed and calibrated to perform satisfactorily when used with a wide range of CRSs. For

example, because rear-facing CRSs with either low or high seat back heights can pose challenges for LRD systems, the agency sought to include rear-facing CRSs of varying seat back heights for LRD testing purposes. Similarly, because the agency believes that certain features like handles and sunshields on rear-facing infant carrier CRSs can lead to false readings by vision-based sensors used in some advanced air bag systems, the agency included rear-facing CRSs that have handles and sunshields in the appendix. Based on this methodology, the agency proposed a series of deletions and additions to appendix A–1 in the 2020 NPRM. The agency also proposed updating two existing entries in appendix A–1 to reflect model name changes. For detailed information on the agency's proposed additions and deletions, please reference the NPRM.

The comment period for the NPRM closed on December 28, 2020. Eight comments (from six commenters) were received in response to the NPRM, and a discussion of those comments with the agency's responses can be found in section VI below.

IV. Amendments to Appendices A and A–1 as Part of This Final Rule

As described above, there are currently two appendices to FMVSS No. 208: appendices A and A–1. Appendix A currently lists the CRSs that were adopted as part of the advanced air bag final rule in 2000. Appendix A–1 currently lists the CRSs that were adopted as part of the first appendix A

update in 2008. In the 2008 final rule, the agency decided to adopt a phase-in process for manufacturer compliance, and keeping the CRSs from the advanced air bag rule as part of the standard was necessary for the agency to continue compliance testing during the phase-in period.

After considering the factors for decision-making discussed in the previous section of this preamble, and after analyzing feedback from both the public and CRS manufacturers, NHTSA is making three sets of amendments to appendices A and A–1 as part of this final rule. First, the agency is deleting all seats currently listed in appendix A from the standard. Because the phase-in period for the 2008 update has long since passed, there is no reason to keep the seats currently listed in appendix A as part of the standard. Second, the agency is moving the seats adopted as part of the 2008 appendix update (the current appendix A–1) to appendix A. Third, and lastly, the agency is adding 20 new CRSs to appendix A–1, which will constitute the update that the following discussion focuses on.

To help clarify the table below, it is important to note that five CRSs are listed in both subparts C and D for testing purposes, which is why the "TOTAL AFTER CHANGES TOTAL" column reflects 25 in table 1 below. (In the current appendix A–1 four CRSs are listed in both subparts C and D.) Table 1 shows the deletions and additions by subpart in appendix A–1.

TABLE 1—TOTAL NUMBER OF CHANGES TO APPENDIX A–1 BY SECTION

	Subpart A	Subpart B	Subpart C	Subpart D	Total
Current total	1	6	10	6	23
Additions	1	6	10	8	25
Deletions	1	6	10	6	23
Total after changes	1	6	10	8	25

** There are five CRSs listed in both subparts C and D for testing purposes, so there are only 20 CRSs total in the appendix.

Tables 2 and 3 below provide the detailed make and model information for NHTSA's deletions and additions to appendix A–1. There are some differences between the list of deletions and additions proposed in the NPRM and the deletions and additions adopted in this final rule, and a detailed discussion of those changes and the rationales behind those decisions can be found in the section below. All the deletions proposed in the NPRM are being adopted in this final rule, and the

reasons for each deletion were discussed in detail in the NPRM. Generally, the proposed deletions were based on CRSs that did not offer any unique characteristics, CRSs that were produced in small quantities, or CRSs that are no longer in production and have not been for some time. Because the proposed deletions are all being adopted, NHTSA recommends that interested members of the public reference the NPRM for specific explanations of deletions for individual

seats. There are two additional deletions and additions being adopted in this final rule. Because there are some differences between the proposed list of additions and deletions in the NPRM and the additions and deletions being adopted in this final rule, detailed explanations of those changes can be found in the following section. As discussed above, although this final rule says that the agency is "deleting" all seats from the current appendix A–1, those CRSs will still appear in the

¹⁷ The EOU program is a program in which NHTSA rates different usability aspects of CRSs currently on the market. It is part of the New Car

Assessment Program (NCAP), and is updated annually. The details of this data collection process

are discussed in the November 2008 final rule (73 FR 66786).

appendix to FMVSS No. 208, but they will appear under appendix A.

TABLE 2—FINAL RULE ADOPTED DELETIONS TO APPENDIX A–1

Deletions		
Model name	Appendix subpart	Model type
ANGEL GUARD ANGELRIDE #AA243FOF	A	Car Bed.
CENTURY SMART FIT 4543	B	Rear-Facing Infant.
GRACO SNUGRIDE	B	Rear-Facing Infant.
GRACO INFANT 8457	B	Rear-Facing Infant.
COSCO ARRIVA 22–013 PAW & 22–999 WHO	B	Rear-Facing Infant.
PEG PEREGO PRIMO VIAGGIO SIP IMUN00US	B	Rear-Facing Infant.
EVENFLO DISCOVERY ADJUST RIGHT IS NOW CALLED EVENFLO NURTURE #362xxxxx ¹⁸	B	Rear-Facing Infant.
COSCO TOURIVA 02519	C	Convertible.
EVENFLO TRIBUTE V 379XXXX	C	Convertible.
EVENFLO MEDALLION 254	C	Convertible.
GRACO COMFORTSPORT	C	Convertible.
GRACO TODDLER SAFESEAT STEP 2	C	Forward-Facing.
BRITAX ROUNDABOUT E9L02XX IS NOW THE BRITAX ALLEGIANCE #E9LR4xx	C	Convertible.
COSCO SUMMIT DELUXE HIGH BACK BOOSTER 22–262	C&D	Combination.
COSCO HIGH BACK BOOSTER 22–209	C&D	Combination.
EVENFLO GENERATIONS 352XXXX	C&D	Combination.
GRACO PLATINUM CARGO	C&D	Combination.
BRITAX ROADSTER 9004	D	BPB.
EVENFLO RIGHT FIT 245	D	BPB.

TABLE 3—FINAL RULE ADOPTED ADDITIONS TO APPENDIX A–1

Deletions		
Model name	Appendix subpart	Model type
SAFETY 1ST DREAMRIDE WITH LATCH #IC238xxx	A	Car Bed.
CHICCO KEYFIT 30 #04061472xxxxxx	B	Rear-Facing Infant.
EVENFLO LITEMAX #305xxxxx	B	Rear-Facing Infant.
DOONA CAR SEAT & STROLLER	B	Rear-Facing Infant.
NUNA PIPA RX WITH PIPA RELX BASE	B	Rear-Facing Infant.
CYBEX CLOUD Q WITH SENSORSAFE	B	Rear-Facing Infant.
EVENFLO NURTUREMAX #364xxxxx	B	Rear-Facing Infant.
BRITAX POPLAR #E1C93xx	C	Convertible.
COSCO SCENERA NEXT #CC123xxx	C	Convertible.
NUNA RAVA #CS05116CVR	C	Convertible.
GRACO 4EVER DLX	C	3-in-1.
GRACO CONTENDER SLIM	C	Convertible.
CYBEX ETERNIS S WITH SENSORSAFE	C&D	3-in-1.
SAFETY 1ST GROW AND GO #CC138xxx	C&D	3-in-1.
EVENFLO CHASE PLUS #307xxxxx	C&D	Combination.
COSCO FINALE #BC110xxx	C&D	Combination.
CHICCO MYFIT #04079783–0070	C&D	Combination.
COSCO RISE #BC126xxx	D	BPB.
GRACO TURBOBOOSTER BACKLESS BOOSTER SEAT	D	BPB.
BRITAX GROW WITH YOU CLICKTIGHT #E1C19xx	D	Combination.

Differences Between the NPRM and the Final Rule

There are several differences between the 2020 NPRM and this Final Rule. Most notably, NHTSA decided to replace 6 of the 18 seats proposed as additions to appendix A–1 in the NPRM and update the model names for 6 of the proposed CRS additions. The agency made these decisions based on feedback

from manufacturers and commenters. After publishing the NPRM, NHTSA contacted the CRS manufacturers of the proposed added seats to verify the production and design status of each proposed addition. The agency followed this same process when NHTSA last updated appendix A–1 in 2008.

In the explanations below for why certain CRSs have been chosen as

replacements for the proposed CRSs, the term “footprint” is used a number of times. For clarification, when using the term “footprint,” the agency is referring to the general size of the CRS base that contacts the seat cushion. The footprint on every CRS model is unique and some air bag suppression systems have difficulty sensing CRSs with certain footprints.

¹⁸ Certain seats listed in appendices A and A–1 contain a series of “x’s” at the end of their model names. These x’s represent specific soft material

designs and colors for those seats. Because soft material designs and colors do not have an impact on FMVSS No. 208 air bag suppression compliance

testing, the agency does not specify soft material colors and designs in either appendix A or A–1.

The NPRM also proposed an update to model identification information for two seats: the Evenflo Discovery Adjust Right and the Britax Roundabout E9L02XX. After consulting with the manufacturers, instead of updating the model information for these two seats, the agency has decided to delete them from appendix A–1. Therefore, in addition to the changes to 12 of the 18 proposed additions to appendix A–1, NHTSA will be adding two different seats to replace the Evenflo Discovery Adjust Right and the Britax Roundabout E9L02XX as part of this Final Rule.

A detailed discussion of the rationales for each change between the NPRM and Final Rule can be found in the subsections below.

A. Deletion of the Evenflo Discovery Adjust Right and Addition of the Evenflo NurtureMax Into Subpart B

As noted above, the NPRM proposed a model name update for the Evenflo Discovery Adjust Right to the Evenflo Nurture #362xxxxx. Based on input from Evenflo, and as shown on their website, the Evenflo Nurture model is no longer available. Because the goal of this Final Rule is to update appendix A–1 to include CRSs that are representative of today's CRS market and readily available, it would be illogical to include a CRS that is not listed on a manufacturer's website. Instead of keeping the Evenflo Discovery Adjust Right/Nurture in appendix A–1, this Final Rule will delete this CRS from subpart B, and will add the Evenflo NurtureMax as a replacement rear-facing CRS in subpart B. The Evenflo NurtureMax is not considered an equivalent replacement because it does not have the same structural design as the Discovery Adjust Right/Nurture, but it does have similar characteristics (e.g., the Evenflo NurtureMax is a lightweight rear-facing CRS with a shorter than average footprint and it is a popular CRS in the U.S.).

B. Addition of the Evenflo Litemax 35 #3305xxxxx Instead of the Evenflo Embrace Into Subpart B

The NPRM proposed the addition of the Evenflo Embrace #315xxxxx, a rear-facing infant seat that was described as lightweight and popular, into subpart B. Based on feedback from the manufacturer and because the Evenflo Embrace model is no longer listed as part of the lineup of rear-facing CRSs on Evenflo's website, this model is no longer being added to the appendix. After evaluating other available CRSs with similar characteristics as the Evenflo Embrace the agency decided to add the Evenflo Litemax, which is also

a popular, lightweight, rear-facing infant CRS with a long footprint.

C. Addition of the Cybex Cloud Q With SensorSafe Instead of the Cybex Aton 2 Into Subpart B

The NPRM proposed the addition of the Cybex Aton 2, a rear-facing infant seat, into subpart B. The NPRM described the Cybex Aton 2 as being a heavy infant seat and having a unique footprint because of its shape and because it is designed to accommodate a load leg. Due to feedback from the manufacturer and because the Cybex Aton 2 is no longer listed on Cybex's website, the agency is instead adding the Cybex Cloud Q with SensorSafe,¹⁹ which has an essentially equivalent base as the Cybex Aton 2 and is just slightly heavier, which is acceptable since the Aton 2 was proposed as a heavy rear-facing CRS (see docketed Technical Assessment for dimensions and pictures). The Cybex Cloud Q also has a load leg like the Cybex Aton 2.

D. Addition of the Nuna Pipa RX With Pipa RELX Base Instead of the Britax B-Safe 35 Into Subpart B

The NPRM proposed the addition of the Britax B-Safe 35 #E1A72xx, a rear-facing infant seat, into subpart B. The NPRM described it as being heavy with a large footprint and as capturing a large portion of the infant CRS market. Based on input from Britax, we decided against including this CRS in the appendix. After evaluating other available rear-facing infant CRSs on the market, we are adding the Nuna Pipa RX with the Pipa RELX base, which has similar characteristics as the Britax B-Safe 35. The Nuna Pipa RX with the Pipa RELX base is a heavy rear-facing infant CRS, with a wide and long footprint.

E. Deletion of the Britax Roundabout EL02XX and Addition of the Nuna Rava #CS05116CVR Into Subpart C

As noted above, the NPRM proposed a model name update for the Britax Roundabout E9L02XX to reflect its new name, the Britax Allegiance #E9LR4xx. Based on input from Britax, and because the Britax Allegiance model is no longer listed on Britax's website as part of its lineup of CRSs, it would be illogical to include a CRS that is no longer part of Britax's CRS lineup. Instead of keeping the Britax Roundabout E9L02XX/Allegiance #E9LR4xx in appendix A–1, this final rule will delete this CRS from subpart C, and will add the Nuna Rava

as a replacement convertible CRS in subpart C. The Nuna Rava has similar characteristics as the Britax Allegiance (e.g., it is a heavy convertible CRS with a wide footprint; see the docketed Technical Assessment for dimensions and pictures). Additionally, the Nuna Rava is also a popular CRS.

F. Addition of the Britax Poplar #E1C93xx Instead of the Britax Marathon ClickTight Into Subpart C

The NPRM proposed the addition of the Britax Marathon ClickTight #E1A38xx, a convertible CRS, into subpart C. It was described as a heavy convertible CRS with a wide footprint. Based on feedback from Britax, we have decided against adding the proposed Marathon ClickTight model and we are instead adding the Britax Poplar #E1C93xx into subpart C. The manufacturer indicated that the Britax Poplar is dimensionally similar to the Britax Marathon ClickTight, so the agency views it as a suitable alternative.

G. Addition of the Graco Contender Slim Instead of the Graco Contender 65 Into Subpart C

The NPRM proposed the addition of the Graco Contender 65, a convertible CRS, into subpart C. The NPRM described it as a lighter than average convertible CRS with a narrow and deep footprint. Based on feedback from the manufacturer we have decided not to add the proposed Contender model and the agency is instead adding the Graco Contender Slim model, which is essentially an equivalent model to the Graco Contender 65, into subpart C. Their footprint and dimensions are very similar, and the Contender Slim is a lighter than average convertible with a narrow footprint (see docketed Technical Assessment for dimensions and pictures).

H. Addition of the Evenflo Chase Plus #307xxxxx Instead of the Evenflo Chase #306xxxxx Into Subparts C and D

The NPRM proposed the addition of the Evenflo Chase #306xxxxx, a combination CRS, into subparts C and D. After consulting with the manufacturer, the agency has decided to instead add the Evenflo Chase Plus. The manufacturer indicated that the Evenflo Chase Plus will be more widely available than the Evenflo Chase, and that the CRSs are nearly equivalent (see docketed Technical Assessment for dimensions and pictures). It is also a popular combination CRS. Accordingly, the agency is adding the Evenflo Chase Plus #307xxxxx, into subparts C and D.

¹⁹ SensorSafe is a technology Cybex has recently integrated into the chest clip of its CRSs that provides alerts to a mobile app about the child's safety.

I. Correction and Name Updates for 6 Proposed CRSs

The NPRM proposed the addition of the Cybex Eternis, a 3-in-1 CRS, into subparts C and D. Based on input from the CRS manufacturer, the correct model name is the Cybex Eternis S with SensorSafe. Accordingly, the agency has added the “S” designation to the name of the CRS as well as the “SensorSafe” designation.

The NPRM proposed the addition of the Safety 1st Dreamride SE LATCH #IC238xxx. Based on input from the manufacturer, the correct model name is the Safety 1st Dreamride with LATCH #IC238xxx. Accordingly, the agency has updated the name of this CRS as part of this final rule.

The NPRM proposed the addition of the Graco 4Ever All-in-1. Based on input from the manufacturer, the correct model name is the Graco 4Ever DLX. Accordingly, the agency has updated the name of this CRS as part of this final rule.

The NPRM proposed the addition of the Cosco Finale #BC121xxx. Based on

input from the manufacturer, the updated model name for this seat is the Cosco Finale #BC110xxx. Accordingly, the agency has updated the name of this CRS as part of this final rule.

The NPRM proposed the addition of the Graco Backless Turbobooster. Based on input from the manufacturer, the correct model name is the Graco Turbobooster Backless Booster Seat. Accordingly, the agency has updated the name of this CRS as part of this final rule.

The NPRM proposed the addition of the Britax Grow with You #E1C19xx. Based on input from the manufacturer, the correct model name is the Britax Grow with You Clicktight #E1C19xx. Accordingly, the agency has updated the name of this CRS as part of this final rule.

V. Discussion of Comments to the NPRM

A. Summary of Comments

There were eight comments submitted in response to the NPRM.²⁰ Commenters

touched on a variety of topics, including the CRSs proposed in the NPRM, concerns about the frequency with which the agency updates appendix A–1, test procedures, the proposed regulatory text, and compliance dates. Some commenters also had concerns with the potential costs and effort necessary for manufacturers to comply with testing using the new CRSs proposed in the NPRM. The agency’s summary of comments and responses can be found in the subsections below.

B. The CRSs Proposed in the NPRM

The Juvenile Products Manufacturers Association (JPMA) submitted a comment providing feedback on the CRSs NHTSA proposed in the NPRM. Table 4 shows the feedback JPMA provided in its comment on specific seats proposed in the NPRM, along with the agency’s response to that feedback.

TABLE 4—JPMA CRS COMMENTS AND NHTSA RESPONSES

NPRM proposed model	JPMA suggested update	Agency response
Britax Allegiance #E9LR4xx.	Indicated incorrect model number listed in the NPRM; suggested using model #E1C14.	This CRS is being replaced with a different CRS due to availability concerns.
Britax B-Safe 35 #E1A72xx.	Indicated listed model number will be phased out in early 2021.	This CRS is being replaced with a different CRS due to availability concerns.
Britax Grow with You #E1C19xx.	Recommended replacing with non-ClickTight model #E1C144xx.	NHTSA chose the ClickTight model because it is the more popular version of the CRS. NHTSA has added the “ClickTight” designation to the name of the CRS.
Cosco Finale #BC121xx.	Indicated the Cosco Finale #BC110xx is more widely available than the proposed model number.	NHTSA has confirmed with the manufacturer that the suggested model number #BC110xx is more widely available. NHTSA is replacing the proposed model with the model JPMA recommended as part of this final rule.
Evenflo Generations 352xxxx.	Indicated the listed model is not produced, and recommended replacing with Evenflo EveryKid 393xxxx.	The Evenflo Generations CRS was a proposed deletion from the appendix. Because the last update to the appendix was in 2008, when NHTSA initiated this update, it evaluated the CRS market as a whole. Accordingly, the CRSs proposed as additions were not limited to the same brand of an existing CRS. Instead of focusing on selecting another seat from the same brand, the agency focused on finding seats with similar dimensions and footprints. In this case, NHTSA has decided on a different replacement seat.
Evenflo Medallion 254	Indicated the listed model is no longer produced; recommended replacing with Evenflo SureRide 371xxxx.	The Evenflo Medallion CRS was a proposed deletion from the appendix. Because the last update to the appendix was in 2008, when NHTSA initiated this update, it evaluated the CRS market as a whole. Accordingly, the CRSs proposed as additions were not limited to the same brand of an existing CRS. Instead of focusing on selecting another seat from the same brand, the agency focused on finding seats with similar dimensions and footprints. In this case, NHTSA has decided on a different replacement seat.
Evenflo Right Fit 245	Indicated the listed model is no longer produced; recommended replacing with Big Kid 365xxxx.	The Evenflo Right Fit CRS was a proposed deletion from the appendix. Because the last update to the appendix was in 2008, when NHTSA initiated this update, it evaluated the CRS market as a whole. Accordingly, the CRSs proposed as additions were not limited to the same brand of an existing CRS. Instead of focusing on selecting another seat from the same brand, the agency focused on finding seats with similar dimensions and footprints. In this case, NHTSA has decided on a different replacement seat.
Evenflo Tribute V 379xxxx.	Indicated the listed model is no longer produced; recommended replacing with Evenflo EveryKid 381xxxx.	The Evenflo Tribute CRS was a proposed deletion from the appendix. Because the last update to the appendix was in 2008, when NHTSA initiated this update, it evaluated the CRS market as a whole. Accordingly, the CRSs proposed as additions were not limited to the same brand of an existing CRS. Instead of focusing on selecting another seat from the same brand, the agency focused on finding seats with similar dimensions and footprints. In this case, NHTSA has decided on a different replacement seat.

²⁰ The Alliance for Automotive Innovation submitted two sets of supplemental comments (August 2021 and August 2023).

TABLE 4—JPMA CRS COMMENTS AND NHTSA RESPONSES—Continued

NPRM proposed model	JPMA suggested update	Agency response
Graco 4Ever All-in-1 ..	Indicated that the currently listed name is for the original version that is only available at Costco; recommended replacing with 4ever DLX 4-in-1 model.	NHTSA has confirmed this comment with the manufacturer and did not find any significant size and weight differences between the two versions. NHTSA is adopting this recommendation as part of this final rule. The 4ever DLX 4-in-1 model will be reflected in the updated appendix.
Graco Backless TurboBooster. Graco Contender 65	Recommended correcting name to “Graco Turbobooster Backless Booster Seat”. Recommended correcting name to “Graco Contender 65 Convertible Car Seat”.	This recommended edit is reflected in the appendix being adopted as part of this final rule.
Safety 1st Dreamride SE LATCH #IC238xxx.	Recommended correcting name to “Safety 1st Dreamride with LATCH”.	This CRS is being replaced with a different CRS due to availability concerns.
		This recommended edit is reflected in the appendix being adopted as part of this final rule.

C. Availability of the Safety 1st Dreamride SE Latch #IC238

The Alliance for Automotive Innovation (The Alliance) commented specifically on NHTSA’s proposed inclusion of the Safety 1st Dreamride SE Latch #IC238. The Alliance argued that, because the Safety 1st Dreamride SE Latch #IC238 is one of the only available infant car beds on the market, NHTSA should create a formal means for automakers to procure seats listed in appendix A–1.

Agency Response: NHTSA will not be creating a formal process to acquire CRSs listed in appendix A–1 as part of this final rule. The Alliance is correct that part of the agency’s rationale in updating appendix A–1 is to ensure manufacturers can more easily acquire the CRSs listed in appendix A–1. As stated previously, it can be difficult to acquire the CRSs currently listed in appendix A–1 because many of the CRSs have been discontinued by manufacturers. This final rule will resolve that issue by updating appendix A–1 to include CRSs currently on the market. However, under the Safety Act, manufacturers are required to self-certify their own motor vehicles and motor vehicle parts.²¹ As part of this certification process, NHTSA strives to ensure that manufacturers and the public are aware of how the agency will test motor vehicles and motor vehicle parts for compliance with the FMVSS. That being said, once NHTSA has made clear how it will test a motor vehicle or motor vehicle part, it is up to the manufacturer to ensure its products comply. The agency believes it has significantly improved the ease with which manufacturers can acquire the CRSs in appendix A–1 by ensuring all CRSs in appendix A–1 are currently available for purchase. In particular, although the Safety 1st Dreamride SE Latch #IC238 is one of the only available infant car beds on the market, it is available for purchase by the public.

Manufacturers do not need to rely on NHTSA to procure CRSs for them. Accordingly, the agency believes that manufacturers should easily be able to acquire the CRSs listed as part of this final rule. For the reasons discussed above, NHTSA will not be creating a formal process for manufacturers to acquire the CRSs listed in appendix A–1 as part of this final rule.

D. Frequency of Updates to the Appendix

The Automotive Safety Council commented that it would like NHTSA to adopt an official frequency with which the agency will update appendix A–1 going forward. JPMA also mentioned in its comment that it would appreciate more frequent updates to appendix A–1 from NHTSA. The Alliance also commented on the need for a more reliable and consistent manner of updating the appendix in its August 2023 supplemental comments.

Agency Response: NHTSA will not be adopting a specific frequency for updating appendix A–1 as part of this final rule. As discussed earlier in this preamble as well as in the NPRM, the agency is aware that a significant amount of time has passed since it last updated appendix A–1 in 2008. The agency is aware that this time-lapse has rendered appendix A–1 outdated, and many of the seats listed in appendix A–1 are no longer in production, which makes it difficult for manufacturers to acquire certain CRSs that NHTSA currently tests with. One of NHTSA’s goals with this final rule is to ensure manufacturers can easily acquire the CRSs listed in appendix A–1. Another goal with this final rule is to ensure the CRSs NHTSA uses to test for compliance with FMVSS No. 208 are representative of the CRS market. The agency believes that committing to a specific frequency to update appendix A–1 would not align with the ever-changing CRS market. Having the discretion necessary to choose when to update appendix A–1 will allow the

agency to adapt as the CRS market adapts. Furthermore, committing to a specified time frame for updating the appendix would likely interfere with the agency’s ability to manage its rulemaking resources as it deems appropriate in light of other priorities and statutory mandates and could hamper its ability to respond quickly to changes in the CRS industry or air bag system designs. As such, NHTSA is not adopting a specific frequency to update appendix A–1 as part of this final rule.

E. Test Procedures

i. Testing With the CRABI Dummy

The Alliance indicated in its comment that it would like clarification on test procedure installation for two forward-facing CRSs proposed in the NPRM. Specifically, the Alliance requested that NHTSA explain how it should test the Cosco Finale DX #BC121 and the Chicco MyFit #04079783–0070 with the 12-month-old CRABI dummy when the owner’s manuals for both of those seats indicate that those CRSs are designed to be used for children weighing more than the 12-month-old CRABI dummy weighs. The Alliance reiterated its concerns in its August 2023 supplemental comments.

Agency Response: As discussed above, NHTSA is correcting the name of the Cosco Finale DX #BC121 and is instead including the Cosco Finale #BC110 as part of this final rule. According to the manufacturer, this is merely a model name change and the seat design and intended use are functionally the same, meaning the Alliance’s comment still applies. FMVSS No. 208, S19.2.1, specifies the use of the 12-month-old dummy for suppression testing in any of the CRSs listed in the appendix subparts C and D as appropriate. The term “as appropriate” is informative here, as it makes clear that NHTSA will only suppression test a seat in appendix A–1 subparts C and D with the 12-month-old dummy if it is appropriate to do so with that seat. As discussed in the

²¹ 49 U.S.C. 30115.

background section above, FMVSS No. 208 sets out testing requirements for advanced air bag systems using the 12-month-old CRABI dummy, the 3-year-old child dummy, and the 6-year-old child dummy. For all seats listed in appendix A–1, NHTSA will only test with the dummies that are the appropriate size for each respective CRS according to the manufacturer's instructions. Accordingly, because the Cosco Finale DX #BC121 and the Chicco MyFit #04079783–0070 are CRSs that are designed to restrain children who weigh more than the 12-month-old CRABI dummy, NHTSA would not suppression test with the 12-month-old CRABI dummy for those CRSs.

ii. Seat Belt Load Requirement

The Alliance requested clarification of the seat belt cinching requirement listed in the FMVSS No. 208 test procedures. The Alliance commented that for certain CRSs listed in the NPRM with belt tensioning devices, “it is possible to exceed the 134 N belt load by 80–106 N if slack is removed from the belt prior to applying the child seat belt tensioning mechanism.” Furthermore, the Alliance indicated that it is concerned that in the field, these belt tensioning mechanisms can exceed the belt tension in the manufacturer's compliance testing, and, in combination with heavier CRSs, could increase the risk of an undesired air bag deployment (e.g., a child heavier than the dummy and excessive belt load due to child seat belt tensioning systems could be misclassified as a small adult occupant).

Agency Response: In response to this comment, NHTSA performed further testing with CRSs proposed in the NPRM that have belt tensioning mechanisms. The agency acknowledges that when these seats are installed using the manufacturers' instructions, these seats automatically tension past the maximum tension of 134 N described in FMVSS No. 208 S20.2.1.5(c). The tension that these seats tension to varies depending on the seat they are installed in as well as the specific CRS. Accordingly, the agency acknowledges that if the manufacturers' instructions for these seats are followed, it would likely not be possible to test within the tension range outlined in S20.2.1.5(c).

The agency has decided to include three seats with belt tensioning systems as part of this final rule, despite the fact that they likely cannot be installed by following the CRS manufacturers' instructions to properly perform the test procedure outlined in S20.2.1.5(c). It is important to note that, for the S20.2.1.5 test procedure, the standard instructs the test conductor to “secure the child

restraint by following, *to the extent possible*, the child restraint manufacturer's instructions regarding proper installation . . .” (emphasis added).

The agency is aware that there are some CRSs on the market that are equipped with belt tensioning systems that may tension past the maximum 134 N outlined in S20.2.1.5. Accordingly, the agency believes it is important to include these CRSs in appendix A, as they represent a segment of the CRS market. Through NHTSA's research on belt tensioning seats, the agency discovered that it is possible to reduce the tension that the belt tensioning devices automatically ratchet to by introducing extra belt webbing when installing the CRS on the vehicle seat. To clarify how to test with these CRSs according to the parameters outlined in S20.2.1.5(c), NHTSA will update its compliance test procedures to instruct labs contracted with NHTSA to introduce extra belt webbing when installing CRSs with belt tensioning devices. The amount of extra webbing that needs to be introduced depends on the CRS and the vehicle seat the CRS is installed on, so the agency will include in the compliance test procedure a method for achieving the required belt tension within the allowable range of zero to 134 N. The agency believes this procedure is consistent with the requirements of paragraph S20.2.1.5(c) because of the “to the extent possible” language used in that paragraph.

The agency decided to keep these CRSs with belt tensioning devices as part of this final rule for multiple reasons. First, as discussed in the NPRM and in the section above describing the difference between the NPRM and the final rule, these seats (Cybex Cloud Q, Britax Poplar, and Britax Grow With You ClickTight) represent important parts of the CRS market when it comes to the characteristics of each CRS (e.g., weight, footprint dimensions and designs). The agency believes that because these seats are part of the CRS market and because they have characteristics the agency wants to include in the appendix for testing the effectiveness of the air bag suppression systems, these seats are worth keeping as part of the amended appendix A–1. Second, these CRSs equipped with belt tensioning devices were not available the last time appendix A–1 was updated in 2008. It is possible that CRSs equipped with belt tensioning devices will become more popular as time goes on. Accordingly, the agency believes it is important to have CRSs equipped with belt tensioning devices as part of appendix A. Although the test

procedure will test at a lower tension than these three CRSs typically tension to, NHTSA believes that there is still a safety benefit to testing these CRSs at a reduced tension. Specifically, if an advanced air bag system fails to suppress at a tension in the zero to 134 N range, it is likely that that advanced air bag system would also fail the test at the tighter tension range that the belt tensioning device would usually ratchet to. Accordingly, vehicle manufacturers will know if their air bag suppression systems are compliant with the specific weight and footprint of these CRSs, with the belt tensioned to the appropriate test range. For the reasons listed above, the agency has decided to keep the CRSs with belt tensioning devices as part of this final rule and will update the compliance test procedures to instruct labs on how to install the CRSs to the tension range outlined in S20.2.1.5(c).

iii. Compliance Concerns With New Heavier CRSs

The Alliance requested that NHTSA reconsider the CRSs proposed in the NPRM, due to concern about the overall shift to include heavier CRSs in appendix A–1. They further stated that the NPRM did “not sufficiently address the potential for misclassification of occupants. The size and weight of CRSs continue to grow, bringing them (combined with their intended child occupants) closer to the size of small adults. The narrowing of this gap creates an increasing risk of misclassifications by vehicle occupant classification systems (OCS), potentially leading to air bag inflation in instances when suppression might be the safer outcome. Significant changes to the air bag systems and related software will be required to address this matter, along with changes to the vehicle instrument panels to accommodate the new systems.”

The Alliance reiterated these concerns in one of its supplemental comments. The Alliance argued that NHTSA's crash data demonstrates that injury and fatality exposure rates are far greater for smaller stature occupants in fatal crashes (i.e., over 13 years old) than for younger children (i.e., under 6 years old) because most younger children are seated in the back seat of vehicles.²² According to the Alliance, this reflects that the largest group at risk of injury from frontal air bags is smaller statured passengers, not passengers seated in CRSs. The Alliance argued that this further supports their argument about

²² NHTSA recommends that children under the age of 13 should be seat in the back seat of a vehicle.

the potential harm of misclassification by OCSs.

The Alliance did not provide actual vehicle compliance test data to support their claims with regards to the performance of current systems with the heavier CRSs. The Alliance suggested that “NHTSA should conduct further analysis to assess the regulatory impact on existing vehicle designs when including CRS that are significantly above the current threshold values

established in appendix A–1, and the potential impact this may have on overall occupant safety.” Furthermore, the Alliance argued that the weight of the heavier CRSs in combination with the 6-year-old dummy would begin to overlap with the air bag activation threshold leading to misclassification by the occupant detection system.

Agency Response: The commenters are correct in their assessment that the proposed CRSs in the appendix A–1

update will be heavier overall than the previous version of the appendix, which was last updated in 2008. Since then, the CRS market has evolved significantly. NHTSA has conducted an analysis of recent Ease of Use program data (2015–2020 yearly data) and found an increase in the yearly average weight of boosters and CRSs that can be used as booster seats, which can be seen in table 5 below.

TABLE 5—AVERAGE WEIGHT OF BOOSTER SEATS AND AVAILABLE CRS MODELS THAT CAN BE USED AS BOOSTER SEATS

Booster seats and CRSs that can be used as booster seats		
Year	Average weight (lb)	Count (n)
2015	12.79	83
2016	12.89	89
2017	13.19	112
2018	14.18	124
2019	14.86	121
2020	14.92	120

Additionally, the agency analyzed Ease of Use data as far back as 2012 to look at whether heavier CRSs were available at that time as well. NHTSA

found booster seats, and CRSs that can be used as booster seats, that are heavier than or have a similar weight as the heavy CRSs identified by the Alliance

that have been available as far back as 2012. Examples of such CRSs can be seen in table 6.

TABLE 6—HEAVY CRSs THAT CAN BE USED AS BOOSTER SEATS

Year in ease of use program *	Model name	Type	Weight (lb)
2012	Baby Trend Fast Back	Combination	28.3
2012	Diono Radian RXT	3-in-1	27.1
2013	Britax Pinnacle 90	Combination	26.8
2014	Diono Rainier	3-in-1	28.0
2014	Diono Pacifica	3-in-1	27.8
2015	Graco Smart Seat	3-in-1	34.4
2015	Diono Olympia	3-in-1	27.0
2016	Britax Pinnacle Clicktight	Combination	26.5
2018	Graco Recline N Ride	3-in-1	28.1
2018	Maxi-Cosi Magellan	3-in-1	26.6
2019	Diono Rainier 2AXT	3-in-1	29.9
2019	Cyber Eternis	3-in-1	27.1

* These boosters/CRSs were available in subsequent years and possibly previous years as well. We have only identified the earliest year the CRS was in the Ease of Use program based on the range of years examined.

The Alliance requested that NHTSA include CRSs that are consistent with the weights of the CRSs currently listed in the appendix. Although the agency acknowledges that manufacturers may have to make design changes to ensure their advanced air bag systems remain compliant with FMVSS No. 208, NHTSA’s top priority is passenger safety. As shown above, there is a clear trend toward CRSs increasing in weight. To ensure vehicle air bag suppression systems protect passengers, the agency must ensure that the CRSs being used to test those systems are representative of the current CRS market. Basing the weights of the CRSs included in

appendix A–1 off the CRS market in 2008 would not reflect the CRSs that most current parents and caretakers use currently. One of NHTSA’s goals with this final rule is to make the FMVSS No. 208 test procedures more representative of the real world, and continuing to test with CRSs from 2008 would do the opposite.

Furthermore, since the inception of the Advance Air Bag Rule, the agency has made clear that it is incumbent on vehicle manufacturers to perform their due diligence by developing and testing their advanced air bag systems with CRSs that are not limited to appendix

A.²³ Accordingly, it is reasonable to

²³ The Advanced Air Bag NPRM (63 FR 49958) required that vehicles with suppression systems be tested with any CRS “manufactured for sale in the United States between two years and ten years prior to the date the model year carline of which the vehicle is a part was (or will be) first offered for sale to a consumer.” This was done so “that vehicle manufacturers take account of the variety of different rear facing child restraints in use as they design their systems.” The supplemental NPRM (64 FR 60556) introduced appendix A, which was developed from a “more comprehensive list represent[ing] the majority of child restraints currently on the market. That list was reduced, in part, by eliminating similar restraint systems, e.g., restraints that are sold as different models but which we believe provide the same footprint.” In the final rule (65 FR 30679) the agency further

Continued

assume that many manufacturers test their advanced air bag systems with more CRSs beyond what is listed in appendix A–1.

Lastly, NHTSA initiated testing to investigate the Alliance's concerns with the heavier CRSs. Thirteen vehicles were tested, and each vehicle was tested with the CRSs in varying modes. The reports from this testing will be placed in the docket for this rulemaking.

This research demonstrated that four of the 13 vehicles tested were able to suppress the air bag with all the CRSs used for testing, including the three heavier CRSs identified by the Alliance. The passenger air bag activation weight threshold was measured for each vehicle and the thresholds ranged from 55–85 lb. The weight threshold for the four vehicles that suppressed the air bag for all the CRSs and modes tested ranged from 56–77 lb. Further, 8 of the 13 vehicles complied with the requirements with at least 2 of the 3 heavy CRSs identified by the Alliance.

The agency's testing also revealed that the weight of the CRS does not necessarily ultimately determine whether an air bag suppression system activates. For instance, one of the tested vehicles (with an air bag suppression system weight threshold of 73 lb) was able to meet the suppression requirements with two of the three CRSs identified by the Alliance (Cybex Eternis and Britax Grow With You), but did not comply with the Chicco MyFit, which was the lightest of the three. This result seemed to be related to how the Chicco MyFit's footprint loaded the system's pressure sensitive bladder.

The agency testing has shown inconsistent performance for heavier CRSs. However, it is clear from the results that systems can be designed to correctly identify these CRSs and appropriately suppress the air bag. The failure of some vehicles to suppress the air bag in the presence of some of the CRSs is concerning and supports the need for expeditious inclusion of heavier CRSs in the appendix.

explained its reasoning for the use of a list of CRSs in appendix A. We stated that “we do not believe that manufacturers should have the option of certifying to only a limited number of the restraints on the list. We do not believe that requiring compliance with seats is excessive, given the importance of reliability in a suppression system and the fact that the suppression tests are nondestructive. Children sitting in the front seat will not receive the benefit of a suppression system that does not recognize their presence in the seat. If manufacturers believe their planned suppression technology is insufficient to detect a wide variety of child restraints, they will need to either improve or supplement that technology.”

iv. Safety Need for Appendix Update

The Alliance commented on the limited exposure to air bags for children in CRSs since most children are placed in the rear seats and because most children in the front passenger seat are restrained only by seat belts. The Alliance further noted that “the CRS list currently defined in FMVSS 208 appendix A–1 has been successful in shaping design countermeasures that support a positive downward trend in injuries and fatalities for both child- and small-stature occupants seated in the right-front seating position.”

Agency Response: NHTSA acknowledges and is encouraged by the positive trend of seating children in the back seat. Nonetheless, children are sometimes still restrained in a CRS in the front seat. Furthermore, as discussed above, there is a clear market trend in CRSs becoming heavier on average. This is at least in part due to the rise of the all-in-one (also known as the 3-in-one) seat, which has become popular with caregivers as they only have to purchase one seat for their child, instead of buying new seats as their child grows. Offerings in the all-in-one CRS category have significantly grown in the CRS industry over the past several years. This is evident in the list provided by American Academy of Pediatrics of available all-in-one CRSs for 2023.²⁴ Additionally, using the 2015–2020 Ease of Use data, the agency looked at the number of all-in-one and combination CRSs and found an increase in the number of these types of CRSs from 84 in 2015 to 120 in 2020. Because the market trends point to an overall increase in CRS weight, NHTSA believes there is a critical safety need to have heavier seats included as part of appendix A–1.

F. Comments on the Proposed Regulatory Text

In the NPRM, the agency proposed specific amendments to FMVSS No. 208, to remove the current appendix A (which has been phased out), redesignate appendix A–1 as appendix A, and add the new list of CRSs as appendix A–1.

The Alliance commented that, “Comparing the NPRM which was published on October 29, 2020, and the current standard, it seems that ‘S21’ has been accidentally deleted. As NHTSA’s intention was to redesignate ‘appendix A–1’ of the current regulation as ‘appendix A’ in the October 29, 2020, NPRM, we believe the section numbers in subpart D should be the same (*i.e.*

should refer to ‘S21 or S23’). See FR page 68552, proposed FMVSS 208, section D of appendix A.” The Alliance also commented that “[t]here appears to be an inconsistency in the proposed regulations. Comparing proposed FMVSS 208 S14.8 vs. Part 585.35 and Part 585.36, it seems that ‘first’ in S14.8 should be ‘second.’”

Agency Response: NHTSA concurs with these comments and has corrected the regulatory text as part of this final rule. This amendment is reflected in the adopted regulatory text below.

G. Comments on the Compliance Date

In the NPRM, the agency proposed that the compliance date for the proposed requirements be phased in such that at least 50 percent of a manufacturer's vehicles manufactured on or after the first September 1st after the publication date of the final rule would have to be certified as meeting FMVSS No. 208 when tested with the CRSs on the revised appendix A–1, and all vehicles manufactured on or after the second September 1st after the publication date of the final rule would have to be so certified.

The Alliance expressed concerns with the proposed compliance date in both its initial comment and one of its supplemental comments. In its initial comment it argued that, due to the increased weight of the CRSs being tested under the proposed update, manufacturers would have to take a series of steps to ensure compliance. The Alliance wrote:

“Substantial testing will be required to assess the performance of occupant classification systems with the heavier CRS installed. Such testing may identify the need for air bag system design changes. Changes to air bag size, shape, and inflators may necessitate changes to instrument panel design. Suppression may no longer be an option for some models with weight-based occupant classification sensors. Those models may have to switch from suppression to LRD approaches. In that case, the air bag module as well as the instrument panel may also need to be re-engineered. Significant changes may be required to accommodate the new systems. Our initial study indicates that, after further consideration of this matter by the affected parties and development of technical solutions, additional lead-time will likely be needed to implement these strategies, beyond what is proposed by the agency in the NPRM. This scenario will require full frontal crash development which typically takes more than two years.”

In its supplemental comment, the Alliance requested that the lead time be extended by two years with an additional four-year phase-in to allow for manufacturers' evaluation and implementation of design changes to advanced air bag systems.

²⁴ <https://downloads.aap.org/HC/car seats/3-all-in-one-seats.pdf>.

Agency Response: As discussed throughout this preamble, the CRS market has been trending toward heavier CRSs for some time. Although appendix A–1 provides manufacturers with a list of seats that NHTSA will test to determine compliance with FMVSS No. 208, the agency made it clear in the Advanced Air Bag Final Rule that manufacturers have a responsibility to ensure that their advanced airbag systems suppress deployment with all seats that are available on the CRS market. Accordingly, if manufacturers have been paying attention to the CRS market, they should have already begun the process of implementing heavier CRSs into their test programs. Furthermore, delaying compliance with the updated appendix would likely result in availability issues for the CRSs being added to the appendix given the frequent change in CRS model names, designs, or discontinuation of CRSs.

As part of NHTSA's own research, the agency acknowledges that some advanced air bag systems will likely have to undergo adjustments to comply with the updated appendix A–1. In response to commenters' compliance concerns as well as the agency's testing, the agency has decided that the phase-in of the revised appendix will be implemented in two stages. To ease the burden on manufacturers, NHTSA is amending the compliance phase-in to the following: Forty percent of all of a manufacturer's light vehicles must comply with the revised appendix by September 1, 2025, and all light vehicles must be fully compliant no later than September 1, 2026. We are also allowing optional early compliance. This change provides relief for an additional 10% of vehicles in the first part of the phase-in. However, NHTSA does not believe that an extension of the full compliance date beyond the second part of the phase-in is warranted or advisable. Among other risks, any additional delay raises the chances of inadvertently unsuppressed air bag systems in vehicles where certain heavier CRSs have been placed in the front seat. The agency encourages vehicle manufacturers to acquire sufficient inventory of the CRSs when the final rule is published to mitigate availability issues in the future.

VI. Discussion of Benefits and Costs Associated With the Final Rule

The NPRM discussed how this rule does not amend any of the FMVSS No. 208 performance test requirements; it merely updates the list of CRSs NHTSA may use for advanced air bag compliance tests. It further explained that we cannot quantify the incremental benefits of testing with these new CRSs

over those listed in the current appendix A–1, due to a lack of field performance test data, but that updating the CRSs used to assess the performance of advanced air bags addresses that potential issue by enabling manufacturers to design advanced air bag systems to factor in the features and characteristics of the CRSs used today.

With regards to the costs associated with the rule, the NPRM stated that the rule would result in a nominal cost to vehicle manufacturers for the purchase of the new CRSs. It provided a conservative cost estimate for the one additional CRS and then amortized this cost over 10 years and 16 million vehicles to get an annual per vehicle cost estimate. Essentially, based on the cost of a complete set of all the CRSs added, \$3,364, it estimated the cost for the one additional CRS being added as \$168.20 (1/20th of total cost). Then, based on an estimated 248 production lines and the assumption that vehicle manufacturers will purchase 10 sets of CRSs, the NPRM estimated that the total undiscounted 10-year cost to all vehicle manufacturers cumulatively would be \$417,136 ($\$168.20 \times 248 \times 10$). Assuming an annual production of 16 million vehicles, there would be 160 million vehicles for the same time period ($16 \text{ million} \times 10 \text{ years}$). Thus, the NPRM provided an annual per-vehicle cost estimate of \$0.0026 ($\$417,136/160 \text{ million}$).

These cost estimates have been updated for this final rule, given the differences between the final rule and NPRM in terms of the new CRSs being added. NHTSA observed an increased cost for most of the NPRM proposed CRSs that were not affected in the final rule. The estimated cost of a complete set of CRSs is now \$4,322.40 (in 2023 dollars). Therefore, the cost for the one additional CRS being added is \$216.12. The updated annual per vehicle cost is \$0.0033 ($(\$216.12 \times 248 \times 10)/160 \text{ million}$).

The agency believes this figure is an overestimate for the following reasons. NHTSA acknowledges that some manufacturers may purchase fewer of some CRSs (if their vehicles are equipped with air bag suppression systems) or more of some CRSs (if they are equipped with LRD air bags).²⁵

²⁵ The lineup of CRSs that a manufacturer actually purchases will likely vary depending on what type of advanced air bag system the manufacturer chooses for its vehicles. For example, CRSs can be more prone to damage in LRD tests, in particular rear-facing CRSs, due to the potential contact with the air bags, so manufacturers may choose to purchase more sets of certain CRSs to meet their testing needs. CRSs are more likely to be damaged in LRD tests because the air bags always deploy in an LRD test, they just deploy with less

Therefore, we consider 10 a high estimate for the number of complete sets vehicle manufacturers will purchase, because, based on our experience, one set can be used to certify several vehicle models for several years.

In its August 2023 supplemental comments, the Alliance also commented on the increased burden of dealing with the aftermarket acquisition process for CRSs that are no longer widely available. Accordingly, the agency believes vehicle manufacturers would also save an unquantified amount of time and money because they will no longer need to acquire the existing appendix A–1 CRSs that are out of production through aftermarket sourcing. In addition, it is reasonable to assume vehicle manufacturers are testing their advanced air bag systems with CRSs that are not in the appendix, so it is possible that they already possess and have conducted testing with some of the proposed CRS additions, particularly the popular CRSs.

VII. Regulatory Analyses

Executive Order 12866, Executive Order 14904, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impact of this final rule under Executive Order 12866, Executive Order 14094, Executive Order 13563, DOT Order 2100.6A, and the Department of Transportation's regulatory policies and procedures. This final rule is not considered to be significant under the Department of Transportation's regulatory policies and procedures.²⁶

This final rule makes several changes to FMVSS No. 208; specifically, the changes amend appendix A–1 of FMVSS No. 208, which lists the child restraint systems NHTSA uses in compliance testing of advanced air bag systems. Due to the changes in the CRSs proposed in the NPRM versus the CRSs being adopted as part of this final rule, the agency updated the costs in preparation for this final rule. The agency estimates that compliance with the final rule would result in a nominal total annual cost to all vehicle manufacturers cumulatively of \$535,977 (over ten years) for the purchase of the new CRSs. Assuming an annual production of 16 million vehicles (with a GVWR of 8,500 lb or less), the per-

force. Conversely, CRSs are less likely to be damaged during suppression system testing because if the suppression system functions properly, the air bags do not deploy, and therefore cannot do damage to the CRS. The majority of vehicle manufacturers choose the suppression option for the child-sized dummies.

²⁶ 44 FR 11034 (Feb. 26, 1979).

vehicle cost is \$0.0033 annually for the purchase of the new CRSs. More information can be found in the “Discussion of Benefits and Costs Associated with the Final Rule” section above. The minimal impacts of this final rule did not warrant the preparation of a regulatory evaluation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this action on small entities. I hereby certify that this final rule will not have a significant impact on a substantial number of small entities. The final rule affects motor vehicle manufacturers, multistage manufacturers, and alterers, but the entities that qualify as small businesses would not be significantly affected by this rulemaking because they are already required to comply with the advanced air bag requirements. This final rule would not establish new requirements, but instead would only adjust and update the CRSs used in FMVSS No. 208’s test procedures for advanced air bags. The small manufacturers would continue to certify their vehicles as meeting the advanced air bag requirements using the same methods and procedures they use today, only with more current CRSs.

Federalism

NHTSA has examined this final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule would 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.

NHTSA rules can have a preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that, if NHTSA has established a standard for an aspect of motor vehicle or motor vehicle equipment performance a State may only prescribe or continue in effect a standard for that same aspect of performance if the State standard is identical to the Federal standard. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts

any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. *See Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to E.O. 13132, NHTSA has considered whether this final rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of this final rule and finds that this final rule, like many NHTSA rules, prescribes only a minimum safety standard. Accordingly, NHTSA does not intend that this final rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this final rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard finalized in this document. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must request and receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rulemaking creates new information collection requirements for phase-in reporting and record retention requirements.

In compliance with the requirements of the PRA, NHTSA is separately publishing a notice requesting comment on NHTSA’s intention to request approval for a reinstatement with modification of a previously approved information collection request. Specifically, NHTSA is requesting reinstatement of the information collection request (ICR) with OMB Control No. 2127–0535 and requesting that 49 CFR part 585 be renamed “Phase-In Reporting Requirements.” This ICR will be used to consolidate all phase-in reporting requirements that are included in 49 CFR part 585 and was chosen because the OMB Control Number is currently listed in 49 CFR part 509 as being associated with information collections contained in part 585.

NHTSA’s ICR describes the nature of the information collections and their expected burden. The ICR is to request approval for two new information collections for mandatory phase-in reporting for vehicle manufacturers and related information collections.

With this final rule NHTSA is amending Federal Motor FMVSS No. 208, “Occupant crash protection,” to update the child restraint systems (CRSs) listed in appendix A–1 of the standard. NHTSA uses the CRSs in appendix A–1 to test the performance of advanced air bag suppression and low risk deployment systems in either suppressing or deploying the air bag in a low-risk manner in the presence of a CRS. The proposed amendments would ensure that the CRSs used by NHTSA to test advanced air bags are representative of the current CRS fleet and would make it easier for vehicle manufacturers and test laboratories to acquire CRSs for testing purposes.

As part of the update to FMVSS No. 208, there will be a phase-in of the requirements for testing with the new CRSs listed in appendix A–1. This phase-in of the amendment gives vehicle manufacturers reasonable time

to certify their advanced air bag systems using the new CRSs. As with all phase-ins, the agency is adopting a reporting and recordkeeping requirement to facilitate the agency's enforcement of the standard by aiding NHTSA in determining whether a manufacturer has complied with the phase-in requirements during the phase-in period. These requirements are found in 49 CFR part 585, "Phase-In Reporting Requirements." The reporting and recordkeeping requirements require that manufacturers submit an annual production report to NHTSA that includes the number of vehicles manufactured in the current production year and the production of complying vehicles and that they retain records of compliance with the phase-in requirements for five years. NHTSA estimates this collection will impact 22 manufacturers each year and will have a total annual burden of approximately 22 hours and \$0.

Unfunded Mandates Reform Act (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing an NPRM or final rule subject to the Act to select the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule." This final rule would not result in a Federal mandate that will likely result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation, with base year of 1995).

Executive Order 12778 (Civil Justice Reform)

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language

the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers (SAE). The NTTAA directs this agency to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this final rule.

Plain Language Requirement

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in promulgating this final rule. Please inform the agency if you can suggest how NHTSA can improve its use of plain language.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading at the beginning of this notice may be used to find this action in the Unified Agenda.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products.

49 CFR Part 585

Reporting and recordkeeping requirements.

For reasons stated in the preamble, NHTSA amends 49 CFR parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Section 571.208 is amended by revising S14.8, S14.8.1, S14.8.2, S14.8.3, S14.8.4, S14.8.5 and appendices A and A–1 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.8 *Vehicles manufactured on or after September 1, 2025, and before September 1, 2026.* Vehicles manufactured on or after September 1, 2025, and before September 1, 2026, shall comply with S14.8.1 through S14.8.4 of this standard. At any time during the production year ending August 31, 2026, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles by make, model and vehicle identification number that have been certified as complying with S19, S21, and S23 of this standard (in addition to the other requirements specified in this standard) when using the child restraint systems specified in appendix A–1 of this standard. The manufacturer’s designation of a vehicle as meeting the requirements when using the child restraint systems in appendix A–1 of this standard is irrevocable.

S14.8.1 Subject to S14.8.2 of this standard, for vehicles manufactured on or after September 1, 2025, the number of vehicles certified as complying with S19, S21, and S23 of this standard when using the child restraint systems specified in appendix A–1 of this standard shall be not less than 40 percent of:

(a) The manufacturer’s average annual production of vehicles subject to S19, S21, and S23 of this standard manufactured on or after September 1, 2022, and before September 1, 2025; or

(b) The manufacturer’s production of vehicles subject to S19, S21, and S23 of

this standard manufactured on or after September 1, 2025, and before September 1, 2026.

S14.8.2 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.8.1 of this standard, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as provided in S14.8.2(a) through (c) of this standard, subject to S14.8.3 of this standard.

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

(c) A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle’s manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.8.2(a) or (b) of this standard.

S14.8.3 For the purposes of calculating average annual production of vehicle for each manufacturer and the number of vehicles by each manufacturer under S14.8.1 of this standard, each vehicle that is excluded from the requirement to test with child restraints listed in appendix A or A–1 of this standard is not counted.

S14.8.4 Until September 1, 2027, vehicles manufactured by a final-stage

manufacturer or alterer may certify compliance with S19, S21, and S23 of this standard when using the child restraint systems specified in appendix A. Vehicles manufactured on or after September 1, 2027, by these manufacturers must be certified as complying with S19, S21, and S23 when using the child restraint systems specified in appendix A–1 of this standard.

S14.8.5 Until September 1, 2027, manufacturers selling fewer than 5,000 vehicles per year in the U.S. may certify their vehicles as complying with S19, S21, and S23 of this standard when using the child restraint systems specified in appendix A. Vehicles manufactured on or after September 1, 2027, by these manufacturers must be certified as complying with S19, S21, and S23 when using the child restraint systems specified in appendix A–1 of this standard.

* * * * *

Appendix A to § 571.208—Selection of Child Restraint Systems

This appendix A applies to vehicles manufactured before September 1, 2025, and to not more than 60 percent of a manufacturer’s vehicles manufactured on or after September 1, 2025, and before September 1, 2026, as specified in S14.8 of this standard. This appendix does not apply to vehicles manufactured on or after September 1, 2026.

A. The following car bed, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A

	Manufactured on or after
Angel Guard Angel Ride XX2403XXX	September 25, 2007.

B. Any of the following rear-facing child restraint systems specified in the table in subpart B of this appendix, manufactured on or after the date listed, may be used by the

National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance

with S19 of this standard. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A

	Manufactured on or after
Century Smart Fit 4543	December 1, 1999.
Cosco Arriva 22–013 PAW and base 22–999 WHO	September 25, 2007.
Evenflo Discovery Adjust Right 212	December 1, 1999.
Graco Infant 8457	December 1, 1999.
Graco Snugride	September 25, 2007.
Peg Perego Primo Viaggio SIP IMUN00US	September 25, 2007.

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after the date listed, may be used by the National Highway

Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with S19 or S21 of this standard. (Note: Any child restraint listed in this subpart that does

not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2 of this standard):

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A

	Manufactured on or after
Britax Roundabout E9L02xx	September 25, 2007.
Graco ComfortSport	September 25, 2007.
Cosco Touriva 02519	December 1, 1999.
Evenflo Tribute V 379xxxx or Evenflo Tribute 381xxxx	September 25, 2007.
Evenflo Medallion 254	December 1, 1999.
Cosco Summit Deluxe High Back Booster 22–262	September 25, 2007.
Evenflo Generations 352xxxx	September 25, 2007.
Graco Toddler SafeSeat Step 2	September 25, 2007.
Graco Platinum Cargo	September 25, 2007.
Cosco High Back Booster 22–209	September 25, 2007.

D. Any of the following forward-facing child restraint systems and belt positioning seats, manufactured on or after the date

listed, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle

that has been certified as being in compliance with S21 or S23 of this standard:

SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A

	Manufactured on or after
Britax Roadster 9004	December 1, 1999.
Graco Platinum Cargo	September 25, 2007.
Cosco High Back Booster 22–209	September 25, 2007.
Evenflo Right Fit 245	December 1, 1999.
Evenflo Generations 352xxxx	September 25, 2007.
Cosco Summit Deluxe High Back Booster 22–262	September 25, 2007.

Appendix A–1 to § 571.208—Selection of Child Restraint Systems

This appendix A–1 applies to not less than 40 percent of a manufacturer's vehicles manufactured on or after September 1, 2025, and before September 1, 2026, as specified in S14.8 of this standard. This appendix applies to all vehicles manufactured on or after September 1, 2026.

A. The following car bed, manufactured on or after [Date of publication of final rule], may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with S19 of this standard:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A–1

Safety 1st Dreamride with LATCH #IC238xxx.

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after August 22, 2024, may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with S19 of this standard. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A–1

Evenflo Litemax #305xxxxx.
Chicco Keyfit 30 #04061472xxxxxx.
Doona Car Seat & Stroller.
Nuna Pipa RX with Pipa RELX base.
Cybex Cloud Q with SensorSafe.
Evenflo NurtureMax #364xxxxx.

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after August 22, 2024, may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with S19 or S21 of this standard. (Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2 of this standard):

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A–1

Britax Poplar #E1C93xx.
Cosco Scenera Next #CC123xxx.
Graco 4Ever DLX.

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A–1—Continued

Nuna Rava #CS05116CVR.
Graco Contender Slim.
Cybex Eternis S with SensorSafe.
Safety 1st Grow and Go #CC138xxx.
Evenflo Chase Plus #307xxxxx.
Cosco Finale #BC110xxx.
Chicco MyFit #04079783—0070.

D. Any of the following forward-facing child restraint systems and belt positioning seats, manufactured on or after August 22, 2024, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with S21 or S23 of this standard:

SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A–1

Chicco MyFit #04079783—0070.
Cybex Eternis S with SensorSafe.
Safety 1st Grow and Go #CC138xxx.
Evenflo Chase Plus #307xxxxx.
Cosco Finale #BC110xxx.
Cosco Rise #BC126xxx.
Graco TurboBooster Backless Booster Seat.
Britax Grow with You ClickTight #E1C19xx.

Figure A1 to Appendix A and Appendix A-1 to § 571.208: Loading Bar Foot Detail

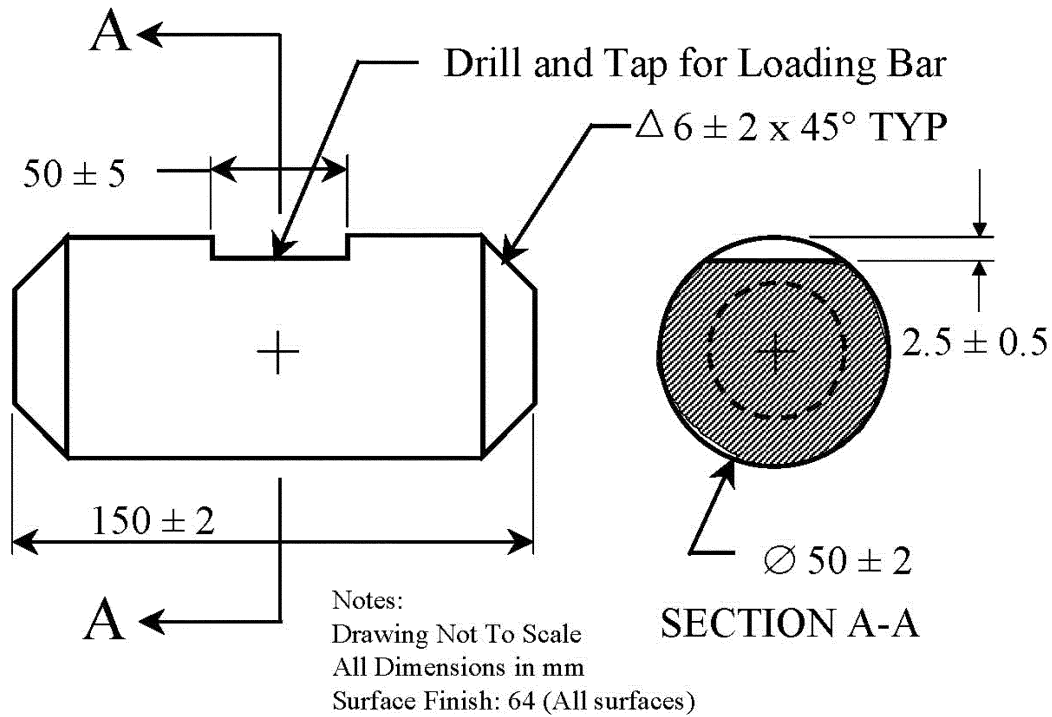
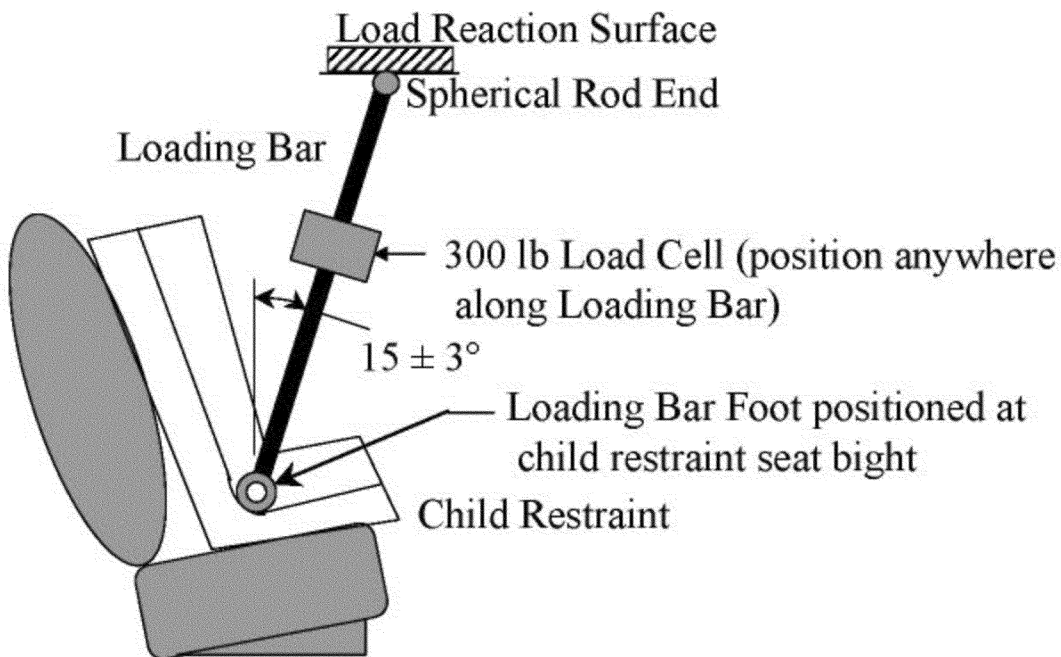


Figure A2 to Appendix A and Appendix A-1 to § 571.208: Loading Bar Installation



PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 3. The authority citation for part 585 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 4. Sections 585.35 through 585.37 are revised to read as follows:

*	*	*	*	*
Sec.				
585.35	Response to inquiries.			
585.36	Reporting requirements.			

585.37 Records.

* * * * *

§ 585.35 Response to inquiries.

At any time during the production year ending August 31, 2026, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 208 when using the child restraint systems specified in appendix A–1 of that standard (49 CFR 571.208). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.36 Reporting requirements.

(a) *Phase-in reporting requirements.* Within 60 days after the end of the production year ending August 31, 2026, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with requirements of Standard No. 208 when using the child restraint systems specified in appendix A–1 of that standard (49 CFR 571.208) for its vehicles produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in § 585.2.

(b) *Phase-in report content.* Basis for phase-in production goals. Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars, trucks, multipurpose passenger vehicles or buses for sale in the United States must report the number of passenger cars, trucks, multipurpose passenger vehicles or buses manufactured during the current production year.

(1) Production of complying vehicles. Each manufacturer shall report on the number of vehicles that meet the requirements of Standard No. 208 when using the child restraint systems specified in appendix A–1 of that standard (49 CFR 571.208).

(2) [Reserved]

§ 585.37 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.36 until December 31, 2029.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024–18114 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 240506–0128; RTID 0648–XE206]

Pacific Halibut Fisheries of the West Coast; Inseason Action for the 2024 Area 2A Pacific Halibut Directed Commercial Fishery

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces inseason action for the 2024 Pacific halibut non-Tribal directed commercial fishery in the International Pacific Halibut Commission's (IPHC) regulatory Area 2A. This action adds a fishing period, August 27 through August 29, 2024, with a fishing period catch limit of 1,400 pounds (0.64 metric tons (mt)) per vessel, dressed weight. This action is intended to provide opportunity to achieve the 2024 non-tribal directed commercial fishery allocation.

DATES: Effective August 27, 2024 through December 7, 2024.

FOR FURTHER INFORMATION CONTACT: Heather Fitch, West Coast Region, NMFS, (360) 320–6549, heather.fitch@noaa.gov.

SUPPLEMENTARY INFORMATION: On May 10, 2024, NMFS published a final rule implementing fishing periods (*i.e.* season dates) and fishing period limits (*i.e.* catch limits), by vessel size class, for the IPHC Area 2A Pacific halibut non-tribal directed commercial fishery that operates south of Point Chehalis, WA (lat. 46°53.30' N) (89 FR 40417). The Area 2A non-Tribal directed commercial fishery allocation is 249,338 pounds (113 mt), net weight (*i.e.*, the weight of Pacific halibut that is without gills and entrails, head-off, washed, and without ice and slime) (89 FR 19275, March 18, 2024).

The initial fishing periods occurred on June 25–27 and July 9–11, 2024, with fishing period limits ranging from 1,800 pounds to 4,500 pounds (0.816 mt to

2.041 mt), dressed weight, varied by vessel size class. A third fishing period occurred on August 6–8, 2024, with a fishing period limit of 1,400 pounds (0.64 mt), dressed weight, for all vessel size classes. Landings information to date indicates that sufficient allocation remains to warrant an additional fishing period. Approximately 209,204 pounds (94.9 mt), net weight, have been harvested of the 249,338-pound (113 mt) allocation (84 percent), leaving 40,134 pounds (18.2 mt) remaining (16 percent).

NMFS is adopting an additional fishing period not previously implemented in the final rule on May 10, 2024 (89 FR 40417), in accordance with 50 CFR 300.63(e)(1)(iii). Fishing period limits implemented through inseason action are equal across vessel size classes and are based on the allocation estimated to be remaining and the projected participation and catch rates in this additional fishing period.

NMFS has determined the following inseason action is necessary to meet the management objective of attaining the allocation, is not anticipated to risk exceeding the allocation, and is consistent with the inseason management provisions allowing for additional fishing periods.

Inseason Action

This inseason action implements an additional fishing period, beginning August 27, 2024 at 8 a.m. and ending on August 29, 2024 at 6 p.m. This inseason action also implements a fishing period catch limit of 1,400 pounds (0.64 mt) per vessel, dressed weight (head-on, with ice and slime), for all vessel size classes.

Notice of this additional fishing period and fishing period limit will also be announced on the NMFS hotline at 206–526–6667 or 800–662–9825.

Classification

NMFS issues this action pursuant to the Northern Pacific Halibut Act of 1982. This action is taken under the regulatory authority at 50 CFR 300.63(e)(1)(iii), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The California, Oregon, and Washington Departments of Fish and Wildlife provided estimated harvest data to NMFS inseason. As of August 14, 2024, the Area 2A non-Tribal directed commercial fishery had caught only an estimated 84 percent of the

fishery allocation. NMFS uses current fishery harvest and participation estimates, and fishing period catches from prior years, to determine if additional fishing periods are necessary to reach the allocation, and to set fishing period limits for those additional fishing periods. Given that harvest in the first three fishing periods is estimated to be well below the allocation, a fourth fishing period is considered necessary to maximize commercial fishing opportunity to attain the allocation. This action should be implemented as soon as possible for fishery participants to plan for the additional fishing. This fishery has historically had 2 weeks between fishing periods, or as close to 2 weeks between them as is practicable. The fishery may close no later than December 7, 2024 (89 FR 19275, March 18, 2024). As such, implementing this action through proposed and final rulemaking would limit the benefit this action would provide to fishery participants. Without implementation of an additional fishing period, the fishery allocation is unlikely to be reached, limiting economic benefits to the participants and not meeting the goals of the Catch Sharing Plan. It is necessary

that this action be implemented in a timely manner so that planning for the additional fishing period can take place, and for business decision making by the regulated public impacted by this action, which includes commercial fishing operations and associated port businesses, among others. To ensure the regulated public is fully aware of this action, notice of this regulatory action will also be provided to fishery participants through a telephone hotline, and via email news release. No aspect of this action is controversial, and changes of this nature were anticipated in the process described in regulations at 50 CFR 300.63(e)(1)(iii) and in the final rule (89 FR 40417, May 10, 2024).

For the reasons discussed above, there is also good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication, as a delay in effectiveness of this action would constrain fishing opportunity and be inconsistent with the goals of the Catch Sharing Plan, as well as potentially limit the economic opportunity intended by this rule to the associated fishing communities. This inseason action is not expected to result

in exceeding the Area 2A Pacific halibut non-tribal directed commercial fishery allocation. NMFS regulations allow the Regional Administrator to add fishing periods and set fishing period limits inseason, provided that the action allows allocation objectives to be met and will not result in exceeding the catch limit for the fishery. NMFS recently received information on the progress of landings in the non-Tribal directed commercial fishery, indicating an additional fishing period with fishing period limits should be implemented in the fishery to ensure optimal and sustainable harvest of the allocation. As stated above, it is in the public interest that this action is not delayed, because a delay in the effectiveness of this additional fishing period would not allow the allocation objectives of the Area 2A Pacific halibut non-Tribal directed commercial fishery to be met.

Authority: 16 U.S.C. 773–773k.

Dated: August 16, 2024.

Lindsay Fullenkamp,

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

[FR Doc. 2024–18744 Filed 8–21–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 163

Thursday, August 22, 2024

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2023–0210]

RIN 3150–AL09

Administrative Changes to Agency Rules of Practice and Procedure

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to revise the agency's rules of practice and procedure to improve access to documents and make e-filing rules technology neutral, to delete an obsolete regulation, to clarify the applicability of Subpart L and Subpart N procedures, to enhance internal consistency for page limit requirements, to enhance consistency with the Federal Rules of Evidence for "true copies," and to better reflect current Atomic Safety and Licensing Board Panel practice regarding admission of evidence.

DATES: Submit comments by September 23, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0210. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

You can read a plain language description of this proposed rule at <https://www.regulations.gov/docket/NRC-2023-0210>. 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:

Ethan Licon, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1016, email: Ethan.Licon@nrc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Plain Writing
- V. Paperwork Reduction Act

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0210 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0210.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern

time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2023–0210 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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on November 5, 2024. However, if the NRC receives significant adverse comments by September 23, 2024, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

The NRC's regulations governing the conduct of adjudicatory proceedings before the agency are contained in part 2 of title 10 of the *Code of Federal Regulations* (10 CFR), "Agency Rules of Practice and Procedure." Periodically, the NRC has amended these rules, including adopting changes in 2004 to enhance efficiency; in 2012 to promote fairness, efficiency, and openness; in 2016 to reflect technological advances and current agency practice; and in 2020 to reflect Commission case law, Supreme Court precedent, and current agency practice. Since the last update to the agency's rules of practice and procedure, the NRC has identified additional provisions that should be updated to improve access to documents and make e-filing rules technology neutral, to delete an obsolete regulation, to clarify the applicability of Subpart L and Subpart N procedures, to enhance internal consistency for page limit requirements, to enhance consistency with the Federal Rules of Evidence for "true copies," and to better reflect current Atomic Safety and Licensing Board Panel practice regarding admission of evidence.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Paperwork Reduction Act

This proposed rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget (OMB) control number.

Dated: August 1, 2024.

For the Nuclear Regulatory Commission.

Mirela Gavrilas,

Executive Director for Operations.

[FR Doc. 2024–18743 Filed 8–21–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 15

[Docket ID OCC–2024–0012]

RIN 1557–AF22

FEDERAL RESERVE SYSTEM

12 CFR Part 262

[Docket No. R–1837]

RIN 7100 AG–79

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064–AF96

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 753

RIN 3133–AF57

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1077

[Docket No. CFPB–2024–0034]

RIN 3170–AB20

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1226

RIN 2590–AB38

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

RIN 3038–AF43

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 256

[Release No. 33–11295; 34–100647; IA–6644; IC–35290; File No. S7–2024–05]

RIN 3235–AN32

DEPARTMENT OF THE TREASURY

31 CFR Part 151

[Docket No. TREAS–DO–2024–0008]

RIN 1505–AC86

Financial Data Transparency Act Joint Data Standards

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of

Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Consumer Financial Protection Bureau (CFPB); Federal Housing Finance Agency (FHFA); Commodity Futures Trading Commission (CFTC); Securities and Exchange Commission (SEC); Department of the Treasury (Treasury).
ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, Federal Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and Department of the Treasury invite public comment on a proposed rule to establish data standards to promote interoperability of financial regulatory data across these agencies. Final standards established pursuant to this rulemaking will later be adopted for certain collections of information in separate rulemakings by the agencies or through other actions taken by the agencies. The agencies are proposing this rule as required by the Financial Data Transparency Act of 2022.

DATES: Comments must be received by October 21, 2024.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “Financial Data Transparency Act” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:*
Go to <https://regulations.gov/>. Enter “Docket ID OCC–2024–0012” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1–866–498–2945 Monday–Friday, between 8 a.m. and 7 p.m. eastern time, or email regulationshelpdesk@gsa.gov.

- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2024–0012” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following methods:

- *Viewing Comments Electronically—Regulations.gov:*

Go to <https://regulations.gov/>. Enter “Docket ID OCC–2024–0012” in the Search Box and click “Search.” Click on the “Dockets” tab and then the document’s title. After clicking the document’s title, click the “Browse All Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Comments Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Browse Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, between 8 a.m. and 7 p.m. eastern time, or email regulationshelpdesk@gsa.gov.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1837 and RIN 7100–AG–79, by any of the following methods:

- *Agency website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Email:* regs.comments@federalreserve.gov. Include docket and RIN numbers in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Instructions: All public comments are available from the Board’s website at <https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street, NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN 3064–AF96, by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications>. Follow instructions for submitting comments on the FDIC’s website.

- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF96), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Hand Delivered/Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

- *Email:* comments@FDIC.gov. Include the RIN 3064–AF96 on the subject line of the message.

Public Inspection: Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC

may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

NCUA: You may submit written comments, identified by 3133–AF57, by any of the following methods (Please send comments by one method only):

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments for Docket Number NCUA–2023–0019.
- **Mail:** Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

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

CFPB: You may submit comments, identified by Docket No. CFPB–2024–0034 or RIN 3170–AB20, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2024-0034>.

- **Email:** 2024-NPRM-FDTA-INTERAGENCY@cfpb.gov. Include Docket No. CFPB–2024–0034 or RIN 3170–AB20 in the subject line of the message.

- **Mail/Hand Delivery/Courier:** Comment Intake—FDTA-INTERAGENCY RULE, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail is subject to delay, commenters are

encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security Numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FHFA: You may submit your comments on the proposed rule, identified by RIN 2590–AB38, by any one of the following methods:

- **Agency Website:** <https://www.fhfa.gov/regulation/federal-register?comments=open>.
- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Hand Delivered/Courier:** The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB38, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- **U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:** The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB38, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

Public Comments and Access: FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Comments will be posted to the electronic rulemaking docket on the FHFA public website at <https://www.fhfa.gov>, except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar,

profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA's internal rulemaking file and considered as required by all applicable laws. Commenters that would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA's *Policy on Communications with Outside Parties in Connection with FHFA Rulemakings*, see https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf. FHFA cannot guarantee that such data or information, or the identity of the commenter, will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. See 12 CFR 1202.8 and 1214.2 and the FHFA FOIA Reference Guide at <https://www.fhfa.gov/about/foia-reference-guide> for additional information.

CFTC: You may submit comments, identified by “Financial Data Transparency Act Joint Data Standards Rulemaking” and RIN number 3038–AF43 by any of the following methods:

- **CFTC Comments Portal:** <https://comments.cftc.gov>. Select the “Submit Comments” link for this release and follow the instructions on the Public Comment Form.
- **Mail:** Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the CFTC's procedures established in 17 CFR 145.9.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may

deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

SEC: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the SEC's internet comment form (<https://www.sec.gov/comments/s7-2024-05/financial-data-transparency-act-joint-data-standards>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–2024–05 on the subject line; or

Paper Comments

- Send paper comments to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to S7–2024–05. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The SEC will post all comments on the SEC's website (<https://www.sec.gov/rules-regulations/2024/07/s7-2024-05>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. 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.

Studies, memoranda, or other substantive items may be added by the SEC or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (<https://www.sec.gov/rules-regulations/2024/07/s7-2024-05>).

Treasury: You may submit comments, identified by RIN [1505–AC86], by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Chief Counsel's Office, Attention: Comment Processing, Office of Financial Research, Department of the Treasury, 717 14th Street NW, Washington, DC 20220.

Instructions: All submissions received must include the agency name and RIN [1505–AC86] for this rulemaking. Because paper mail in the Washington, DC, area may be subject to delay, it is recommended that comments be submitted electronically.

In general, all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

OCC: Richard Heeman, Enterprise Data Governance Program Manager, Office of the Chief Information Officer and Chief Data Officer, (202) 945–7224; Allison Hester-Haddad, Special Counsel, Chief Counsel's Office, (202) 649–5490; 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 711 to access telecommunications relay services.

Board: Katherine Tom, Chief Data Officer, (202) 872–4986; Nuha Elmaghrabi, Clearance Officer, (202) 452–3884, Office of the Chief Data Officer; William Treacy, Adviser, (202) 452–3859, Division of Supervision and Regulation; Dafina Stewart, Deputy Associate General Counsel, (202) 452–2677; Gillian Burgess, Senior Counsel, (202) 736–5564; Sumeet Shroff, Counsel, (202) 973–5085, 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: Geoffrey Nieboer, Chief Data Officer, (703) 516–5850, ChiefDataOfficer@fdic.gov; Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

NCUA: Office of Business Innovation: Amber Gravius, Chief Data Officer, (703) 548–2411, agravius@ncua.gov, and Aaron Langley, Business Innovation Officer, (703) 548–2710, alangley@ncua.gov; Office of General Counsel: Regina Metz, Senior Attorney, (703) 518–6561, rmetz@ncua.gov, and Ariel Pereira, Senior Attorney, (703) 548–2778, apereira@ncua.gov.

CFPB: George Karithanom, Office of Regulations, at (202) 435–7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

FHFA: Matthew Greene, Office of the Chief Data Officer, (202) 649–3174, Matthew.Greene@fhfa.gov; or Jamie Schwing, Office of General Counsel, (202) 649–3085, Jamie.Schwing@fhfa.gov. These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

CFTC: Ted Kaouk, Chief Data Officer, (202) 418–5747, tkaouk@cftc.gov; Tom Guerin, Senior Special Counsel, (202) 743–4194, tguerin@cftc.gov, Division of Data; Jeffrey Burns, Senior Assistant General Counsel, (202) 418–5101, jburns@cftc.gov, Office of the General Counsel; in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SEC: Dennis Hermreck, Office of Rulemaking, Division of Corporation Finance, or Parth Venkat, Office of the Chief Data Officer, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

Treasury: Cornelius Crowley, Chief Data Officer, Office of Financial Research, (202) 294–3382, cornelius.crowley@ofr.treasury.gov; Michael Passante, Chief Counsel, Office of Financial Research, (202) 921–4003, michael.passante@ofr.treasury.gov, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On December 23, 2022, the Financial Data Transparency Act of 2022 (FDTA) was signed into law.¹ The FDTA seeks to promote interoperability of financial regulatory data. As explained below, the FDTA directs the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB), Federal Housing Finance Agency (FHFA), Commodity Futures

¹ Public Law 117–263, title LVIII, 136 Stat. 2395, 3421 (2022) (adding, among other things, a new section 124 of the Financial Stability Act of 2010, which is codified at 12 U.S.C. 5334).

Trading Commission (CFTC),² Securities and Exchange Commission (SEC), and Department of the Treasury (Treasury) (each referred to individually as the “Agency” and collectively as the “Agencies”) to jointly establish data standards. The FDTA also directs most of the Agencies to issue individual rules adopting applicable joint standards for certain collections of information under their respective purview. In this proposed rule, the Agencies are requesting comment on data standards to be jointly established; individual Agency proposals will follow after the establishment of the joint standards.

The Agencies seek comment on all aspects of the proposal.

A. Joint Agency Rulemaking

Section 5811 of the FDTA amends subtitle A of the Financial Stability Act of 2010 (Financial Stability Act)³ by adding a new section 124.⁴ Section 124 of the Financial Stability Act directs the Agencies jointly to issue regulations establishing data standards for (1) certain collections of information reported to each Agency by financial entities⁵ under the jurisdiction of the Agency, and (2) the data collected from the Agencies on behalf of the Financial Stability Oversight Council (FSOC). The statute requires the Agencies to issue the final joint rule within two years of December 23, 2022. Section 124 of the Financial Stability Act defines the term “data standard” to mean a standard that specifies rules by which data is described and recorded.⁶ In this preamble, “joint standard” refers to a data standard that has been established by the Agencies pursuant to the joint rule.

As noted in section I.B below, the FDTA directs the OCC, Board, FDIC, NCUA, CFPB, FHFA, and SEC

(collectively, the “implementing Agencies”) to issue individual rules adopting applicable data standards for specified collections of information⁷ (collectively, the “Agency-specific rulemakings”) and to incorporate and ensure compatibility with, to the extent feasible, the joint standards.⁸

The application of the joint standards to specific collections of information would take effect through adoption by an Agency of an Agency-specific rulemaking or other action.⁹

Section 124(c)(1)(A) of the Financial Stability Act requires the joint standards to include common identifiers, including a common nonproprietary legal entity identifier that is available under an open license for all entities required to report to the Agencies. Further, section 124(c)(1)(B) of the Financial Stability Act requires that the data standards must, to the extent practicable:

- Render data fully searchable and machine-readable;¹⁰
- Enable high quality data through schemas, with accompanying metadata¹¹ documented in machine-readable taxonomy or ontology models,¹² which clearly define the

⁷ The FDTA does not specifically require Treasury and the CFTC to issue individual rules adopting data standards. Treasury and the CFTC may adopt data standards for their collections of information at their discretion.

⁸ FDTA section 5842 (OCC); FDTA section 5863 (Board); FDTA section 5833 (FDIC); FDTA section 5873 (NCUA); FDTA section 5852 (CFPB); FDTA section 5883 (FHFA); and FDTA sections 5821, 5823, and 5824 (SEC).

⁹ Some Agencies already mandate the use of data standards that are consistent with the joint standards, and the continued application of such standards in those contexts may not require any new rulemaking or other action. Additionally, to the extent an Agency applies the joint standards to an existing collection of information not specified in the FDTA, an Agency-specific rulemaking or other action may not be required to incorporate the joint standards.

¹⁰ The term “machine-readable” is defined as data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost. 44 U.S.C. 3502(18).

¹¹ The term “metadata” is defined as structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions. 44 U.S.C. 3502(19).

¹² Within the field of data science, the terms “schema,” “taxonomy,” and “ontology model” are used in various and sometimes conflicting ways. For example, sometimes the term schema refers only to the description of the syntax of a data asset, while other times, the term can refer to a description of the syntax, semantic meaning, and organizational structure. Similarly, sometimes the term taxonomy refers only to the description of the semantic meaning of a data asset, while other times, the term can refer to a description that includes syntax, semantic meaning, and hierarchical structure. The term ontology model may refer to the

semantic meaning of the data, as defined by the underlying regulatory information collection requirements;

- Ensure that a data element or data asset¹³ that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata;
- Be nonproprietary or made available under an open license;¹⁴
- Incorporate standards developed and maintained by voluntary consensus standards bodies; and
- Use, be consistent with, and implement applicable accounting and reporting principles.

Finally, section 124 of the Financial Stability Act directs the Agencies, in establishing the joint standards, to consult with other Federal departments and agencies and multi-agency initiatives responsible for Federal data standards¹⁵ and to seek to promote interoperability of financial regulatory data across members of the FSOC.¹⁶

B. Agency-Specific Rulemakings

Separate from section 124 of the Financial Stability Act, the FDTA specifically requires each implementing Agency to adopt by rule applicable data standards for certain collections of information that are regularly filed with or submitted to that Agency.¹⁷ Subject

description of the semantic meaning of a data asset. However, taken together, these terms consistently refer to the combination of syntax, structure, and semantic meaning of a data asset. For simplicity, this proposal uses the term “schema and taxonomy” to refer to a description or set of descriptions of the syntax, structure, and semantic meaning of the data and “taxonomy” to refer to a description of the semantic meaning and hierarchical structure of data. This usage is consistent with the definition of taxonomy in National Information Standards Organization Standard Z39.19, “Guidelines for the Construction, Format, and Management of Monolingual Controlled Vocabularies,” available at <https://www.niso.org/publications/ansiniso-z3919-2005-r2010>.

¹³ The term “data asset” is defined as a collection of data elements or data sets that may be grouped together. 44 U.S.C. 3502(17).

¹⁴ The term “open license” is defined as a legal guarantee that a data asset is made available at no cost to the public and with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset. 44 U.S.C. 3502(21).

¹⁵ Section 124(c)(2)(A) of the Financial Stability Act.

¹⁶ Section 124(c)(2)(B) of the Financial Stability Act.

¹⁷ See *supra* note 8. FDTA section 5821(c) refers to collections of information required to be submitted or published by a nationally recognized statistical rating organization (NRSRO) under section 15E of the Securities Exchange Act of 1934, and some of that information, including credit rating histories, is required by rule to be published on NRSROs’ websites rather than reported directly to the SEC. Section 5823 refers to information submitted to the Municipal Securities Rulemaking Board. In each case, the Agencies interpret the

² The term “covered agencies” is defined under the FDTA to include “any . . . primary financial regulatory agency designated by the [Secretary of the Treasury].” On May 3, 2024, the Secretary of the Treasury designated the CFTC as a covered agency under the FDTA. See FDTA section 5811(a).

³ The Financial Stability Act, codified at 12 U.S.C. 5321 *et seq.*, is title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

⁴ Codified at 12 U.S.C. 5334.

⁵ The Commodity Exchange Act (CEA) and CFTC regulations currently provide a definition of “financial entity” in CEA section 2(h)(7)(C), CFTC regulation § 1.3 and CFTC regulation § 45.1 for certain specified purposes. In each instance, the current definition of “financial entity” is the definition set forth in CEA section 2(h)(7)(C). The CFTC does not believe that it was intended for this CEA definition of “financial entity” to be used for the purpose of the joint data standards required by the FDTA. The CFTC expects to either adopt a definition of “financial entity” for the purpose of the FDTA and/or to address the meaning of the term as it considers CFTC collections of information.

⁶ Section 124(a)(3) of the Financial Stability Act.

to the flexibilities and discretion discussed below, the data standards that an implementing Agency adopts in its Agency-specific rulemaking must incorporate and ensure compatibility with, to the extent feasible, applicable joint standards. Pursuant to the FDTA, the data standards adopted by each implementing Agency through their respective Agency-specific rulemaking must take effect not later than two years after the final joint rule is promulgated.¹⁸

Generally, an implementing Agency will determine the applicability of the joint standards to the collections of information specified in the FDTA under its purview. Additionally, in issuing an Agency-specific rulemaking, each implementing Agency (1) may scale data reporting requirements to reduce any unjustified burden on smaller entities affected by the regulations and (2) must seek to minimize disruptive changes to those entities or persons.¹⁹ Further, section 5891(c) of the FDTA provides that nothing in the FDTA may be construed to prohibit an Agency from tailoring the data standards when those standards are adopted.²⁰ To the extent an Agency has separate authority to adopt data standards, the Agency may adopt other standards beyond the joint standards. Finally, the FDTA does not impose new information collection requirements (that is, it does not require an implementing Agency to collect or make publicly available additional information that the Agency was not already collecting or making publicly available prior to the enactment of the FDTA).²¹ For example, to the extent the

directive of section 124(b)(1) of the Financial Stability Act to apply to such specific collections of information.

¹⁸ See *supra* note 8.

¹⁹ *Id.*

²⁰ In connection with an Agency-specific rulemaking, an Agency could determine to use an identifier that is not in the joint standards, including an Agency-specific identifier, rather than, or in addition to or in combination with, an identifier established by the final joint rule if, for example, the Agency exercised its authority to tailor the joint standards in its Agency-specific rulemaking (FDTA section 5891(c)) or the Agency determined either that using the identifier established by the final joint rule was not feasible (FDTA section 5841 (OCC); FDTA section 5861(a), (b), (c), (d) (Board); FDTA section 5831 (FDIC); FDTA section 5871 (NCUA); FDTA section 5851(a)(2) (CFPB); FDTA section 5881 (FHFA); FDTA sections 5821(a)(2), (b)(2), (c), (d), (e), (f), (g), (h), 5823(a), 5824(a) (SEC)) or that using an identifier that is not in the joint standards, including an Agency-specific identifier, would minimize disruptive changes to the persons affected by those standards (see *supra* note 8).

²¹ FDTA section 5843 (OCC); FDTA section 5864 (Board); FDTA section 5834 (FDIC); FDTA section 5874 (NCUA); FDTA section 5853 (CFPB); FDTA section 5884 (FHFA); FDTA section 5826 (SEC); and FDTA section 5813 (Treasury).

joint standards include a common identifier for a financial instrument, an implementing Agency that collects aggregated data related to that type of financial instrument would not be required to collect disaggregated data for that type of financial instrument.

The Agencies expect to work together on the adoption of the established joint standards in the Agency-specific rulemakings or other Agency actions, as appropriate. The Agencies also expect to monitor developments related to data standards, including the joint standards, and update the joint rule, as appropriate. The field of data standards, data transmission, schemas and taxonomies is rich with well-established practices and is also rapidly evolving, including with proposals to extend existing standards beyond their existing use and with development of new standards.

C. Consultations

Section 124(c)(2)(A) of the Financial Stability Act directs the Agencies to consult with other Federal departments and agencies and multi-agency initiatives responsible for Federal data standards. To comply with this requirement, the implementing Agencies and Treasury consulted with a variety of Federal governmental entities with relevant experience in advance of issuing this proposal.²² The implementing Agencies and Treasury also met with public stakeholders with relevant experience in advance of issuing this proposal.²³ These consultations provided the implementing Agencies and Treasury with a greater understanding of the issues involved in establishing and adopting the joint standards. In addition, the Agencies anticipate receiving public comments on this proposed rule from a wide range of stakeholders.

²² Since March 2023, staff at the implementing Agencies and Treasury consulted with counterparts at the National Institute of Standards and Technology, Federal Chief Data Officers Council, Federal Evaluation Officer Council, the Federal Financial Institutions Examination Council (FFIEC), the Department of Health and Human Services, and the Department of Homeland Security. These consultations took place before the CFTC was designated in May 2024 as a covered agency under the FDTA.

²³ Since March 2023, staff at the implementing Agencies and Treasury consulted with the Global Legal Entity Identifier Foundation (GLEIF), Enterprise Data Management Council, XBRL US, Data Foundation, and American National Standards Institute (ANSI) Accredited Standards Committee X9.

II. Proposed Joint Rule

A. Collections of Information

The joint standards established by the joint rule would apply to certain collections of information reported to each Agency.²⁴

Although the FDTA does not define the term “collections of information,” that term is a term of art, defined in the Paperwork Reduction Act of 1995 (PRA),²⁵ an act to which the Agencies are subject.

The Agencies propose to define the term “collections of information” as used in connection with the FDTA by reference to the definition of that term in the PRA. That definition is widely understood by the Agencies and by public stakeholders. All approved and pending PRA collections of information have been categorized and are accessible to the Agencies and the public on *Reginfo.gov*.²⁶ The use of the term “collections of information” in the FDTA is consistent with the PRA definition, and the PRA definition is consistent with the purposes of the FDTA.

The statute limits the applicability of the joint standards established by the joint rule to certain collections of information. Section 124(b)(1) of the Financial Stability Act directs the Agencies to jointly establish data standards for certain “collections of information reported to each [Agency] by financial entities under the jurisdiction of the [Agency].” Under this directive, collections of information that do not include reporting requirements (e.g., recordkeeping and third-party disclosure collections) and that are not reported to an Agency by a specified type of financial entity are outside the scope of the FDTA. Likewise, specified collections of information that are not regularly reported to the relevant Agency,²⁷ or that are subject to the “monetary policy” exception²⁸ are also outside the scope of the FDTA. Each implementing Agency may choose to further interpret the scope of the FDTA’s applicability to its own collections of information in the

²⁴ Section 124(b) of the Financial Stability Act.

²⁵ 44 U.S.C. 3501 *et seq.* The term “collection of information,” is defined at 44 U.S.C. 3502(3).

²⁶ See *Reginfo.gov*, U.S. General Services Administration and the Office of Management and Budget, available at <https://www.reginfo.gov/public>.

²⁷ See FDTA sections 5824(a), 5841(a), 5851(a), 5861(a)–(d), 5871(a), 5881(a).

²⁸ Under the monetary policy exception, nothing in the FDTA, or the amendments made by the FDTA, applies to activities conducted, or data standards used, in connection with monetary policy proposed or implemented by the Board or the Federal Open Market Committee. FDTA section 5891(b).

Agency-specific rulemakings. However, the FDTA does not limit an Agency from applying the joint standards to other collections of information at its discretion.

The Agencies invite comment on the incorporation of the PRA definition of “collection of information” for purposes of the proposed rule.

B. Legal Entity Identifier

Section 124(c)(1)(A) of the Financial Stability Act requires the joint standards to include “a common nonproprietary legal entity identifier that is available under an open license for all entities required to report to” the Agencies. The term “open license” is defined (by reference to the PRA) to mean a legal guarantee that a data asset is made available at no cost to the public and with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset.²⁹ The Agencies propose to establish the International Organization for Standardization (ISO) 17442–1:2020, Financial Services—Legal Entity Identifier (LEI) as the legal entity identifier joint standard.³⁰

The LEI is a global, 20-character, alphanumeric, identifier standard that uniquely and unambiguously identifies a legal entity, which is documented by the ISO³¹ and which meets the requirements of section 124(c)(1). The LEI is nonproprietary, and the LEI data is made publicly available under an open license, free of charge to any interested user.

The LEI is managed by the GLEIF,³² which was established by the Financial Stability Board (FSB)³³ in June 2014 to support the implementation and use of the LEI. The GLEIF must adhere to governance principles designed by the FSB and the Regulatory Oversight Committee (ROC), a group of financial markets regulators, other public authorities and observers from more than 50 countries.³⁴ The ROC

designated the LEI as the standard, assigned responsibility for maintenance of the standard to the GLEIF, and oversees its work so that it remains in the public interest.³⁵

The LEI is used worldwide in the private and public sectors and, in certain jurisdictions, including the United States, is used for regulatory reporting.³⁶ In some cases, the LEI can be used to identify the filer of a particular report, as well as entities related to the filer, such as its subsidiaries or parents.³⁷ Regulators have the discretion to determine whether firms are obligated to renew LEI and corresponding legal entity reference data.³⁸

While the LEI codes and reference data may be used free of charge, entities must pay a fee to local operating units to register and renew the LEI assigned

U.S. representatives on the ROC include the SEC, Board, CFTC, and FDIC.

³⁵ See Global LEI System, Regulatory Oversight Committee, available at <https://www.lei.org/lei.htm>. The LEI definition currently relies on a standard published by ISO. See *supra* note 30.

³⁶ The Financial Stability Board’s most recent “Thematic Review on Implementation of the Legal Entity Identifier,” estimates that less than 3 percent of all eligible legal entities in the United States have acquired an LEI. The Financial Stability Board notes that LEI coverage in the United States is far higher for entities involved in the swaps and security-based swaps markets, with close to 100 percent of swaps reports in the United States using LEIs to identify both trade counterparties. See Thematic Review on Implementation of the Legal Entity Identifier (28 May 2019), Financial Stability Board, available at <https://www.fsb.org/wp-content/uploads/P280519-2.pdf>.

³⁷ As discussed in the Financial Stability Board’s June 8, 2012, Report, “A Global Legal Entity Identifier for Financial Markets” (endorsed by G20 leaders on June 19, 2020), the Global LEI System is designed to allow for the collection of information on relationships among entities—specifically, information on direct and ultimate parents of legal entities, as defined by the ROC. The information on direct and ultimate parents of legal entities is sometimes referred to as LEI Level 2 Data. The ROC has articulated specific instances an LEI might not include Level 2 Data: namely, when there is no direct parent or ultimate parent; when the legal entity is prohibited from providing such information by law, binding legal commitments (such as articles governing the legal entity) or contract; or when the disclosure of such information would be detrimental to the legal entity or the relevant parent. See generally https://www.lei.org/publications/gls/roc_20220125.pdf, at 9–10 and https://www.lei.org/publications/gls/roc_20180502-1.pdf, at 10. “Ultimate parent” means the highest-level legal entity preparing consolidated financial statements. See LEI ROC Report, at 15 (Mar. 10, 2016), available at https://www.lei.org/publications/gls/lou_20161003-1.pdf.

³⁸ A framework for renewal is established by the Master Agreement of the Global LEI System between the local operating units, the entities that assign LEIs to applicants, and GLEIF, the entity that manages the LEI system. See Master Agreement, Rev. 1.4.1 (26 June 2024), Global Legal Entity Identifier Foundation, available at <https://www.gleif.org/en/about-lei/the-lifecycle-of-a-lei-issuer/gleif-accreditation-of-lei-issuers/required-documents>.

to them.³⁹ The LEI system is based on a cost-recovery model, meaning the costs associated with obtaining and renewing an LEI cover the administrative expenses associated with the LEI system. However, this proposed joint rule would not impose any requirements that any particular entity obtain an LEI and incur the associated costs; such requirements would be determined by the Agency-specific rulemakings.

The Agencies considered but are not proposing the following legal entity identifier options because they did not meet the FDTA’s requirements, including, among others, the nonproprietary and open license requirements and the requirement to use standards developed and maintained by voluntary consensus standards bodies:

- The Business Identifier Code, because it is applicable to only a subset of financial entities under the jurisdiction of the Agencies and the standard is used within the proprietary system administered by the Society for Worldwide Interbank Financial Telecommunication (SWIFT).
- Data Universal Numbering System, because the standard is proprietary, is not freely available under an open license, and is not developed or maintained by a voluntary consensus standards body.
- Commercial and Government Entity Code, because the standard is proprietary, is not available under an open license, and is not developed or maintained by a voluntary consensus standards body.
- North Atlantic Treaty Organization Commercial and Government Entity Code, because the standard is proprietary, is not available under an open license, and is not developed or maintained by a voluntary consensus standards body.
- Research, Statistics, Supervision & Regulation, Discount & Credit Database Identifier, because the standard is proprietary to the Federal Reserve System, not available under an open license, and not developed or maintained by a voluntary consensus standards body.
- Taxpayer Identification Number (TIN) because it is applicable to only a subset of financial entities under the

³⁹ See How to Obtain an LEI, The Regulatory Oversight Committee, available at <https://www.lei.org/lei/how.htm>. A list of local operating units accredited by GLEIF is available at <https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations>. Currently, U.S. entities may obtain an LEI for a one-time fee of \$60 and an annual renewal fee of \$40. See Fees, Payments, & Taxes (2024), Bloomberg Finance L.P., available at <https://lei.bloomberg.com/docs/faq#what-fees-are-involved>.

²⁹ 44 U.S.C. 3502(21).

³⁰ See ISO 17442–1:2020, Financial Services—Legal Entity Identifier (LEI), International Organization for Standardization, available at <https://www.iso.org/standard/78829.html>.

³¹ See About ISO, International Organization for Standardization, available at <https://www.iso.org/about-us.html>.

³² See Introducing the Legal Entity Identifier (LEI), Global Legal Entity Identifier Foundation, available at <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei>.

³³ See generally About the FSB, Financial Stability Board, available at <https://www.fsb.org/about/>.

³⁴ The ROC was established in November 2012 to coordinate and oversee a worldwide framework of legal entity identification, the Global LEI System. See About the ROC, Regulatory Oversight Committee, available at <https://www.lei.org/>. The

jurisdiction of the Agencies⁴⁰ and because the TIN can sometimes be the Social Security Number (where the entity is a sole proprietorship), which is sensitive information that the entity would not want to share.

The Agencies invite comment on the establishment of the LEI as the legal entity identifier data standard in this proposed joint rule and on other options for the legal entity identifier data standard. The Agencies also request comment on the use of the LEI to identify legal entities related to the filer of a particular report, such as a subsidiary or parent of the filer.⁴¹

C. Other Common Identifiers

In addition to the LEI, the Agencies propose to establish the following common identifiers in the joint standards. Each of these identifiers satisfies the requirements listed in section 124(c)(1) of the Financial Stability Act.

For reporting of swaps and security-based swaps, the Agencies propose to establish ISO 4914—Financial services—Unique product identifier (UPI).⁴² For other types of financial instruments, the Agencies propose to establish ISO 10962—Securities and related financial instruments—Classification of financial instruments (CFI) code.⁴³ The UPI and CFI are complementary identifiers and provide a taxonomic classification system for financial instruments. These identifiers are useful for aggregating data and increasing global transparency, which is beneficial in certain financial markets such as swaps, forwards, and non-listed options.

For an identifier of financial instruments,⁴⁴ the Agencies propose to establish the Financial Instrument Global Identifier (FIGI)⁴⁵ established by

the Object Management Group, which is an open-membership standards consortium. The FIGI is an international identifier for all classes of financial instruments, including, but not limited to, securities and digital assets. It is a global non-proprietary identifier available under an open license. The FIGI provides free and open access and coverage across all global asset classes, real-time availability, and flexibility for use in multiple functions. The FIGI also can be used for asset classes that do not normally have a global identifier, including loans. The FIGI has been implemented as a U.S. standard (X9.145) by the ANSI Accredited Standards Committee X9 organization. For the identification of securities, the Agencies also considered CUSIP and the ISIN (which includes the CUSIP). While these identifiers are widely used, they are proprietary and not available under an open license in the United States.

For date fields, the Agencies propose to establish the date as defined by ISO 8601⁴⁶ using the Basic format option (which minimizes the number of separators). Date and time express fundamental dimensions of financial data and are ubiquitous in the collections of information subject to the FDTA. Therefore, consistent representation of dates may help facilitate data integration and interoperability across diverse collections. While date and time information may be displayed on forms, web pages, user interfaces, and other media in other formats (*e.g.*, Month, Day, Year), the underlying machine-readable data should, to the extent feasible, follow the ISO 8601 format.

For identification of a State, possession, or military “state” of the United States of America or a geographic directional, the Agencies propose to establish the U.S. Postal Service Abbreviations, as published in Appendix B of Publication 28 “Postal Addressing Standards, Mailing Standards of the United States Postal Service.”⁴⁷ Identification of a State, possession, geographic directional, or a military “state” is widely used in collections that are subject to the FDTA. Compared to alternative numeric State codes, this proposed standard is more

continues to function as a registration authority for FIGI issuances.

⁴⁶ See ISO 8601, Date and time format, International Organization for Standardization, available at <https://www.iso.org/iso-8601-date-and-time-format.html>.

⁴⁷ See Appendix B, Two-Letter State and Possession Abbreviations, U.S. Postal Service, available at <https://pe.usps.com/text/pub28/pub28apb.htm>.

widely used and is more conducive to use by both humans and machines.

For identification of countries, the Agencies propose to establish the country codes and their subdivisions, as appropriate, as defined by the Geopolitical Entities, Names, and Codes (GENC) standard. GENC, which was developed by the Country Codes Working Group of the Geospatial Intelligence Standards Working Group, specifies the U.S. Government profile of ISO 3166, “Codes for the Representation of Names of Countries and their Subdivisions.”⁴⁸ This profile addresses requirements unique to the U.S. Government for: restrictions in recognition of the national sovereignty of a country; identification and recognition of geopolitical entities not included in ISO 3166; and use of names of countries and country subdivisions that have been approved by the U.S. Board on Geographic Names (BGN). This standard is widely used among Federal agencies and other entities in the United States and helps provide consistency and interoperability of references to geopolitical entities.

For identification of currencies, the Agencies propose to establish the alphabetic currency code as defined by ISO 4217 Currency Codes.⁴⁹ These internationally recognized codes are widely used and incorporated into many other data standards. This standard helps support interoperability, enable clarity, and reduce errors.

The Agencies invite comment on the establishment of these other common identifiers in the proposed rule.

The Agencies also are requesting comment on whether to establish an additional common identifier for Census Tract reporting as part of the joint standards. Specifically, the Agencies are considering the 11-digit format defined by the U.S. Census Bureau, which includes a 5-digit Federal Information Processing Standards (FIPS) county code prefix followed by a 6-digit tract code with no decimals and allows for leading or trailing zeros as applicable. Census Tract is a widely utilized geocoding standard with applications in data matching, estimation, and other analytical pursuits. The Agencies invite comment on whether to establish this common identifier as part of the joint standards and the reasons for establishing or not establishing it.

⁴⁸ See Independent States in the World, U.S. Department of State, available at <https://www.state.gov/independent-states-in-the-world/>.

⁴⁹ See ISO 4217, Currency codes, International Organization for Standardization, available at <https://www.iso.org/iso-4217-currency-codes.html>.

⁴⁰ Foreign entities do not have TINs.

⁴¹ See *supra* note 37.

⁴² See ISO 4914:2021, Financial services, Unique product identifier (UPI), International Organization for Standardization, available at <https://www.iso.org/standard/80506.html>.

⁴³ See ISO 10962:2021, Securities and related financial instruments, Classification of financial instruments (CFI) code, International Organization for Standardization, available at <https://www.iso.org/standard/81140.html>.

⁴⁴ To the extent a financial instrument could be identified by more than one of the joint standards, the application of the joint standards to specific collections of information would take effect through adoption by an Agency of an Agency-specific rulemaking or other action. For example, if a financial instrument can be identified using CFI and FIGI, an Agency could determine not to require both.

⁴⁵ See Standard Symbolology for Global Financial Securities, Object Management Group, available at <https://www.omg.org/figi/>. Bloomberg L.P. irrevocably contributed its FIGI intellectual property to Object Management Group in 2015 and

D. Data Transmission and Schema and Taxonomy Format Standards

Standardizing the way in which information is transmitted to the Agencies can promote the interoperability of that information. The formats that the Agencies use to digitally receive collections of information are referred to as data transmission formats.

For certain collections of information, submitted data may refer to one or more schemas, taxonomies, or ontology models that describe the syntax, structure, or semantic meaning of the data.⁵⁰ These can be used to validate and explain the data. A high-quality machine-readable description of the syntax and structure of a data asset allows for automated verification of the associated data asset. A high-quality machine-readable description of semantic meaning of a data asset ensures that the specific meaning remains clear as the data asset is transmitted to multiple parties.⁵¹ Not all Agency collections of information have a schema and taxonomy associated with them, as a schema and taxonomy may not be appropriate. Further, a schema and taxonomy would not be required for all collections of information subject to the FDTA. The formats used to develop and publish schemas and taxonomies are referred to as schema and taxonomy formats.

For the joint standard for data transmission and schema and taxonomy formats, the Agencies propose to establish that the data transmission or schema and taxonomy formats used have, to the extent practicable, four properties, derived from the requirements listed in section 124(c)(1)(B) of the Financial Stability Act. Specifically, the proposed properties would be that the data transmission and schema and taxonomy formats will, to the extent practicable:

- Render data fully searchable and machine-readable;
- Enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying

regulatory information collection requirements, as appropriate;

- Ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata; and
- Be nonproprietary or available under an open license.

One of these properties is that, to the extent practicable, a data element or data asset that exists to satisfy an underlying regulatory information collection requirement must be consistently identified as such in associated machine-readable metadata. This property is set forth in section 124(c)(1)(B)(iii) of the Financial Stability Act. This means that, to the extent practicable and where collection of information is pursuant to regulatory requirements, a schema and taxonomy should include machine-readable metadata to track the applicable regulatory requirements. Applicable regulatory requirements should be easily identifiable for data assets that are collections of information subject to the PRA. To the extent practicable, Agencies may also identify applicable regulatory requirements on a data-element level.

Under the proposal, any data transmission or schema and taxonomy format that, to the extent practicable, has these properties would be consistent with this proposed joint standard. There are currently various data transmission formats that generally have these properties—for example, there are methods of using Comma Separated Values (CSV) or other delimiter-separated files, eXtensible Markup Language (XML), and Java Script Object Notation (JSON) in manners that satisfy these properties. In addition, HyperText Markup Language (HTML) and Portable Document Format (PDF) are data transmission formats that may satisfy these properties in limited circumstances. For example, HTML may satisfy the standard if the data within the HTML document conforms to a schema (e.g., Inline XBRL), and PDF may satisfy the standard if the data within the PDF conforms to specification “A” (PDF/A) that uses advanced features for tagging fields with a reference schema and taxonomy and provides necessary metadata that allows for automated data extraction. HTML and PDF documents whose data does not conform to any such schema and taxonomy would not be considered machine-readable as that term is defined in the FDTA because the data contained in such HTML and PDF documents cannot be easily processed by a

computer without human intervention while ensuring no semantic meaning is lost. Regarding schema and taxonomy formats, XML Schema Definition (XSD), eXtensible Business Reporting Language (XBRL) Taxonomy, and JSON Schema are currently available schema and taxonomy formats that have these properties.

The Agencies propose to establish a joint standard that refers to a list of properties rather than any specific data transmission or schema and taxonomy formats for several reasons. First, since the list of properties is derived from the requirements listed in section 124(c)(1)(B) of the Financial Stability Act, any data transmission or schema and taxonomy format data standards with these properties would satisfy the FDTA’s related requirements. Second, data transmission or schema and taxonomy formats that have these properties are likely to be interoperable with each other. Interoperability is an important consideration, as the FDTA directs the Agencies to “seek to promote interoperability of financial regulatory data across members of the FSOC” when establishing the joint standards.⁵² Finally, under this approach, the Agencies could adopt new open-source file formats as they are developed, and maintain consistency with the joint standards, provided that the new formats have the listed properties; the joint rule would not need to be amended to specify new formats.

The Agencies invite comment on the proposed establishment of a properties-based joint standard for data transmission or schema and taxonomy formats, as well as the proposed properties. The Agencies also invite comment on whether, as an alternative, it would be preferable to establish specific data transmission and schema and taxonomy formats as joint standards. The Agencies also invite comment on use of the terms “data transmission format” and “schema and taxonomy format.”

E. Request for Comment: Accounting and Reporting Taxonomies

Some financial market participants have developed standardized data definitions that are intended to facilitate efficient and consistent information exchanges. The Agencies and standard-setting bodies have developed taxonomies based on these standardized data definitions, many of which are currently used for Agency collections of information and serve as machine-readable, externally maintained

⁵⁰ With respect to the meaning and usage of the terms “schema,” “taxonomy” and “ontology model,” see *supra* note 12.

⁵¹ Section 124(c)(1)(B) of the Financial Stability Act requires that the joint standards to the extent practicable “enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements[.]”

⁵² Section 124(c)(2)(B) of the Financial Stability Act.

taxonomies. For example, the FFIEC Consolidated Reports of Condition and Income (FFIEC Call Report) Taxonomy,⁵³ the Financial Accounting Standards Board's U.S. Generally Accepted Accounting Principles (U.S. GAAP) Financial Reporting Taxonomy,⁵⁴ and the International Accounting Standards Board's International Financial Reporting Standards Taxonomy are taxonomies that define the semantic meaning of the data and that are currently used in regulatory reporting. In addition, other taxonomies (including those published by the FFIEC for reports other than the FFIEC Call Report) are used and may continue to be used in connection with collections of information of the Agencies. Not all Agency collections of information have a taxonomy associated with them, as a taxonomy may not be appropriate. Further a taxonomy would not be required for all collections of information subject to the FDTA.

The FDTA does not explicitly require the establishment of specific taxonomies as joint standards and, therefore, it is not clear whether the establishment of specific taxonomies is necessary to enable high quality data, given that the use of any taxonomy would further this objective. Therefore, while the Agencies considered establishing joint standards related to taxonomies, they are not proposing to do so. However, the Agencies invite comment on: (*option 1*) whether to establish a joint standard for taxonomies based on certain properties, and if so, the properties that should be set forth in the joint standard; or (*option 2*) whether to establish specific taxonomies, and if so, the taxonomies

that should be set forth in the joint standard (such as those listed above or other specific taxonomies). The Agencies also invite comment on use of the term "taxonomy" and whether the Agencies should define the term by rule, and if so, how the term should be defined.

If, following notice and comment, the Agencies establish specific taxonomies as joint standards, the Agencies would clarify in the final rule that the use of one or more data element definitions from a taxonomy that is established as a joint standard would not preclude an Agency from using data element definitions from another taxonomy or using additional taxonomies, including Agency-specific taxonomies, for the same collection of information. Similarly, an Agency would not be precluded from modifying or tailoring the joint standard taxonomy in consideration of the benefits and costs to its reporting entities, in consideration of the Agency's mission, or to comply with applicable law.⁵⁵ The Agencies invite comment on this approach (that is, the potential for an Agency to use multiple taxonomies in an individual collection of information, including taxonomies that are not a jointly-established standard taxonomy) to the establishment of joint standards and the flexibility needed to meet regulatory reporting requirements unique to a specific Agency or groups of Agencies.

F. General Request for Comment

The Agencies request and encourage any interested person to submit comments regarding the proposed rule and note that such comments are of particular assistance to our rulemaking if accompanied by supporting data and analysis.

To inform potential future rulemakings, the Agencies also request public input related to data standards, data transmission formats, and schemas and taxonomies the Agencies should consider for potential future updates of the joint rule. Are there other data or semantic standards, data transmission formats, or schemas and taxonomies beyond those discussed in this preamble that the Agencies should consider in connection with potential future updates to the joint rule?

For example, if the Agencies were to update the joint rule in the future, should the Agencies consider adopting joint standards that help identify specific transactions for collections of

information that gather transaction-level information?⁵⁶ Additionally, should the Agencies consider data standards that enable automatic verification of the identities of those submitting information?

III. Proposed Effective Date

The Agencies propose that the joint rule would take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published in the **Federal Register**. As noted above, most Agencies are required to separately adopt data standards for certain collections of information. The joint standards would take effect through adoption by implementing Agencies through the Agency-specific rulemakings, not the joint rule. The proposed effective date for the joint rule would not change any reporting requirements without further action by the Agencies.

IV. Administrative Law Matters

A. Regulatory Planning and Review

Treasury

Executive Order 12866, as amended, directs agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is not a significant regulatory action and, therefore, was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866, Regulatory Planning and Review.

B. The Paperwork Reduction Act

OCC

The PRA⁵⁷ states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule. The data standards that the Agencies propose to adopt in

⁵³ The FFIEC Call Report Taxonomy is applicable in its entirety only to insured depository institutions and certain non-depository trust companies that report specific information to the Board, the OCC, or the FDIC. For example, the NCUA maintains a distinct call report form and associated instructions for federally insured credit unions and would not utilize the FFIEC Call Report Taxonomy for data collection or sharing. The complete taxonomy is not germane to entities that are not required to file FFIEC Call Reports and it would therefore not be appropriate for any other Agency to use this taxonomy for other regulatory reporting without significant tailoring. Furthermore, while the FFIEC Call Report Taxonomy shares some common elements with the U.S. GAAP Taxonomy, the Board, the OCC, and the FDIC have designed the FFIEC Call Report Taxonomy to serve their respective missions and satisfy applicable statutory requirements. The FFIEC Call Report Taxonomy is different from the U.S. GAAP Taxonomy in a number of ways to address the reporting requirements further described in the General Instructions to the FFIEC Call Report.

⁵⁴ Note that many of the Agencies' collections of information are authorized by statutes that permit or require the issuing Agency to use accounting and financial reporting standards other than U.S. GAAP, which may mean that the U.S. GAAP Taxonomy is not germane to such collections of information.

⁵⁵ As noted above, section 5891(c) of the FDTA clarifies that nothing in the FDTA may be construed to prohibit an agency from tailoring the data standards it adopts in its Agency-specific rulemaking.

⁵⁶ For example, the Unique Transaction Identifier (UTI) as defined by ISO 23897 is a global standard developed to uniquely identify OTC derivative transactions. See ISO 23897:2020, Financial services, Unique transaction identifier (UTI), International Organization for Standardization, available at <https://www.iso.org/standard/77308.html>.

⁵⁷ 44 U.S.C. 3501–3521.

Agency-specific rulemakings that create any new information collection requirements or revise any existing collection of information will be addressed in one or more separate **Federal Register** notices.

Board

In accordance with the PRA,⁵⁸ the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number. While certain provisions of the proposed rule reference “collections of information” within the meaning of the PRA, the Board reviewed the proposed rule under the authority delegated to the Board by the OMB and determined that it contains no collections of information under the PRA.⁵⁹ Accordingly, there is no paperwork burden associated with the rule.

FDIC

The PRA⁶⁰ provides that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC reviewed this proposed rule and determined that it does not create any new information collection or revise any existing collection of information. Accordingly, the FDIC does not expect to make PRA submissions to OMB with respect to this proposed rule.

NCUA

The PRA (44 U.S.C. 3501 *et seq.*) requires that the OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. While certain provisions of the proposed rule reference “collections of information” within the meaning of the PRA, the NCUA reviewed the proposed rule and determined that it would not create any new information collection or revise any existing information collection as defined by the PRA.

CFPB

In accordance with the PRA,⁶¹ the CFPB may not conduct or sponsor (nor is a respondent required to respond to) an information collection unless it displays a currently valid OMB control number. While certain provisions of the proposed rule reference “collections of

information” within the meaning and definition under the PRA, the CFPB reviewed the proposed joint rule and has determined that it contains no collections of information as defined by the PRA. Accordingly, there is no paperwork burden imposed by the joint rule. Thus, neither submission to nor approval by OMB is necessary.

FHFA

The proposed rule does not contain any information collection requirement that requires the approval of OMB under the PRA (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

CFTC

The PRA⁶² imposes certain requirements on Federal agencies, including the CFTC, in connection with conducting or sponsoring any collection of information as defined by the PRA. The CFTC believes that the proposal will not change existing reporting obligations on the part of financial entities. As a result, the CFTC has determined that the proposed joint rule does not create any information collection or revise any existing collection of information. Accordingly, the CFTC has not prepared a PRA submission to OMB with respect to this proposal.

SEC

The proposed joint rule does not contain any collection of information requirements as defined by the PRA.⁶³ The data standards established by the joint rule would not change existing reporting obligations. Furthermore, as noted above, the FDTA does not impose new information collection requirements (*i.e.*, it does not require an Agency to collect or make publicly available additional information that the Agency was not already collecting or making publicly available prior to enactment of the FDTA).

Treasury

PRA⁶⁴ provides that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The Treasury reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA

submissions to OMB will be made with respect to this proposed rule.

C. Regulatory Flexibility Act

OCC

In general, the Regulatory Flexibility Act (RFA)⁶⁵ requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the U.S. Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises 1,048 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),⁶⁶ of which approximately 636 are small entities.⁶⁷ To estimate expenditures, the OCC reviews the costs associated with the activities necessary to comply with the proposed rule. These include an estimate of the total time required to implement the proposed rule and the estimated hourly wage of bank employees who may be responsible for the tasks associated with achieving compliance with the proposed rule. For cost estimates, the OCC uses a compensation rate of \$129 per hour.⁶⁸

⁶⁵ 5 U.S.C. 601 *et seq.*

⁶⁶ Based on data accessed using FINDRS on April 16, 2024.

⁶⁷ The OCC bases its estimate of the number of small entities on the Small Business Administration's (SBA) size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2023, to determine size because a “financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the SBA's *Table of Size Standards*.

⁶⁸ To estimate wages, the OCC reviewed May 2022 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses \$129.40 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (4.3 percent as of Q1 2024), plus an additional 34.3 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2023 for

⁵⁸ 44 U.S.C. 3506; 5 CFR part 1320, appendix A, section 1.

⁵⁹ See 44 U.S.C. 3502(3).

⁶⁰ 44 U.S.C. 3501 *et seq.*

⁶¹ 44 U.S.C. 3501 *et seq.*

⁶² 44 U.S.C. 3507(d).

⁶³ 44 U.S.C. 3501–3521.

⁶⁴ 44 U.S.C. 3501 *et seq.*

Based on this approach, the OCC estimates the annual cost for small entities to review the rule could be as much as approximately \$1,032 per bank (\$129 per hour × 8 hours).

The OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 32 OCC-supervised small entities would constitute a substantial number, and the proposed rule would affect a substantial number of OCC-supervised small entities. However, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Based on the thresholds for a significant economic impact, the OCC estimates that, if implemented, the proposed rule would have a significant economic impact on zero small entities. Accordingly, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Board

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The RFA⁶⁹ requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small entities.⁷⁰ In connection with a proposed rule, the RFA requires an agency to prepare and invite public comment on an initial regulatory flexibility analysis describing the impact of the rule on small entities, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an

estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities.⁷¹

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis.

The FDIA both requires and serves as the legal basis for the Board to issue this proposed rule. The FDIA instructs the Agencies to establish data standards to promote interoperability of financial regulatory data across these Agencies. The proposed rule only applies to the Agencies themselves—it does not apply to any other entities, including small entities. Therefore, the proposed rule includes no new reporting, recordkeeping, or other compliance requirements.

The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The Board also is aware of no significant alternatives to the proposed rule that would accomplish the stated objectives of applicable statute. Because the proposed rule would not apply to any small entities supervised by the Board, there are no alternatives that could minimize the impact of the proposed rule on small entities.

Therefore, the Board believes that the proposed rule would not have a significant economic impact on a substantial number of small entities supervised by the Board.

The Board welcomes comment on all aspects of its analysis.

FDIC

The RFA generally requires an agency, in connection with a proposed

rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.⁷² However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The SBA has defined “small entities” to include banking organizations with total assets of less than or equal to \$850 million.⁷³ Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. As of December 31, 2023, the FDIC supervises 2,936 insured depository institutions, of which 2,221 institutions would be considered a “small entity” for purposes of the RFA.⁷⁴

The proposed rule, if enacted, would establish data standards for collections of information reported to the Agencies, as mandated by the FDIA. The establishment of these data standards may promote the interoperability of the data and may reduce the costs to transmit or share data between and among the Agencies. These reduced costs may improve the FDIC's ability to plan, coordinate and evaluate future regulatory and supervisory actions.

The proposed rule, if enacted, would impose some costs on the FDIC to update its current systems to match the proposed standards. The proposed rule, if enacted, would neither create additional requirements for, nor impose burden on, private individuals, businesses, organizations, communities, or non-Federal governmental entities. The FDIC does not believe the proposed rule would have substantive effects on financial market activity or the U.S.

⁶⁹ 5 U.S.C. 601 *et seq.*

⁷³ The SBA defines a small banking organization as having \$850 million or less in assets, where an organization's “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is “small” for the purposes of RFA.

⁷⁴ Reports of Condition and Income for the quarter ending December 31, 2023.

NAICS 522: credit intermediation and related activities).

⁶⁹ 5 U.S.C. 601 *et seq.*

⁷⁰ Under regulations issued by the SBA, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$850 million or less. See 13 CFR 121.201. Consistent with the SBA's General Principles of Affiliation, the Board includes the assets of all domestic and foreign affiliates toward the applicable size threshold when determining whether to classify a particular entity as a small entity. See 13 CFR 121.103. As of December 31, 2022, there were approximately 2,081 small bank holding companies, approximately 88 small savings and loan holding companies, and approximately 427 small state member banks.

⁷¹ 5 U.S.C. 603(b)–(c).

economy. As such, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities for which the FDIC is the appropriate Federal banking agency that the FDIC has not identified?

NCUA

The RFA ⁷⁵ generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.⁷⁶ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.⁷⁷

The proposed rule would not impose new, or modify existing, requirements that would result in the imposition of an economic cost. As discussed, the proposed rule establishes joint standards that will then separately be adopted in Agency-specific rulemakings. The Agency-specific rulemaking might therefore impose some costs on “financial entities under the jurisdiction of” the agencies, and these will be addressed in the preambles of the individual rules. As noted, the Agency-specific rules will generally be subject to the notice and comment requirements of the Administrative Procedure Act, allowing the public opportunity to provide comment, including on the potential economic impacts. The NCUA Board notes that the FDTA confers the agency with authority to mitigate these potential costs. Specifically, section 5873 of the FDTA provides that the NCUA (1) may scale data reporting requirements to reduce any unjustified burden on smaller regulated entities and (2) must seek to minimize disruptive changes to the persons affected by the regulations. Further, section 5891(c) of the FDTA clarifies that nothing in the FDTA may be construed to prohibit an agency from tailoring the data standards it adopts in its Agency-specific rulemaking. The

NCUA will take these authorities into consideration in the development of its Agency-specific rule.

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

CFPB

The RFA as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not for profit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the SBA pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) of any proposed rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The CFPB also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.

An IRFA is not required for this proposed rule because the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed interagency rule jointly establishes data standards (joint standards) for (1) certain collections of information reported to each Agency by financial entities under the jurisdiction of each agency and (2) the data collected from the Agencies on behalf of the FSOC. The joint standards would take effect through adoption by implementing Agencies through the Agency-specific rulemakings, not the joint rule. The joint rule does not identify covered persons nor does the proposed interagency rule impose that any such covered persons implement any standards as a direct consequence of the proposed rule. Therefore, while the joint rule establishes data standards for the agencies to adopt in subsequent individual rulemakings, it does not impose any requirements upon covered persons, including small entities. The joint rule does not impose any direct effects on covered entities. To the extent that covered entities will be impacted by the CFPB’s individual rule, any such effects will be discussed in the

corresponding CFPB specific individual rulemaking process.

Absent the subsequent individual rule, the CFPB does not anticipate changes in industry standards attributable to the proposed interagency rule. The CFPB recognizes that any discussion of the potential impact on costs sustained by entities of all sizes as a result of establishing data standards would be attributed to and assessed as part of the subsequent individual rule itself and not in the context of this proposed interagency rule. The CFPB recognizes that there are existing CFPB rules—as well as rules implemented by other Agencies—that may require covered entities to comply with reporting standards that may overlap with standards that may be included in the CFPB’s subsequent individual rule. Therefore, the CFPB believes the impacts of the forthcoming individual rule may be mitigated. However, these impacts will be assessed as part of the subsequent individual rule itself and not in the context of this proposed interagency rule.

Because the joint rule does not adopt any data standards that covered persons, including small entities, are required to implement, the Director of the CFPB certifies that the joint rule, if adopted, would not have a significant impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal.

FHFA

The RFA (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation’s impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the RFA and FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the regulated entities, which are not small entities for purposes of the RFA.

CFTC

The RFA requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities

⁷⁵ 5 U.S.C. 601 *et seq.*

⁷⁶ 5 U.S.C. 605(b).

⁷⁷ 80 FR 57512 (Sept. 24, 2015).

and, if so, provide a regulatory flexibility analysis with respect to such impact.⁷⁸ The data standards established by the joint rule would not change existing reporting obligations and collections of information. Once the proposed joint standards are established, certain collections of information may need revision to incorporate and ensure compatibility with, to the extent feasible, the joint standards. Accordingly, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that these proposed rules will not have a significant economic impact on a substantial number of small entities.

SEC

The RFA⁷⁹ requires the SEC to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of the proposed rule amendments on small entities, unless the SEC certifies that the rules, if adopted would not have a significant economic impact on a substantial number of small entities.⁸⁰

The SEC hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed joint rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed joint rule implements section 124 of the Financial Stability Act of 2010 which, in general, directs the Agencies to issue rules establishing data standards to promote interoperability of financial regulatory data across the Agencies. The data standards established by the joint rule would not change existing reporting obligations. Instead, after the joint standards are established, the FDTA directs the SEC to adopt individual rules for specified collections of information that incorporate and ensure compatibility with, to the extent feasible, the joint standards. Accordingly, the SEC does not believe that the proposed joint rule, if adopted, would have a significant economic impact on a substantial number of small entities. The SEC encourages written comments on the certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

Treasury

The RFA (5 U.S.C. 601 *et seq.*) generally requires an agency, in connection with a proposed rule, to prepare an IRFA describing the impact

of the rule on small entities.

Alternatively, under section 605(b) of the RFA, the IRFA is not required if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.

The Department of the Treasury hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule is limited to establishing data standards to promote interoperability of financial regulatory data across the Agencies. The rule will not impose costs on small businesses other than the time it may take to read and understand the regulations.

Notwithstanding this certification, the Department of the Treasury invites comments from the public about any impacts this rule would have on small entities.

D. Plain Language

Section 722 of the Gramm-Leach Bliley Act⁸¹ requires the Federal banking agencies⁸² to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language and whether any part of the proposed rule could be more clearly stated. For example:

- Have the Federal banking agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?
- Are the requirements in the notice of proposed rulemaking clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the Federal banking agencies do to make the proposed rule easier to understand?

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act

(RCRDIA),⁸³ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.⁸⁴

The proposed rule only applies to the Agencies themselves—it does not apply to any other entities. Therefore, the proposed rule (1) would not impose any additional reporting, disclosures, or other new requirements on IDIs and (2) places no new administrative burdens on depository institutions, including small depository institutions, and customers of depository institutions.

The Federal banking agencies welcome comment on this analysis and conclusion.

F. Unfunded Mandates Reform Act of 1995 Determination

OCC

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). Because the proposed rule enumerates certain data standards for future reference but does not contain any mandates, the OCC estimate that the UMRA cost of this proposal would be zero. The OCC, therefore, concludes that the proposed rule would not result in an expenditure of \$183 million or more annually by State, local, and Tribal governments, or by the private sector. Accordingly, the OCC has not prepared

⁷⁸ 5 U.S.C. 601 *et seq.*

⁷⁹ 5 U.S.C. 601 *et seq.*

⁸⁰ See 5 U.S.C. 603(a) and 605(b).

⁸¹ Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999).

⁸² The Federal banking agencies are the OCC, Board, and FDIC.

⁸³ 12 U.S.C. 4802(a).

⁸⁴ 12 U.S.C. 4802.

the written statement described in section 202 of the UMRA.

Treasury

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This document does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

G. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023⁸⁵ requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, the Agencies are issuing this proposed rule for public comment that would establish data standards, that would separately be adopted for certain collections of information. Jointly establishing such data standards would promote interoperability of financial regulatory data across these agencies and would fulfill requirements of the Financial Data Transparency Act of 2022.

The proposal and such a summary can be found at:

- OCC: <https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html>
- Board: <https://www.regulations.gov> and <https://www.federalreserve.gov/supervisionreg/reglisting.htm>
- FDIC: <https://www.fdic.gov/resources/regulations/federal-register-publications/>
- NCUA: <https://www.regulations.gov>
- CFPB: <https://www.regulations.gov/docket/CFPB-2024-0034>
- FHFA: www.Regulations.gov
- CFTC: <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>
- SEC: <https://www.sec.gov/rules-regulations/2024/07/s7-2024-05>
- Treasury: <https://www.regulations.gov>

H. Executive Order 13132—Federalism NCUA

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere to fundamental federalism principles. This proposed rule would not impose any new, or revise existing, regulatory requirements. Rather, the proposed rule would implement section 5811 of the FDFTA by identifying the joint data standards established by the Agencies, which would separately be adopted for certain collections of information in separate Agency-specific rulemakings. Any federalism impacts stemming from the regulatory implementation of the FDFTA will be because of the individual agency rules and not this proposed rule.

As discussed above, section 5811 specifies that the data standards apply to “financial entities under the jurisdiction of” the individual agencies. With respect to the NCUA, these entities are mainly federally insured credit unions, including federally insured state-chartered credit unions (FISCUs). The NCUA-specific rulemaking to implement the FDFTA may therefore have an occasional direct effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA notes, however, that because FISCUs are included because of the scope of the statute, any federalism implications will be the result of the statutorily mandated scope of the applicability of the data standards, and not due to the agency’s exercise of its discretion. Further, by law FISCUs are already subject to numerous provisions of the NCUA’s rules, based on the agency’s role as the insurer of member share accounts and the significant interest the NCUA has in the safety and soundness of their operations. The Board of the NCUA will endeavor to eliminate, or at least minimize, potential conflicts in this area in its Agency-specific rulemaking.

The NCUA has therefore determined that this proposed rule would not constitute a policy that has federalism implications for purposes of the Executive order.

Treasury

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial,

direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This document does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

I. Assessment of Federal Regulations and Policies on Families

NCUA

The NCUA Board has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999. The proposed rule would not establish new, or revise existing, regulatory requirements. Rather, as required by section 5811 of the FDFTA, the proposed rule would establish joint data standards that will be implemented in individual Agency-specific rulemakings. Although the overall goals of the FDFTA are to facilitate the access, comparison, and analysis of agency collections of information, the potential positive effect on family well-being, including financial well-being is, at most, indirect.

J. Small Business Regulatory Enforcement Fairness Act of 1996

SEC

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the SEC must advise OMB as to whether the proposed amendments constitute a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the U.S. economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The SEC requests comment on whether the joint rule, if adopted, would be a “major rule” for purposes of SBREFA. In this regard, the SEC notes that the data standards established by the joint rule would not change existing reporting obligations. Furthermore, as noted above, the FDFTA does not impose new information collection requirements (*i.e.*, it does not require an Agency to collect or make publicly available additional information that the Agency was not already collecting or

⁸⁵ Public Law 118–9.

making publicly available prior to enactment of the FDTA).

Proposed Text of Common Rule (All Agencies)

The proposed text of the agencies' common rule text appears below:

PART FINANCIAL DATA TRANSPARENCY

Sec.

_.1 Definitions.

_.2 Establishment of standards.

§ .1 Definitions

Agencies means, collectively, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, Federal Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and Department of the Treasury; and *Agency* means any one of the *Agencies*, individually.

Collection of information means a collection of information as defined in the Paperwork Reduction Act (codified at 44 U.S.C. 3501 *et seq.*).

Data standard means a standard that specifies rules by which data is described and recorded.

Geospatial Intelligence Standards Working Group means the joint technical working group established in 2005 by the National Geospatial-Intelligence Agency.

International Organization for Standardization or *ISO* means the independent, non-governmental international organization that develops voluntary, consensus-based, market-relevant, international standards.

Object Management Group means the Object Management Group Standards Development Organization, an international, membership-driven and not-for-profit consortium which develops technology standards for a diverse range of industries.

§ .2 Establishment of Standards

(a) *Data standards.* The Agencies establish the following data standards for purposes of section 124(b)(2) of the Financial Stability Act of 2010, 12 U.S.C. 5334(b)(2), as added by section 5811 of the Financial Data Transparency Act of 2022, for collections of information reported to each Agency by financial entities under the jurisdiction of such Agency and the data collected from Agencies on behalf of the Financial Stability Oversight Council.

(1) *Legal entity identifier.* The legal entity identifier is established to be ISO

17442—Financial Services—the Legal Entity Identifier (LEI).

(2) *Other common identifiers.* The following common identifiers are established as data standards, as applicable:

(i) For identification of swaps and security-based swaps: ISO 4914—Financial services—Unique product identifier (UPI);

(ii) For identification of financial instruments that are not swaps or security-based swaps: ISO 10962—Securities and related financial instruments—Classification of financial instruments (CFI);

(iii) For identification of financial instruments: Financial Instrument Global Identifier (FIGI) created by the Object Management Group;

(iv) For identification of dates: date as defined by ISO 8601 using the Basic format option;

(v) For identification of states, possessions, or military “states” of the United States of America or geographic directionals: U.S. Postal Service Abbreviations as published in Appendix B of Publication 28—Postal Addressing Standards, Mailing Standards of the United States Postal Service;

(vi) For identification of countries and their subdivisions: the country code with the code for subdivisions, as appropriate, as defined by the Geopolitical Entities, Names, and Codes (GENC) developed by the Country Codes Working Group of the Geospatial Intelligence Standards Working Group; and

(vii) For identification of currencies: the alphabetic currency code as defined by ISO 4217—Currency Codes.

(3) *Data transmission and schema and taxonomy format data standards—*

(i) *Data standard.* For the reporting of information pursuant to a collection of information to the Agencies and the use of schemas and taxonomies by the Agencies, the Agencies establish the data standard that the data transmission or schema and taxonomy format used have the properties set forth in paragraph (a)(3)(ii) of this section.

(ii) *Properties.* To be considered a data transmission or schema and taxonomy format that meets the data standard set forth in paragraph (a)(3)(i) of this section, the data transmission or schema and taxonomy format must, to the extent practicable:

(A) Render data fully searchable and machine-readable;

(B) Enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying

regulatory information collection requirements, as appropriate;

(C) Ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata; and

(D) Be nonproprietary or available under an open license.

(b) *Consideration by the Agencies.* The data standards established in paragraph (a) of this section shall be subject to consideration by the Agencies of the applicability, feasibility, practicability, scaling, minimization of disruption to affected persons, and tailoring, as specified in the Financial Data Transparency Act of 2022.

End of Common Rule Text

List of Subjects

12 CFR Part 15

Financial data transparency, Reporting and recordkeeping requirements.

12 CFR Part 262

Administrative practice and procedure.

12 CFR Part 304

Reporting and recordkeeping requirements.

12 CFR Part 753

Administrative practice and procedure, Information, Reporting and recordkeeping requirements.

12 CFR Part 1077

Administrative practice and procedure, Financial data standards, Information.

12 CFR Part 1226

Administrative practice and procedure, Financial data transparency.

17 CFR Part 140

Administrative practice and procedure, Organization and functions (Government agencies).

17 CFR Part 256

Administrative practice and procedure, Electronic filing, Financial data transparency, Reporting and recordkeeping requirements, Securities.

31 CFR Part 151

Financial data transparency, Reporting and recordkeeping requirements.

Adoption of Common Rule

The proposed adoption of the common rule by the agencies, as modified by the agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Chapter I****Authority and Issuance**

For the reasons set forth in the common preamble, and under the authority of 12 U.S.C. 5334, the Office of the Comptroller of the Currency proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

PART 15—FINANCIAL DATA TRANSPARENCY

- 1. Add part 15 to read as set forth in the common rule text at the end of the common preamble.
- 2. The authority citation for part 15 is added to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1467a, 5334.

Board of Governors of the Federal Reserve System**12 CFR Chapter II, Subchapter A****Authority and Issuance**

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend part 262 of subchapter A of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 262—RULES OF PROCEDURE

- 3. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248, 321, 325, 326, 483, 602, 611a, 625, 1467a, 1828(c), 1842, 1844, 1850a, 1867, 3105, 3106, 3108, 5334, 5361, 5368, 5467, and 5469.

§§ 262.1 through 262.25 [Designated as Subpart A]

- 4. Designate §§ 262.1 through 262.25 as subpart A.
- 5. Add a heading for newly designated subpart A to read as follows:

Subpart A—General Rules of Procedure

- 6. Add subpart B to read as set forth in the common rule text at the end of the common preamble.
- 7. Revise the heading for subpart B to read as follows:

Subpart B—Financial Data Transparency**§§ 262.1 and 262.2 of Subpart B [Redesignated as §§ 262.26 and 262.27]**

- 8. Redesignate §§ 262.1 and 262.2 of subpart B as §§ 262.26 and 262.27.

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Chapter III****Authority and Issuance**

For the reasons set forth in the common preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 304 of title 12 of the Code of Federal Regulations as follows:

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

- 9. The authority citation for part 304 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1463, 1464, 1811, 1813, 1817, 1819, 1831, 1831cc, 1861–1867, and 5334.

- 10. Add subpart D to read as set forth in the common rule text at the end of the common preamble.
- 11. Revise the heading for subpart D to read as follows:

Subpart D—Financial Data Transparency**§§ 304.1 and 304.2 of Subpart D [Redesignated as §§ 304.30 and 304.31]**

- 12. Redesignate §§ 304.1 and 304.2 of subpart D as §§ 304.30 and 304.31.

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Chapter VII****Authority and Issuance**

For the reasons stated in the joint preamble, the National Credit Union Administration proposes to amend chapter VII of title 12 of the Code of Federal Regulations as follows:

PART 753—FINANCIAL DATA TRANSPARENCY

- 13. Add part 753 to read as set forth in the common rule text at the end of the common preamble.
- 14. The authority citation for part 753 is added to read as follows:

Authority: 12 U.S.C. 1752e, 1752f, 5334.

CONSUMER FINANCIAL PROTECTION BUREAU**12 CFR Chapter X****Authority and Issuance**

For the reasons set forth in the common preamble, the Consumer Financial Protection Bureau proposes to amend chapter X of title 12 of the Code of Federal Regulations as follows:

PART 1077—FINANCIAL DATA TRANSPARENCY

- 15. Add part 1077 to read as set forth in the common rule text at the end of the common preamble.

- 16. The authority citation for part 1077 is added to read as follows:

Authority: 12 U.S.C. 5334.

FEDERAL HOUSING FINANCE AGENCY**12 CFR Chapter XII, Subchapter B****Authority and Issuance**

For the reasons set forth in the common preamble, and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to amend subchapter B of chapter XII of title 12 of the Code of Federal Regulations as follows:

PART 1226—FINANCIAL DATA TRANSPARENCY

- 17. Add part 1226 to read as set forth in the common rule text at the end of the common preamble.
- 18. The authority citation for part 1226 is added to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4526, 4527, 5334, 1752 *et seq.*

COMMODITY FUTURES TRADING COMMISSION**17 CFR Chapter I****Authority and Issuance**

For the reasons set forth in the common preamble, the Commodity Futures Trading Commission proposes to adopt the common rule text at the end of the common preamble and amend 17 CFR part 140 as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

- 19. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 2(a) (12), 12a, 13(c), 13(d), 13(e), and 16(b); 12 U.S.C. 5334.

- 20. Add subpart D, consisting of § 140.800, to read as follows:

Subpart D—Financial Data Transparency**§ 140.800 Financial data transparency.**

(a) *Definitions.* As used in this section:

Agencies means, collectively, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, Federal

Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and Department of the Treasury; and *Agency* means any one of the *Agencies*, individually.

Collection of information means a collection of information as defined in the Paperwork Reduction Act (codified at 44 U.S.C. 3501 *et seq.*).

Data standard means a standard that specifies rules by which data is described and recorded.

Geospatial Intelligence Standards Working Group means the joint technical working group established in 2005 by the National Geospatial-Intelligence Agency.

International Organization for Standardization or ISO means the independent, non-governmental international organization that develops voluntary, consensus-based, market-relevant, international standards.

Object Management Group means the Object Management Group Standards Development Organization, an international, membership-driven and not-for-profit consortium which develops technology standards for a diverse range of industries.

(b) *Establishment of standards*—(1) *Data standards.* The Agencies establish the following data standards for purposes of section 124(b)(2) of the Financial Stability Act of 2010, 12 U.S.C. 5334(b)(2), as added by section 5811 of the Financial Data Transparency Act of 2022, for collections of information reported to each Agency by financial entities under the jurisdiction of such Agency and the data collected from Agencies on behalf of the Financial Stability Oversight Council.

(i) *Legal entity identifier.* The legal entity identifier is established to be ISO 17442—Financial Services—the Legal Entity Identifier (LEI).

(ii) *Other common identifiers.* The following common identifiers are established as data standards, as applicable:

(A) For identification of swaps and security-based swaps: ISO 4914—Financial services—Unique product identifier (UPI);

(B) For identification of financial instruments that are not swaps or security-based swaps: ISO 10962—Securities and related financial instruments—Classification of financial instruments (CFI);

(C) For identification of financial instruments: Financial Instrument Global Identifier (FIGI) created by the Object Management Group;

(D) For identification of dates: date as defined by ISO 8601 using the Basic format option;

(E) For identification of states, possessions, or military “states” of the United States of America or geographic directionals: U.S. Postal Service Abbreviations as published in Appendix B of Publication 28—Postal Addressing Standards, Mailing Standards of the United States Postal Service;

(F) For identification of countries and their subdivisions: the country code with the code for subdivisions, as appropriate, as defined by the Geopolitical Entities, Names, and Codes (GENC) developed by the Country Codes Working Group of the Geospatial Intelligence Standards Working Group; and

(G) For identification of currencies: the alphabetic currency code as defined by ISO 4217—Currency Codes.

(iii) *Data transmission and schema and taxonomy format data standards*—(A) *Data standard.* For the reporting of information pursuant to a collection of information to the Agencies and the use of schemas and taxonomies by the Agencies, the Agencies establish the data standard that the data transmission or schema and taxonomy format used have the properties set forth in paragraph (b)(1)(iii)(B) of this section.

(B) *Properties.* To be considered a data transmission or schema and taxonomy format that meets the data standard set forth in paragraph (b)(1)(iii)(A) of this section, the data transmission or schema and taxonomy format must, to the extent practicable:

(1) Render data fully searchable and machine-readable;

(2) Enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements, as appropriate;

(3) Ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata; and

(4) Be nonproprietary or available under an open license.

(2) *Consideration by the Agencies.* The data standards established in paragraph (b)(1) of this section shall be subject to consideration by the Agencies of the applicability, feasibility, practicability, scaling, minimization of disruption to affected persons, and tailoring, as specified in the Financial Data Transparency Act of 2022.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Securities and Exchange Commission proposes to amend chapter II of title 17 of the Code of Federal Regulations as follows:

PART 256—FINANCIAL DATA TRANSPARENCY

■ 21. Add part 256 to read as set forth in the common rule text at the end of the common preamble.

■ 22. The authority citation for part 256 is added to read as follows:

Authority: 12 U.S.C. 5334; 15 U.S.C. 77g, 77z–4, 78d, 78m, 78n, 78o–3, 78o–4, 78o–7, 78rr, 80a–8, 80a–29, and 80b–4.

DEPARTMENT OF THE TREASURY

31 CFR Chapter I

Authority and Issuance

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

PART 151—FINANCIAL DATA TRANSPARENCY

■ 23. Add part 151 to read set forth in the common rule text at the end of the common preamble.

■ 24. The authority citation for part 151 is added to read as follows:

Authority: 12 U.S.C. 5334, 5335; 31 U.S.C. 301, 321.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

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

James P. Sheesley,

Assistant Executive Secretary.

By the National Credit Union

Administration Board, this 8th day of August 2024.

Melane Conyers-Ausbrooks,

Secretary of the Board.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

By the Securities and Exchange Commission.

Dated: August 2, 2024.

Sherry R. Haywood,

Assistant Secretary.

Nellie Liang,

Under Secretary for Domestic Finance.

Issued in Washington, DC, on August 8, 2024, by the Commodity Futures Trading Commission.

Christopher Kirkpatrick,

Secretary of the Commodity Futures Trading Commission.

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

Appendix A—Concurring Statement of CFTC Commissioner Caroline D. Pham

I respectfully concur on the Notice of Proposed Rulemaking on the Financial Data Transparency Act (FDTA) Joint Data Standards (“Joint Data Standards Proposal”) to require each respective agency to implement certain data standards for its regulated entities because there is insufficient discussion of the impact and costs associated with the adoption of these new data standards that will apply across the banking and financial services sector (including small entities as set forth under the Regulatory Flexibility Act). While I support the FDTA’s mandate, I believe the Joint Data Standards Proposal would be improved by addressing head-on the elephant in the room—the very real costs that will be imposed on potentially tens of thousands of firms of all sizes that will eventually have to update their systems and records to adhere to the new data standards. I encourage all commenters to address the costs and benefits of the Joint Data Standards Proposal, including the necessary future agency rulemakings that will subsequently follow. I thank Ted Kaouk, Tom Guerin, Jeffrey Burns, and the staff of the CFTC, and all the other agencies for their efforts on this proposal.

[FR Doc. 2024–18415 Filed 8–21–24; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P; 7535–01–P; 4810–AM–P; 8070–01–P; 6351–01–P; 8011–01–P; 4810–AK–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2129; Project Identifier MCAI–2024–00066–T]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for

certain ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This proposed AD was prompted by a report that for airplanes converted from passenger to cargo configuration using certain supplemental type certificates, no height limitation for the cargo, when loaded in the cargo compartment, is defined, and that as a consequence, cargo might be loaded up to the ceiling of the cargo compartment. This proposed AD would require modification of the cargo compartment and implementation of updated cargo loading procedures. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 7, 2024.

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

- **Federal eRulemaking Portal:** Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.
- **Fax:** 202–493–2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2129; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Sabena Technics material identified in this proposed AD, contact Sabena Technics BGC, Le Galilée, 9 Bd Henri Ziegler, 31700 Blagnac France; telephone 33 (0)1 56 54 42 30; email airworthiness.office@sabenatechnics.com.

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email shahram.daneshmandi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2024–2129; Project Identifier MCAI–2024–00066–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email shahram.daneshmandi@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024–0025, dated January 24, 2024 (EASA AD 2024–0025) (also referred to

after this as the MCAI), to correct an unsafe condition on certain ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes. The MCAI states that it was identified that for airplanes converted from passenger to cargo configuration using EASA Supplemental Type Certificate (STC) 10069551, Revision 1 (EASA STC 10069551, Revision 0, corresponds to FAA STC ST04602NY), or the previous EASA STC 2004–2872 (which corresponds to FAA STC S116–004NM, Revision 1), no height limitation for the cargo, when loaded in the cargo compartment, is defined. Consequently, operators of such airplanes may load the cargo up to the ceiling of the cargo compartment and, therefore, potentially affect the proper functioning of the smoke detectors. This condition, if not corrected, could lead to smoke not being detected in time, possibly resulting in an uncontrolled fire.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2129.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Sabena Technics Airworthiness Technical Instructions 0110–09–A–ATI–F01–R00; and 0110–11–A–ATI–F01–R00, both dated September 19, 2023. This material describes procedures for modifying the cargo compartment (installing a label and tape to indicate maximum cargo height). These documents are distinct since they apply to different airplane models.

The FAA also reviewed Sabena Technics Weight & Balance Manual Supplement 0110–09–A–2305–R06, Revision 06, dated September 15, 2023; and Sabena Technics Weight & Balance Manual Supplement 0110–11–A–2305–R07, Revision 07, dated September 15, 2023. Section 2.9., “Cargo Compartment—Loading Limitation,” of Sabena Technics Weight & Balance Manual Supplement 0110–09–A–2305–R06, Revision 06, dated September 15, 2023; and section 2.11., “Cargo Compartment—Loading Limitation,” of Sabena Technics Weight & Balance Manual Supplement 0110–11–A–2305–R07, Revision 07, dated September 15, 2023; describe the maximum cargo height in the cargo compartment. These documents are distinct since they apply to different airplane models.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × \$85 per hour = \$680	\$100	\$780	\$1,560

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

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds

necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative,

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—GIE Avions de Transport Régional:
Docket No. FAA–2024–2129; Project
Identifier MCAI–2024–00066–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 7, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR—GIE Avions de Transport Régional airplanes identified in paragraphs (c)(1) and (2) of this AD, modified in accordance with FAA Supplemental Type Certificate (STC) ST116–004NM or STC ST04602NY, certificated in any category,

(1) Model ATR42–200, –300, –320, and –500 airplanes.

(2) Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 11, Placards and Marking.

(e) Unsafe Condition

This AD was prompted by a report that for airplanes converted from passenger to cargo configuration using certain supplemental type certificates no height limitation for the cargo, when loaded in the cargo compartment, is defined, and that as a consequence, cargo may be loaded up to the ceiling of the cargo compartment. The FAA is issuing this AD to address cargo being loaded up to the ceiling of the cargo compartment, which could affect the proper functioning of the smoke detectors. This condition, if not corrected, could lead to smoke not being detected in time, possibly resulting in an uncontrolled fire.

(f) Compliance

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

(g) Modification of Cargo Compartment

Within 6 months after the effective date of this AD, modify the cargo compartment in accordance with the Accomplishment Instructions of Sabena Technics Airworthiness Technical Instructions 0110–09–A–ATI–F01–R00, dated September 19, 2023 (for Model ATR42 airplanes); or Sabena Technics Airworthiness Technical Instructions 0110–11–A–ATI–F01–R00, dated September 19, 2023 (for Model ATR72 airplanes).

(h) Revision of Weight and Balance Manual

Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, implement the cargo loading procedures specified in Section 2.9., “Cargo Compartment—Loading Limitation,” of Sabena Technics Weight & Balance Manual Supplement 0110–09–A–2305–R06, Revision 06, dated September 15, 2023 (for Model ATR42 airplanes); or Section 2.11., “Cargo Compartment—Loading Limitation,” of Sabena Technics Weight & Balance Manual Supplement 0110–11–A–2305–R07, Revision 07, dated September 15, 2023 (for Model ATR72 airplanes).

(i) No Reporting Requirement

Although Sabena Technics Airworthiness Technical Instructions 0110–09–A–ATI–F01–R00; and 0110–11–A–ATI–F01–R00; both dated September 19, 2023; specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Sabena Technics BGC’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email shahram.daneshmandi@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) Sabena Technics Airworthiness Technical Instructions 0110–09–A–ATI–F01–R00, dated September 19, 2023.

(ii) Sabena Technics Airworthiness Technical Instructions 0110–11–A–ATI–F01–R00, dated September 19, 2023.

(iii) Sabena Technics Weight & Balance Manual Supplement 0110–09–A–2305–R06, Revision 06, dated September 15, 2023. This document has the revision level and date on page 2; no other page of the document has this information.

(iv) Sabena Technics Weight & Balance Manual Supplement 0110–11–A–2305–R07, Revision 07, dated September 15, 2023. This document has the revision level and date on page 2; no other page of the document has this information.

(3) For Sabena Technics material identified in this AD, contact Sabena Technics BGC, Le

Galilée, 9 Bd Henri Ziegler, 31700 Blagnac France; telephone 33 (0)1 56 54 42 30; email airworthiness.office@sabenatechnics.com.

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

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

Issued on August 16, 2024.

Victor Wicklund,

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

[FR Doc. 2024–18751 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2019; Project Identifier MCAI–2023–00909–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by a design review that found insufficient clearance between fire extinguishing system (FIREX) lines and certain fasteners in the center mid-fuselage area. This proposed AD would require an inspection for positioning and sufficient clearance of certain fasteners in certain fuselage and keel beam areas, an inspection for damage of the fire extinguishing lines, and applicable corrective actions, as specified in a Transport Canada AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 7, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

- *Fax*: 202–493–2251.

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2019; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Transport Canada material identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this material on the Transport Canada website at tc.canada.ca/en/aviation. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2019.

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

FOR FURTHER INFORMATION CONTACT:

Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2024–2019; Project Identifier MCAI–2023–00909–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by

the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–58, dated July 25, 2023 (Transport Canada AD CF–2023–58) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The MCAI states that a design review found insufficient clearance between FIREX lines and the nuts of the Hi-Lite fasteners in the center mid-fuselage in locations where the fastener nut is on the same side as the FIREX lines. Fouling between the FIREX lines and the Hi-Lite fasteners could lead to a rupture of the line. This would result in a dormant failure of the cargo compartment fire extinguishing system, preventing the system from being available in the event of a cargo compartment fire.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2019.

Material Incorporated by Reference Under 1 CFR Part 51

Transport Canada AD CF–2023–58 specifies procedures for a general visual inspection for positioning and sufficient clearance of Hi-Lite fasteners in certain fuselage and keel beam areas, an inspection for damage (includes rupturing, cracking, or denting) of the FIREX lines, and applicable corrective actions (including fastener replacement, changing the direction of the fastener, oversizing the fastener, and repair of the FIREX lines). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF–2023–58 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF–2023–58 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2023–58 in its entirety through that incorporation,

except for any differences identified as exceptions in the regulatory text of this proposed AD. Material required by Transport Canada AD CF–2023–58 for compliance will be available at *regulations.gov* under Docket No. FAA–

2024–2019 after the FAA final rule is published.
Costs of Compliance
The FAA estimates that this AD, if adopted as proposed, would affect 50

airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 33 work-hours × \$85 per hour = \$2,805	\$0	Up to \$2,805	Up to \$140,250.

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 13 work-hours × \$85 per hour = \$1,105	\$2,000	Up to \$3,105.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and
(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2024–2019; Project Identifier MCAI–2023–00909–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 7, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–

1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–58, dated July 25, 2023 (Transport Canada AD CF–2023–58).

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection; 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a design review that found insufficient clearance between fire extinguishing system (FIREX) lines and certain fasteners in the center mid-fuselage area. The FAA is issuing this AD to address fouling between the FIREX lines and the fasteners, which could lead to a rupture of the line. This would result in a dormant failure of the cargo compartment fire extinguishing system. The unsafe condition, if not addressed, could result in loss of fire extinguishing capability during a cargo compartment fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–58.

(h) Exception to Transport Canada AD CF–2023–58

(1) Where Transport Canada AD CF–2023–58 refers to its effective date, this AD requires using the effective date of this AD.
(2) Where Transport Canada AD CF–2023–58 refers to hours air time, this AD requires using flight hours.
(3) Where the “Compliance” paragraph of Transport AD CF–2023–58 specifies the compliance time to accomplish the actions, for this AD, the compliance time is at the applicable time specified in paragraph (h)(3)(i) or (ii), whichever occurs later.

(i) Within the time specified in the “Compliance” paragraph of Transport AD CF–2023–58.

(ii) Within 90 days after the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–58, dated July 25, 2023.

(ii) [Reserved]

(3) For Transport Canada material identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this Transport Canada material on the Transport Canada website at tc.canada.ca/en/aviation.

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

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

Issued on August 12, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–18716 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2021; Project Identifier AD–2023–01077–T]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. This proposed AD was prompted by a report of cracking in the electrical grounding receptacles located on the left and right wings. This proposed AD would require inspecting the electrical grounding receptacles for cracks and corrosion, performing applicable on-condition actions, and sealing over the grounding receptacles on the top of the wings to permanently disable the receptacle. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 7, 2024.

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

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

- *Fax:* 202–493–2251.

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2021; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Gulfstream material identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email pubs@gulfstream.com; website [gulfstream.com/en/customer-support](https://www.gulfstream.com/en/customer-support).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2021.

FOR FURTHER INFORMATION CONTACT:

Harun Kalin, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5576; email: 9-ASO-ATLACO-ADs@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2024–2021; Project Identifier AD–2023–01077–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important

that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Harun Kalin, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5576; email: 9-ASO-ATLACO-ADs@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of cracks found in the electrical grounding receptacles located on the left and right wings of certain Gulfstream Aerospace Corporation Model GVII airplanes. Further investigation revealed that the cracks were initiated by the collection of water in the electrical grounding receptacle leading to corrosion and mechanical stresses from water freeze and thaw cycles. Water can leak through the o-ring/pin interface of the grounding receptacle and fill the housing over time. The subsequent freeze and thaw cycles of the entrapped water over multiple flights resulted in cracking and failures within the receptacle, which can be exacerbated by corrosion. Fuel vapors can escape through a cracked

receptacle during over-wing fueling operations. When the ground crew attempts to connect equipment to grounding receptacle a spark from refueling equipment could ignite flammable fuel mixture in the fuel tank. Fuel leaking from the electrical grounding receptacles could result in a potential source of ignition in a fuel tank and consequent fire or explosion.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Gulfstream GVII–G500 Customer Bulletin No. 089, dated November 28, 2023; and Gulfstream GVII–G600 Customer Bulletin No. 058, dated November 28, 2023. This material specifies procedures for the following actions:

- Borescope inspections for cracking and corrosion of the interior walls of the grounding receptacle casing.
- Measurement of the inner diameter of the grounding receptacle if any Level 1 corrosion is found.
- Repair including cleaning and application of chemical conversion coating if any Level 1 corrosion within the specified tolerance (inner diameter) is found.

- Replacement of the grounding receptacle assembly if any crack, any Level 2 or Level 3 corrosion, or any level 1 corrosion outside of the specified tolerance is found.
 - Removal of the “GROUND HERE” decal/stencil from the grounding receptacles, and application of epoxy over the ground receptacle area to permanently disable the receptacles.
- These documents are distinct since they apply to different airplane models. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in ADDRESSES.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this material at [regulations.gov](https://www.regulations.gov) by searching for and locating Docket No. FAA–2024–2021.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 236 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting and disabling grounding receptacles.	64 work-hours × \$85 per hour = \$5,440	\$83	\$5,523	\$1,303,428

The FAA estimates the following costs to do any necessary corrective actions that would be required based on

the results of the proposed inspections. The agency has no way of determining

the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	12 work-hours × \$85 per hour = \$1,020	\$83	\$1,103
Replacement	35 work-hours × \$85 per hour = \$2,975	926	3,901

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

Authority for This Rulemaking

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

detail the scope of the Agency’s authority. The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing

regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation: Docket No. FAA–2024–2021; Project Identifier AD–2023–01077–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 7, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model GVII–G500 airplanes, having serial numbers (S/Ns) 72001 through 72139 inclusive.

(2) Model GVII–G600 airplanes, having S/Ns 73001 through 73144 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a report of cracking in the electrical receptacles located on left and right wings of certain Gulfstream Aerospace Corporation Model GVII airplanes. The FAA is issuing this AD to address cracks and corrosion of the electrical grounding receptacles. The unsafe condition, if not addressed, could result in fuel leaking from the electrical grounding receptacles.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (2) of this AD, in accordance with Gulfstream GVII–G500 Customer Bulletin No. 089 or Gulfstream GVII–G600 Customer Bulletin No. 058, both dated November 28, 2023, as applicable.

(1) Do borescope inspections for cracking and corrosion of the interior walls of the grounding receptacle casing and do all applicable corrective actions before further flight.

(2) Remove the “GROUND HERE” decal/stencil from the grounding receptacles and apply epoxy over the ground receptacle area to permanently disable the grounding receptacles.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) For material that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled “RC Exempt,” then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in

accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

For more information about this AD, contact Harun Kalin, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5576; email: 9-ASO-ATLACO-ADs@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) Gulfstream GVII–G500 Customer Bulletin No. 089, dated November 28, 2023.

(ii) Gulfstream GVII–G600 Customer Bulletin No. 058, dated November 28, 2023.

(3) For Gulfstream material identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email pubs@gulfstream.com; website gulfstream.com/en/customer-support.

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

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

Issued on August 8, 2024.

Victor Wicklund,

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

[FR Doc. 2024–18635 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0183; Airspace Docket No. 23–AAL–67]

RIN 2120–AA66

Modification of Class E Airspace; Chenega Bay Airport, Chenega, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface

of the earth, due to the Area Navigation (RNAV) (Global Positioning System [GPS])-A approach being re-oriented to the north. Additionally, this action proposes administrative amendments to update the airport's existing Class E airspace legal description. These actions would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before October 7, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2024-0183 and Airspace Docket No. 23-AAL-67 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 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 the 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: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231-3460.

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 would modify Class E airspace to support IFR operations at Chenega Bay Airport, Chenega, AK.

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 receives 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 posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), 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/](http://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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document 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 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.

Background

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Class E airspace extending upward from 700 feet above the surface of the earth at Chenega Bay Airport, Chenega, AK.

The Class E airspace extending upward from 700 feet above the surface of the earth within a 2-mile radius should be modified to contain the arrival procedure only to the final approach fix (FAF), and to contain the departure procedure starting at JODRO—given that arrivals are visual flight rules (VFR) after the FAF and departures are VFR until reaching JODRO. Additionally, Class E airspace beginning at 700 feet above the surface of the earth should be added to the north of the airport to contain arriving IFR operations below 1,500 feet above the surface until reaching the FAF.

Finally, the FAA is proposing an administrative modification to the airport's associated legal description. The city name within the text header should be updated from "Chenega Bay, AK" to "Chenega, AK."

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.

* * * * *

AAL AK E5 Chenega, AK [Amended]

Chenega Bay Airport, AK
(Lat. 60°04′43″ N, long. 147°59′41″ W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 60°11′28″ N, long. 148°4′30″ W; to lat. 60°18′43″ N, long. 147°59′37″ W; to lat. 60°18′23″ N, long. 147°55′19″ W; to lat. 60°14′30″ N, long. 147°56′37″ W; to lat. 60°5′57″ N, long. 147°37′29″ W; to lat. 60°3′26″ N, long. 147°42′48″ W; thence back to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on August 15, 2024.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2024–18732 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130, and 1240

[Docket No. CPSC–2023–0046]

Safety Standard for Infant and Infant/Toddler Rockers; Supplemental Information; Notice of Availability and Request for Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule; availability of supplemental information; request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) published a notice of proposed rulemaking (NPR) in October 2023 to address risks of death and injury associated with infant suffocations, falls, and other hazards associated with infant and infant/toddler rockers (rockers). CPSC announces the availability of, and seeks comment on, details about incident data relevant to the rulemaking and associated with infant and toddler rocker use. CPSC also seeks comment on a standard tessellation language (STL) file (used in computer-aided design) for a firmness test fixture proposed in the NPR, and a updated version of the voluntary standard for rockers.

DATES: Submit comments by September 23, 2024.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2023–0046, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by email, except as described below. CPSC encourages you to submit

electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, U.S. Consumer Product Safety Commission 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To read background documents or comments regarding this proposed rulemaking, go to: <https://www.regulations.gov>, insert Docket No. CPSC–2023–0046 in the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT:

Zachary S. Foster, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2034; email: zfoster@cpsc.gov.

SUPPLEMENTARY INFORMATION: Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. Under this statutory direction, in October 2023, the Commission published an NPR, *Safety Standard for Infant and Infant/Toddler Rockers*, to reduce the risk of death and injury associated with rockers. 88 FR 73551 (Oct. 26, 2023).

The NPR defines an “infant rocker” as “a freestanding product intended to support an occupant who has not developed the ability to sit up unassisted, up to 20 lb. (approximately 0 through 6 months of age), in a seated, reclined position greater than 10° and to facilitate rocking by the occupant with

the aid of the caregiver or by other means,” while an “infant/toddler rocker” is “a freestanding product intended to support an occupant in a seated, reclined position greater than 10° and to facilitate rocking by the occupant with the aid of the caregiver or by other means until the occupant is approximately age 2.5 years, up to 40 lb.” 89 FR 2544.

In July 2014, ASTM International’s (ASTM) Committee F15 on Consumer Products first published a voluntary standard for rockers—ASTM F3084–14, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers*, to minimize the risk of injury or death associated with children’s use of rockers. The standard addressed hazards associated with product disassembly and collapse, stability, and falls from an elevated surface. Hazard mitigation provisions included performance requirements, warnings, and instructional literature. The ASTM standard has been revised six times since 2014: in 2016, 2018, 2020, 2022, and twice after publication of the NPR (in January 2024 and again in July 2024).

The January 2024 revision of ASTM’s voluntary standard for rockers, ASTM F3084–23, included: (1) revisions to the definitions to include an upper weight limit for infant rockers and infant/toddler rockers; (2) modification to restraint storage requirements; (3) clarification of the forward stability test and modification to the static load application location; and (4) addition of battery compartment performance requirements and a battery leakage test. ASTM published its latest revision on July 31, 2024—ASTM F3084–24. This revision includes the January 2024 additions, while also establishing new elements intended to address the tethered strap and/or cord hazards discussed in the NPR. In relevant part, ASTM F3084–24 adds (1) definitions for “cord,” “strap,” and “tethered strap and/or cord” and (2) performance requirements and test methods to address tethered strap and/or cord hazards, including entrapment and entanglement, as well as adds accompanying figures of test probes. CPSC intends to refer to the July 2024 version of ASTM F3084 should it proceed to issuing a final rule. CPSC will evaluate whether the NPR’s recommended substantive changes are addressed in ASTM’s July 2024 version of the voluntary standard. The Commission seeks comment on the proposed incorporation by reference of ASTM F3084–24.

The Office of the Federal Register (OFR) has regulations concerning

incorporation by reference. 1 CFR part 51. For a proposed rule, agencies must discuss in the preamble of the NPR ways that the material the agency proposes to incorporate by reference is reasonably available to interested persons or how the agency worked to make the material reasonably available. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a). In accordance with the OFR’s requirements, this section summarizes the provisions of ASTM F3084–24 that the Commission proposes to incorporate by reference. ASTM F3084–24 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period of this rulemaking, at: www.astm.org/cpsc.htm. To download or print the standard, interested persons may purchase a copy from ASTM, through its website (www.astm.org), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428. Alternatively, interested parties may inspect a copy of the standard at CPSC’s Office of the Secretary by contacting Alberta E. Mills, Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; phone: 301–504–7479; email: cpsc-os@cpsc.gov. The Commission is now making available to the public incident reports underlying the data discussed in the NPR, as described below.¹ The Commission’s intent is to disclose all relied-upon incidents, including reports submitted into *SaferProducts.gov*, hospital database reports, In-Depth Investigations (IDIs), and incidents submitted to CPSC by manufacturers and retailers under section 15 of the Consumer Product Safety Act (CPSA), subject to the limits in section 6 of the CPSA (section 15 reports). 15 U.S.C. 2055.

These reports have been redacted to protect personal information, confidential medical information, and other information protected from disclosure by section 6 of the CPSA. In particular, section 6(a) of the CPSA prohibits CPSC from disclosing trade secrets and commercial or financial information obtained from a person that is privileged or confidential, and it requires CPSC to offer such manufacturer or private labeler an opportunity to mark such information as confidential. 15 U.S.C. 2055(a). If the Commission determines that a report marked as confidential by a manufacturer or private labeler may be

disclosed because it is not confidential information as provided by section 6(a)(2), the Commission must notify the manufacturer or private labeler within a specified time frame before any disclosure. Section 6(b) of the CPSA also imposes limitations on CPSC’s public disclosure of information that will permit the public to ascertain readily the identity of a manufacturer or private labeler but contains specific exceptions for disclosure of such information in the course of or concerning a rulemaking proceeding. 15 U.S.C. 2055(b)(4). Section 6(b)(5) of the CPSA contains limitations on public disclosure of information if the information was submitted to CPSC pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b). 15 U.S.C. 2055(b). Section 6(b)(5)(c) also prohibits disclosure of information submitted pursuant to CPSA section 15(b) unless the firm submitting the information “agrees to its public disclosure.” 15 U.S.C. 2055(b)(5)(C). Thus, prior to disclosure, CPSC offers such a manufacturer or private labeler an opportunity to mark such information as confidential, and it asks for the firm’s agreement to release the documents.

CPSC notified all four submitters who provided incident information underlying the NPR to CPSC under section 15(b), and it sought consent to release the incident information pursuant to section 6. All four submitters consented to disclosure with redactions. Two of those firms consented to disclosure of one section 15 report each, the third firm consented to disclosure of six section 15 reports, and the fourth firm consented to disclosure of 1,010 section 15 reports.

The NPR contained information about incidents from two databases: the Consumer Product Safety Risk Management System (CPSRMS)² and the National Electronic Injury Surveillance System (NEISS).³ CPSC

² CPSRMS includes data primarily from three groups of sources: incident reports, death certificates, and in-depth follow-up investigation reports. A large portion of CPSRMS consists of incident reports from consumer complaints, media reports, medical examiner or coroner reports, retailer or manufacturer reports (incident reports received from a retailer or manufacturer involving a product they sell or make), safety advocacy groups, law firms, and federal, state, or local authorities, among others. It also contains death certificates that CPSC purchases from all 50 states, based on selected external cause of death codes (ICD–10). The third major component of CPSRMS is the collection of in-depth follow-up investigation reports. Based on the incident reports, death certificates, or NEISS injury reports, CPSC Field staff conduct IDIs (on-site, via telephone, or online) of incidents, deaths, and injuries, which are then stored in CPSRMS.

³ NEISS is the source of the injury estimates; it is a statistically valid injury surveillance system.

¹ The Commission voted unanimously (5–0) on August 6, 2024, to publish this document.

staff searched these databases for fatalities, incidents, and concerns associated with rockers and involving infants and toddlers up to five years old, reported to have occurred between January 1, 2011, and November 7, 2022. This search revealed data pertaining to at least 11 fatalities and 88 injuries, with 1,088 total incidents reported to CPSC. The NPR included information about the hazard patterns associated with these fatal and nonfatal incidents, such as the child's age, hazard scenarios, and product-design concerns.

Relevant data from CPSRMS for the 11-year period include records of fatal and nonfatal incidents, such as incident reports from medical examiners, consumers, death certificates, and manufacturers. Some of the incident data relied on for the rulemaking were obtained from 47 IDIs conducted by CPSC. Among these IDIs, 11 were fatal incidents and 36 were nonfatal incidents. Incident data have been redacted for personally identifiable information or confidential medical information, as required by law and any applicable confidentiality agreements.

Data available from NEISS for the 11-year period contain too few emergency department-treated injuries associated with rockers to derive reportable national estimates based on the NEISS-participating sample hospitals. Although CPSC was unable to provide national injury estimates based on NEISS data, one NEISS injury case is included in the total count of reported incidents.

The Commission is also making available an STL file for the handle of the firmness test fixture proposed in the NPR. Commenters on the NPR indicated that the drawing of the fixture in the NPR was incomplete and did not include enough detail to allow development and testing of the proposed fixture.⁴ The STL file can be used to examine the handle geometry, or to 3D print a handle similar to that used in the seated product report referenced in the NPR⁵ and used by CPSC staff in

NEISS injury data are gathered from emergency departments of a representative sample of U.S. hospitals, with 24-hour emergency departments and at least six beds. The surveillance data gathered from the sample hospitals enable CPSC staff to make timely national estimates of the number of injuries associated with specific consumer products.

⁴ *Safety Standard for Infant and Infant/Toddler Rockers*, Notice of Proposed Rulemaking, published Oct. 26, 2023, Figure 4 to Paragraph (b)(10)(x)—Hand-Held Firmness Test Device; 88 FR 73566.

⁵ Mannen, E.M., Siegel, D., Goldrod, S., Bossart, A., Lujan, T.J., Wilson, C., Whitaker, B., Carrol, J. (2023). *Seated Products Characterization and Testing*. Report available at <https://www.cpsc.gov/content/Report-Boise-State-Universitys-Seated-Products-Characterization-and-Testing>.

testing rockers. The Commission seeks comment on which design features of the handle should be considered critical to the performance of the firmness test; which features should be customizable by users based on the test equipment that is attached to the handle; and whether any changes should be made to the drawing of the handle based on the assessment.

The Commission invites comments on the incident data and analysis of this data in the NPR, the STL file and its proposed use in the NPR, and incorporation by reference of the updated ASTM standard, F3084–24. Upon publication of this document in the **Federal Register**, CPSC will make available for review and comment the incident reports relied upon and discussed in the NPR, to the extent allowed by applicable law, along with the associated IDIs. The data will be made available by submitting a request at: <https://forms.office.com/g/WwGfAvpww0>. You will then receive a website link to access the data at the email address you provide. If you do not receive a link within two business days, please contact Zachary S. Foster, email: zfoster@cpsc.gov. Information on how to submit comments and contact information for CPSC's Office of the Secretary are in the **ADDRESSES** section of this notice.

Alberta E. Mills,
Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–18133 Filed 8–21–24; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0311; FRL–12092–01–R9]

Conditional Approval of Arizona State Implementation Plan Revisions; Maricopa County Air Quality Department; Mobile Source Emission Reduction Credits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve a revision to the Maricopa County Air Quality Department's (MCAQD or "Department") portion of the Arizona State Implementation Plan (SIP). This rule revision establishes a program allowing fleet owners/operators to

generate emission reduction credits (ERCs) by either retrofitting or replacing existing fleet vehicles with lower emitting vehicles and meeting other ongoing requirements. These ERCs are intended for use as offsets under the Department's nonattainment New Source Review (NNSR) program. We are taking comments on this proposal and plan to follow with a final action.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0311 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which 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: Laura Yannayon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 972–3534; or by email to yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date it was adopted by the MCAQD and submitted by the

Arizona Department of Environmental Quality (ADEQ), which is the governor's designee for Arizona SIP submittals.

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Adopted	Submitted
Rule 205	Emission Offsets Generated by Voluntary Mobile Source Emission Reduction Credits	4/26/23	5/4/23

On November 4, 2023, the submittal of Rule 205 was deemed complete by operation of law.

B. Are there other versions of this rule?

There are no previous versions of Rule 205 in the Maricopa County portion of the Arizona SIP.

C. What is the purpose of the submitted rule?

Portions of Maricopa County are currently designated as “Moderate” nonattainment for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) and as “Serious” nonattainment for the 1987 particulate matter equal to or less than 10 micrometers (PM₁₀) NAAQS.¹ Therefore, the MCAQD is required to implement a NNSR program, which requires sources emitting ozone precursors in large quantities to provide surplus emission reductions to offset a proposed project's projected emission increases. In Maricopa County, the quantity of surplus emission reductions available for use as offsets does not appear sufficient to support current and projected economic growth.

Rule 205, “Emission Offsets Generated by Voluntary Mobile Source Emission Reduction Credits,” is intended to provide a regulatory structure for the generation and use of nontraditional emission reduction credits (ERCs) from mobile sources to be used as offsets for new and modified major sources. When ERCs are generated from mobile sources, they are referred to as mobile ERCs or “MERCs.” The rule allows mobile source fleet owners that reduce emissions from their fleets to sell those reductions to stationary sources, who can then use them to offset their proposed emission increases. Rule 205 outlines the requirements a “permitted generator” of emission reductions must meet before the Department can certify these emission reductions as meeting the offset integrity criteria specified for

NNSR programs.² Generally speaking, the rule requires the permitted generator to submit certain information in its application; procedures for processing an application; use of specific methodologies to calculate emission reductions; issuance of MERC certificates; and ongoing monitoring, recordkeeping, and reporting requirements. The rule also contains certain requirements for the MERC user and the Control Officer. More information on the contents of Rule 205 can be found in the Technical Support Document (TSD) included in the docket for this action.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

In evaluating Rule 205 we reviewed it for compliance with the requirements for offsets found in 40 CFR 51.165(a)(3)(ii)(C)(1)(i) and CAA section 173 and the substantive CAA requirements for SIPs and SIP revisions as set forth in CAA sections 110(a)(2), 110(l), and 193. Throughout our evaluation we also referred to our 2001 Economic Incentive Programs (EIP) guidance document.

The requirements for emission reductions used as NNSR offsets are found in 40 CFR 51.165(a)(3)(ii)(C). Specifically, paragraph (a)(3)(ii)(C)(1)(i) requires emission reductions to be surplus, permanent, quantifiable, and federally enforceable. We refer to this group of requirements as the “offset integrity criteria.” In addition, CAA section 173(a) requires increased emissions to be offset by reductions in “actual” emissions, meaning that the pollutant was actually emitted during the baseline period and is not a paper reduction in a source's potential to emit; in other words, it requires that each offset represents emissions that have been taken out of the air. CAA section 173(c)(1) also provides a timing requirement for the offsets, in that the emission reductions must be, “by the

time a new or modified source commences operation, in effect and enforceable.”

CAA section 110(a)(2) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable. CAA section 110(l) requires that states provide public notice and an opportunity for public hearing of SIP revisions prior to their submittal and prohibits the EPA from approving any SIP revisions that would interfere with attainment or maintenance of a NAAQS, reasonable further progress (RFP), or other applicable requirements of the CAA. CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

In 2001, the EPA issued a guidance document entitled “Improving Air Quality with Economic Incentive Programs” (“2001 EIP guidance”),³ which sets out the EPA's non-binding guidelines on discretionary EIPs.⁴ An EIP is a regulatory program that implements market-based strategies to achieve an air quality objective. Rule 205 is classified as an EIP because it provides a framework for generating ERCs from mobile sources. The ERCs generated under the EIP may be traded with stationary sources to provide the offsets required under a NNSR program.⁵ Our 2001 EIP guidance document does not represent final EPA action on the requirements for EIPs, but rather it identifies several different types of EIPs and proposed elements for each type that, if met, would assure that the program would meet the applicable CAA requirements.

³ U.S. EPA, Improving Air Quality with Economic Incentive Programs, EPA-452/R-01-001 (January 2001), available at <https://www.epa.gov/sites/default/files/2015-07/documents/eipfin.pdf>.

⁴ A discretionary EIP is not subject to the requirements for mandatory EIPs found in 40 CFR part 51, subpart U.

⁵ See *id.*

¹ 40 CFR 81.303.

² See, e.g., 40 CFR 51.165(a)(3)(ii)(C)(1)(i) and CAA sections 172(a) and (c)(1).

B. Does the rule meet the evaluation criteria?

In general, we find that Rule 205 complies with most applicable requirements but does not satisfy the requirements pertaining to offset trading programs and requirements for SIPs to be clear and enforceable, including provisions found in 40 CFR 51.165(a)(3)(ii)(C)(1)(i), and CAA Sections 110(a)(2) and 173. Our technical support document (TSD), which is included in the docket for this action, contains a detailed and complete discussion of the applicable CAA requirements and our evaluation of whether Rule 205 satisfies these requirements. Section 6 of the TSD identifies the deficiencies that must be addressed to ensure full approval of a future revision of Rule 205. Please see the TSD included in the docket for this proposed rulemaking for additional information.

C. Deferred Action

At this time, the EPA is not taking action on Rule 205, Appendix A, paragraph D, titled “High Pollution Area Incentive,” which contains a provision allowing a permitted generator with a vehicle fleet located in an “area of high pollution” to calculate its baseline emissions using the original fleet vehicle emission rates rather than a current model year vehicle type emission rate. The EPA will act on this portion of the rule in a separate rulemaking unless the provision is withdrawn by the MCAQD.

D. Proposed Action and Public Comment

The EPA has reviewed Rule 205, “Emission Offsets Generated by Voluntary Mobile Source Emission Reduction Credits,” in accordance with the evaluation criteria described earlier in this preamble. CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In letters dated May 1, 2024, and May 6, 2024, the MCAQD and the ADEQ committed to adopt and submit specific enforceable measures to address the identified deficiencies in Rule 205 within one year after the date of final approval.⁶ Accordingly, pursuant to section 110(k)(4) of the Act, we are proposing a

conditional approval of Rule 205. We are proposing to conditionally approve Rule 205 based on our determination that, apart from the deficiencies listed in Section II.B of this preamble and Section 6 of our TSD, the rules satisfy the applicable statutory and regulatory requirements for offset trading programs and the general requirements for SIPs to be clear and enforceable, including provisions found in 40 CFR 51.165(a)(3)(ii)(C) and CAA Sections 110(a)(2) and 173. Moreover, we conclude that if the MCAQD and the ADEQ submit the changes listed in their commitment letters, the identified deficiencies will be cured.

The intended effect of our proposed conditional approval action is to update the applicable SIP while providing the Department the opportunity to correct the identified deficiencies. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.120 (Identification of plan) and 40 CFR 52.119 (Identification of plan—conditional approval).

If the State meets its commitment to submit the required revisions and the EPA approves the submission, then the deficiencies listed above will be cured. However, if the Department fails to submit these revisions within the required timeframe, explained in section II.C, the conditional approval will automatically convert to a disapproval, and the EPA will issue a finding of disapproval. The EPA is not required to propose the finding of disapproval.

In support of this proposed action, we have also concluded that our conditional approval of Rule 205 would comply with sections 110(l) and 193 of the Act because the submitted rule as a whole would not interfere with continued attainment of the NAAQS in Maricopa County and would not relax control technology and offset requirements.

We will accept comments from the public on this proposal until September 23, 2024.

III. Incorporation by Reference

In this rulemaking, the 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, the EPA is proposing to incorporate by reference Rule 205, “Emission Offsets Generated by Voluntary Mobile Source Emission Reduction Credits,” which establishes a program allowing fleet owners/operators to generate emission reduction credits (ERCs) by either retrofitting existing fleet vehicles or replacing existing fleet

vehicles with lower emitting vehicles and meeting other ongoing requirements. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. 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 review state choices and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action proposes conditionally approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

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 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 an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to

⁶ See the May 1, 2024 and May 6, 2024 commitment letters from the MCAQD and the ADEQ for additional information about how the MCAQD will correct the identified deficiencies. These letters are contained in the docket for this rulemaking.

the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it merely proposes to conditionally approve state law as meeting federal requirements. Furthermore, the EPA’s Policy on Children’s Health does not apply to this action.

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 (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.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 14, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–18570 Filed 8–21–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. DOT–OST–2024–0090]

RIN 2105–AF05

Transportation for Individuals With Disabilities; Adoption of Accessibility Standards for Pedestrian Facilities in the Public Right-of-Way

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation (DOT or the Department) is proposing to amend its rules implementing the transportation provisions under Title II, Part B, and Title III of the Americans with Disabilities Act (ADA) by adopting as regulatory accessibility standards the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) issued by the Architectural and Transportation Barriers Compliance Board (Access Board) on August 8, 2023. This proposed rule would adopt the Access Board’s PROWAG into the Department’s ADA regulations. When adopted, DOT’s public right-of-way ADA standards will apply only to new construction and alterations of transit stops in the public right-of-way. For purposes of this rulemaking, transit stops in the public right-of-way are facilities in the public right-of-way used in the provision of designated or specified public transportation, as defined in DOT’s existing ADA regulations.

DATES: Comments must be received on or before September 23, 2024. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number DOT–OST–2024–0090) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9

a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2024–0090 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Docket: For internet access to the docket to read background documents and comments received, go to www.regulations.gov. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Electronic Access and Filing: A copy of the Notice of Proposed Rulemaking, all comments, final rule and all background material may be viewed online at: www.regulations.gov using the docket number listed above. A copy of this document will be placed in the docket and electronic retrieval help and guidelines are available on the website. The website is available 24 hours each day/365 days a year. An electronic copy of this document may be downloaded from the Office of the Federal Register's website at: www.FederalRegister.gov.

FOR FURTHER INFORMATION CONTACT: For general questions, Holly Ceasar-Fox, Office of the General Counsel, U.S. Department of Transportation, (202) 366–7420, holly.ceasarfox@dot.gov. For legal questions related to PROWAG, James T. Esselman, Office of Chief Counsel, Federal Highway Administration, (202) 366–6181, james.esselman@dot.gov. For legal questions related to transit, Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, (202) 366–0944, bonnie.graves@dot.gov. For questions related to intercity or high-speed rail, Linda Martin, Federal Railroad Administration, Office of Chief Counsel, 202–689–9408, Linda.Martin@dot.gov.

SUPPLEMENTARY INFORMATION: The Americans with Disabilities Act (ADA)

directs the U.S. Access Board (the Board) to issue minimum guidelines for accessible design to guide the U.S. Department of Justice and the U.S. Department of Transportation in the development of ADA accessibility standards. *See* 42 U.S.C. 12204(a). In 1991, the Board issued an initial set of ADA accessibility guidelines (ADAAG) for buildings and facilities on sites, defined as “[a] parcel of land bounded by a property line or a designated portion of a public right-of-way.” *See* 56 FR 35408 (July 26, 1991). In 2004, the Board issued revisions to the ADAAG. *See* 69 FR 44084 (July 23, 2004). Neither version of the ADAAG specifically addresses the accessibility of facilities in the public right-of-way.

In 2011, the Board issued proposed accessibility guidelines for pedestrian facilities, including transit stops, in the public right-of-way (proposed PROWAG). 76 FR 44664 (July 26, 2011). The proposed rule defined “public right-of-way” as “[p]ublic land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.” In 2013, the Board published a supplemental NPRM, to incorporate proposed accessibility guidelines for shared-use-paths into the proposed PROWAG. 78 FR 10110 (Feb. 13, 2013). Following consideration of public comments, the Board issued its final rule on Public Rights-of-Way Accessibility Guidelines (PROWAG) on August 8, 2023. (88 FR 53604). The final rule defines “public right-of-way” as “[p]ublic land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.” This NPRM proposes to adopt the PROWAG into the Department's ADA regulations without substantive modification.

Background

Title II of the ADA sets forth accessibility requirements applicable to public entities. Under Title II, Part B, DOT is authorized to implement the ADA relating to nondiscrimination in the provision of public transportation services. *See* 42 U.S.C. 12149(a). The ADA directs DOT to adopt standards for accessible public transportation facilities that are “consistent with” final minimum accessibility guidelines issued by the Board. *Id.* at § 12149(b). Similarly, Title III of the ADA directs DOT to adopt regulations implementing the transportation provisions of Title III, applicable to private entities that provide specified public transportation services, and provides that any standards adopted under such

regulations must be “consistent with” final minimum accessibility guidelines adopted by the Access Board. *Id.* at §§ 12186(a), (c). These statutory directives require the DOT to develop and implement this proposed rule.

Public transportation facilities subject to Title II of the ADA and DOT's ADA regulations at 49 CFR part 37 are those facilities used in the provision of designated public transportation, which is defined in DOT's ADA regulations as “transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.” 49 CFR 37.3. These facilities include bus and other transit stops in the public right-of-way operated by public transit agencies.

Public transportation facilities subject to Title III of the ADA and DOT's ADA regulations at 49 CFR part 37 include those facilities located in the public right-of-way used in the provision of specified public transportation, which is defined in DOT's ADA regulations as “transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.” 49 CFR 37.3. These services include those provided by tour and charter buses, taxis and limousines, and hotel shuttles operated by private entities.

For purposes of this rule, DOT considers facilities in the public right-of-way used in the provision of designated or specified public transportation to be transit stops. The Access Board's PROWAG does not use the terms “designated public transportation” or “specified public transportation” in setting forth accessibility guidelines applicable to transit stops. The PROWAG defines “transit stop” as: “An area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. This definition does not include intercity rail except where a stop is located in the public right-of-way.” PROWAG R104. DOT's existing ADA regulations do not define “transit stop.” To bridge the Access Board's PROWAG with DOT's existing ADA regulations applicable to public transportation facilities, DOT is proposing to add a definition of “transit stop” to its regulations at 49 CFR part

37 that adopts the PROWAG definition but clarifies that facilities in the public right-of-way used in the provision of designated or specified transportation are transit stops. Unless otherwise stated, DOT's use of the term "transit stop" in this preamble refers to this proposed definition.

In order to avoid duplication, since the entire text of the PROWAG is available in materials published by the Access Board, the Department is proposing to adopt the PROWAG into Section 37.9 of the Department's ADA regulations at 49 CFR part 37 by cross-reference to 36 CFR part 1190. If adopted as proposed, DOT's public right-of-way ADA standards would apply only to new construction and alterations of transit stops in the public right-of-way. The Department may pursue a separate rulemaking in the future to address application of its public right-of-way ADA standards to existing transit stops not otherwise undergoing alterations and to adopt its public right-of-way ADA standards into DOT's regulations implementing Section 504 of the Rehabilitation Act of 1973 at 49 CFR part 27.

This proposed rule would adopt the PROWAG issued by the Access Board into DOT's ADA regulations at 49 CFR part 37. Although DOT proposes to adopt the entirety of the PROWAG into its ADA regulations, DOT's independent enforcement authority under the ADA extends only to the accessibility of public transportation facilities. *See* 42 U.S.C. 12149(a), 12186(a), (c). As a result, DOT would enforce only those provisions of DOT's public right-of-way ADA standards applicable to new construction and alterations of transit stops in the public right-of-way. As set forth in PROWAG R309, elements required to be accessible at a transit stop in the public right-of-way include the boarding and alighting area at a sidewalk or street-level transit stop or the boarding platform, pedestrian access routes (PARs) that connect altered boarding and alighting areas or altered boarding platforms with existing pedestrian circulation paths, and, if provided, transit shelters and PARs connecting transit shelters with boarding and alighting areas or boarding platforms they serve. The PROWAG contains other provisions applicable to transit stops in the public right-of-way that would be subject to DOT enforcement under this rule: fare vending machines (R210); operable parts of other fixed elements (R210); detectable warnings for boarding platforms (R205.5) and sidewalk and street-level rail boarding and alighting areas (R205.6); pedestrian signs (R208);

connections to accessible facilities subject to the ADA for newly constructed transit stops (R203.2.1); alternate transit stops (R204.2); and benches (R209.6.1).

The term "transit stop" is not intended to include other separate elements of the public right-of-way, such as on-street parking spaces, crosswalks, or sidewalks (with the exception of the PAR connections mentioned above: PARs between transit stops and transit shelters, PARs between altered boarding and alighting areas or altered boarding platforms and existing pedestrian circulation paths, and PARs between newly constructed transit stops and accessible elements, spaces, and pedestrian facilities required to be accessible). Such other elements in the public right-of-way fall under the jurisdiction of the Department of Justice under Title II, Part A, of the ADA.

We request comments on whether the Department's accessibility standards should differ from the Access Board's PROWAG, noting that the Department's standards must be "consistent with" the Access Board's PROWAG. That is, the Department may not adopt standards that provide less accessibility for individuals with disabilities than what is provided in the PROWAG. The Department may adopt modifications, however, that provide greater accessibility than the PROWAG or that clarify application of certain PROWAG provisions.

Specifically, the Department is considering whether it should add restrictions on the location of transit stop boarding and alighting areas to provide greater accessibility. The Department is concerned that certain transit stop designs locate the boarding and alighting area so that it coincides with vehicular lanes, including bicycle facilities, which may impede accessibility. An example is where a bicycle lane is located between the bus stop and the sidewalk, and the boarding and alighting area of the bus stop extends into the bicycle lane.

The Department has identified various potential accessibility concerns regarding boarding and alighting areas that are co-located with a vehicular way. Co-location of the boarding area with a vehicular lane, including a bicycle lane, may put a transit user with disabilities at risk of being struck while waiting to board. Individuals who are blind or have low vision or who use wheelchairs often wait for transit vehicles within the portion of the boarding and alighting area closest to the curb to ensure that the driver sees them. Where the boarding and alighting area overlaps a bicycle lane or other vehicular lane,

these individuals may be at greater risk of being struck. When alighting from the transit vehicle, passengers who are blind or have low vision may be unable to detect a motorist or bicyclist approaching, and the motorist or bicyclist may not see that a passenger is about to alight the transit vehicle, particularly a passenger in a wheelchair who is lower to the ground and thus less visible. Pedestrians with mobility issues may have difficulty moving out of the way quickly enough to avoid injury. In addition, if the transit vehicle needs to deploy a ramp so a passenger using a wheelchair can board or alight, the ramp may conflict with vehicular, including bicycle, traffic.

The PROWAG transit stop provisions at R309.1 are silent on whether the co-location of boarding areas and vehicular lanes, including bicycle facilities, is permitted. The Department seeks comment on whether allowing boarding and alighting areas to overlap vehicular lanes presents accessibility concerns, and whether it should consider adding a provision to R309.1 when it adopts the PROWAG into its standards restricting such co-location. The Department is interested in whether there are solutions short of prohibiting co-location that would address accessibility concerns, such as alternative designs that prevent vehicular passage when riders are boarding or alighting from a transit vehicle. The Department also seeks any data, research, or studies concerning this issue, as well as comment on costs and benefits of approaches to the co-location of boarding and alighting areas with vehicular lanes, including bicycle lanes, that would ensure accessibility. The Department's Draft Regulatory Impact Assessment identifies preliminary unit costs for elements in the public right-of-way that may be affected if modifications to R309.1 with respect to co-location of boarding areas and vehicular lanes are adopted in the Department's final rule.

Because the Department, as a member of the Access Board, has already had the opportunity to review comments provided to the Access Board during its development of the PROWAG, it is not necessary to resubmit any comments to the Department that were already provided to the Access Board during its rulemaking process.

Amendments to 49 CFR Part 37

The Department proposes to codify the PROWAG by revising our regulations at title 49, Code of Federal Regulations, part 37.

We propose to keep the existing regulatory provisions at section 37.9, but to create a paragraph (a) for those

provisions with the paragraph heading of “Transportation facilities other than transit stops in the public right-of-way.” This revision would clarify that the provisions under section 37.9(a) apply to public transportation facilities that are buildings or located on sites, including buildings or sites located in the public right-of-way, such as transit and rail stations. As is currently the case under existing section 37.9, transportation facilities subject to new section 37.9(a) would be considered readily accessible to and usable by individuals with disabilities if they meet the requirements of 49 CFR part 37 and meet the requirements of the Access Board’s 2004 ADA Accessibility Guidelines (2004 ADAAG), set forth in Appendices B and D of 36 CFR 1191, as amended by 49 CFR part 37, Appendix A. This is consistent with PROWAG provision R201.3.¹ The new section 37.9(a) would not apply to pedestrian facilities in the public right-of-way, including transit stops.

The Department also proposes to create a new paragraph at section 37.9(b), “Transportation facilities (transit stops) in the public right-of-way,” that would adopt the PROWAG as regulatory standards for new construction or alterations of transit stops located in the public right-of-way by cross-reference to the Access Board’s codification of the PROWAG in the Appendix at 36 CFR part 1190. The Department proposes, as well, to add definitions of “transit stop,” “public right-of-way,” and “alteration of a transit stop” to 49 CFR 37.3. The proposed definition of “transit stop” mirrors the definition of “transit stop” in the PROWAG but clarifies that a facility used in the provision of designated or specified public transportation in the public right-of-way is a transit stop. The proposed definition of “public right-of-way” mirrors the definition in the PROWAG. DOT proposes to add a definition of “alteration of a transit stop” to distinguish such alterations, which would be subject to DOT’s public rights-of-way standards adopted under this rule, from the existing definition of “alteration” in DOT’s ADA regulation, which are subject to accessibility standards applicable to buildings and

sites (the 2004 ADAAG adopted by DOT, as modified by Appendix A of 49 CFR part 37).

One of the issues an agency always faces when adopting or updating standards is how to handle projects that are in progress at the time the new standards come into effect. The Department proposes that the clearest way of handling this issue is to provide in section 37.9(b)(2) that a transit stop project located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before the effective date of the final rule are not required to be consistent with the requirements set forth in the Appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities. This approach would provide needed clarity to regulated entities, but the Department does not expect significant impacts on accessibility. Even in the absence of enforceable standards, public entities are prohibited from discriminating against individuals with disabilities in the provision of designated or specified public transportation. See 49 CFR 37.5(a). Public entities retain flexibility in how to ensure that their facilities are accessible, but, as documented in the accompanying Draft Regulatory Impact Assessment, most public entities are already designing and building transit stops in the public right-of-way in line with guidelines that are similar to those in the PROWAG. The entity or person constructing or altering a transit facility could also choose to comply with the new proposed standards in such a case.

The Department is proposing an effective date of the final rule of 30 days after publication of its final rule. Given that the public and regulated entities have been aware of the proposed PROWAG’s provisions related to transit stops since 2011, which are generally unchanged in the PROWAG, and that many entities have relied on the Department of Justice’s similar 2010 ADA Standards for boarding and alighting areas or boarding platforms as references for transit stops in the public right-of-way, we do not anticipate entities requiring additional time to become familiar with the Department’s ADA public right-of-way standards before compliance is required for new construction and alterations. DOT seeks comment on whether the proposed compliance date is appropriate.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) has determined that this rulemaking is not a significant regulatory action within the meaning of E.O. 12866, as amended by E.O. 14094 (“Modernizing Regulatory Review”). The rule will not have an annual effect on the economy of \$200 million or more. The rule will not adversely affect in a material way the economy, any sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities. In addition, the changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

DOT estimates that this rulemaking would have minimal implementation costs, due to the close alignment between the requirements of the rule and existing guidance and industry practices for transit stops in the public right-of-way. This is presented in further detail in the accompanying Draft Regulatory Impact Assessment (DRIA) document.

The rule benefits pedestrians with disabilities by establishing a clear set of accessible design and construction standards for transit stops in the public right-of-way with which public entities would be required to comply. The rule would ensure a more uniformly accessible public transportation system, which facilitates independent living and economic self-sufficiency. Other pedestrians may experience ancillary benefits as well if facilities are easier to use. These benefits are unlikely to be quantified or monetized. The full draft RIA is available in the docket.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), DOT has reviewed the analysis conducted by the Access Board and published with the final rule (88 FR 53604, August 8, 2023), and evaluated the effects of this proposed rule on small entities and has determined that it is not anticipated to have a significant economic impact on a substantial number of small entities. DOT estimates that this rulemaking would have minimal implementation costs, due to the close alignment between the requirements of the rule and existing

¹ PROWAG R201.3 provides: “R201.3 Buildings, Structures, and Elements. Buildings, structures, and elements in the public right-of-way that are not covered by the requirements in these guidelines shall comply with the applicable requirements in 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Examples include, but are not limited to, buildings, structures, and elements at safety rest areas or park and ride lots, temporary performance stages and reviewing stands.”

guidance and industry practices for transit stops in the public right-of-way. In addition, many small governmental jurisdictions are located in rural areas and do not have transit facilities that would be impacted by the proposed USDOT rulemaking. This is presented in further detail in the accompanying Draft Regulatory Impact Assessment (DRIA) document. Therefore, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the DOT's proposed adoption of the 2023 Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way Guidelines is done pursuant to the ADA, which prohibits discrimination on the basis of disability, an assessment of the rule's effect on state, local, and tribal governments, and the private sector is not required.

Executive Order 13132 (Federalism Assessment)

DOT's proposed rule would be applicable to public entities, including state and local governments, but any federalism implications are not significant. Public entities have been subject to the ADA since 1991, and the many public entities that receive Federal financial assistance have also been required to comply with the requirements of Section 504 of the Rehabilitation Act. Both statutes have required accessibility of transit stops, even in the absence of enforceable standards. Many public entities, in fact, have independently applied the proposed 2011 PROWAG or similar transit stop provisions in DOT's 2006 ADA Standards or DOJ's 2010 ADA Standards. Thus, the adoption of PROWAG into DOT's ADA regulations, enforceable only with respect to transit stops, would not significantly alter existing practice. In addition, public entities previously had the opportunity to provide input and feedback during the development of the Access Board's PROWAG rule. As a result, DOT has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. This NPRM will not have a substantial effect on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among various levels of government.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1501.4(a). Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, "[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . ." 23 CFR 771.118(c)(4) and Federal Highway Administration's implementing procedures, "[p]romulgation of rules, regulations, and directives." 23 CFR 771.117(c)(20).

In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. 40 CFR 1501.4(b). This rulemaking concerns civil rights protection for individuals with disabilities. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking. The Department welcomes public comment on potential environmental impacts, including climate change impacts, that may result from this rulemaking.

Executive Order 13175 (Tribal Consultation)

DOT has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13175, "Consultation and Coordination with Indian Tribal Governments." The proposed rule would establish a regulation on the accessibility of transit stops in the public right-of-way.

This measure applies to public entities, as defined under the ADA, which does not include tribal governments or other tribal entities, and it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

Executive Order 12898 (Environmental Justice)

E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The DOT has determined that this proposed rule does not raise any environmental justice issues.

Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 37

Civil rights, Individuals with disabilities, Transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.27(a).

Subash Iyer,

Acting General Counsel, U.S. Department of Transportation.

For the reasons set forth in the preamble, DOT proposes to amend title 49, Code of Federal Regulations, part 37, as follows:

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

■ 2. Amend § 37.3 by adding, in alphabetical order, the definitions of “Alteration of a transit stop”, “Public right-of-way”, and “Transit stop”.

§ 37.3 Definitions.

* * * * *

Alteration of a transit stop means a change to or an addition of a transit stop in an existing, developed public right-of-way that affects or could affect pedestrian access, circulation, or usability.

* * * * *

Public right-of-way means public land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.

* * * * *

Transit stop means an area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. Transit stops include, if provided, transit shelters and pedestrian circulation connections between transit shelters and bus boarding and alighting areas or boarding platforms they serve. This definition does not include intercity rail except where a stop is located in the public right-of-way. A facility used in the provision of designated or specified public transportation in the public right-of-way is a transit stop.

* * * * *

■ 3. Revise § 37.9 to read as follows:

§ 37.9 Standards for accessible transportation facilities.

(a) Transportation facilities other than transit stops in the public right-of-way.

(1) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in Appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by Appendix A to this part.

(2) Facility alterations begun before January 26, 1992, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in §§ 37.47 and 37.51 of this part, even if these alterations are not consistent with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part, if the modifications complied with the

Uniform Federal Accessibility Standards (UFAS) or ANSI A117.1(1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable.

(3) (i) New construction or alterations of buildings or facilities on which construction has begun, or all approvals for final design have been received, before November 29, 2006, are not required to be consistent with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part, if the construction or alterations comply with the former Appendix A to this part, as codified in the October 1, 2006, edition of the Code of Federal Regulations.

(ii) Existing buildings and facilities that are not altered after November 29, 2006, and which comply with the former Appendix A to this part, are not required to be retrofitted to comply with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part.

(4) (i) For purposes of implementing the equivalent facilitation provision in ADA Chapter 1, Section 103, of Appendix B to 36 CFR part 1191, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(A) (1) A public or private entity that provides transportation facilities subject to the provisions of subpart C of this part, or other appropriate party with the concurrence of the Administrator.

(2) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 49 CFR part 27 or regulations implementing the Americans with Disabilities Act, an air carrier subject to the requirements of 14 CFR part 382, or other appropriate party with the concurrence of the Administrator.

(B) The manufacturer of a product or accessibility feature to be used in a transportation facility or facilities.

(ii) The requesting party shall provide the following information with its request:

(A) Entity name, address, contact person and telephone;

(B) Specific provision(s) of Appendices B and D to 36 CFR part 1191 or Appendix A to this part concerning which the entity is seeking a determination of equivalent facilitation.

(C) [Reserved]

(D) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in Appendices B and D to 36 CFR part 1191 or Appendix A to this part; and

(E) Documentation of the public participation used in developing an alternative method of compliance.

(iii) In the case of a request by a public entity that provides transportation facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(A) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(B) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(C) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(iv) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(v) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(vi) (A) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. Provided, however, that with respect to a product or accessibility feature that the Administrator determines can provide an equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation

determination applying to that class of situations.

(B) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.

(C) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

(b) Transportation facilities (transit stops) in the public right-of-way

(1) Except as set forth in paragraph (2), if new construction or alterations of a transit stop located in the public right-of-way commence after [Effective Date of Rule], the new construction or alterations of a transit stop shall comply with the requirements set forth in the Appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

(2) New construction or alterations of transit stops located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before [Effective Date of Rule], are not required to be consistent with the requirements set forth in the Appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities.

(3) (i) For purposes of implementing the equivalent facilitation provision in Chapter 1, Section R102.1, of the Appendix to 36 CFR part 1190, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(A) A public or private entity that provides transit stops in the public

right-of-way subject to the provisions of subpart C of this part, or other appropriate party with the concurrence of the Administrator.

(B) The manufacturer of a product or accessibility feature to be used in a transit stop in the public right-of-way.

(ii) The requesting party shall provide the following information with its request:

(A) Entity name, address, contact person and telephone;

(B) Specific provision(s) of the Appendix to 36 CFR part 1190 concerning which the entity is seeking a determination of equivalent facilitation.

(C) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in the Appendix to 36 CFR part 1190; and

(D) Documentation of the public participation used in developing an alternative method of compliance.

(iii) In the case of a request by a public entity that provides transit stops in the public right-of-way, the required public participation shall include the following:

(A) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(B) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(C) The entity shall sponsor at least one public hearing on the request and

shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(iv) In the case of a request by a manufacturer or a private entity, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(v) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(vi) (A) Determinations of equivalent facilitation are made only with respect to transit stops in the public right-of-way, and pertain only to the specific situation concerning which the determination is made. Provided, however, that with respect to a product or accessibility feature that the Administrator determines can provide an equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination applying to that class of situations.

(B) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.

(C) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

[FR Doc. 2024-18496 Filed 8-21-24; 8:45 am]

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Notices

Federal Register

Vol. 89, No. 163

Thursday, August 22, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

2024 USAID DEIA Bi-Annual Survey

AGENCY: United States Agency for International Development.

ACTION: Notice of information collection; request for comment.

SUMMARY: The 2024 USAID DEIA survey will utilize workforce data to establish metrics in diversity, equity, inclusion, and accessibility (DEIA), enable long-term evaluation at all levels, and, by comparing this version with the pilot survey, identify areas for improvement.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Yasmine Taylor Hart, 202-712-5590 or email at ythart@usaid.com.

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 1320.13, the Agency submitted a request for emergency approval of new information collection from the agency's workforce on DEIA, including U.S. Direct Hires (permanent and temporary) U.S. Personal Services Contractors, Institutional Support Contractors, Cooperating Country Nationals, and other expanded demographic categories in 6 main areas on a 5-point Likert scale, including 13 diversity questions, 7 equity questions, 13 accessibility questions, and 29 talent impact questions.

Description of Proposed Use of Information

The information will be collected via a digital survey and used by the workforce to capture the viewpoints and perceptions of USAID headquarters and overseas employees across all staffing mechanisms and at all grades and ranks; allow for data disaggregation by Bureau, Independent Office, and Mission; provide data for analysis to support

evidence-based and data-driven approaches to determine whether and to what extent Agency policies programs, and practices present barriers to equal and equitable and opportunities and employment outcomes and what needs to be changed or developed to remove said barriers; and to support USAID efforts to monitor and report on DEIA and EEO program effectiveness, enabling continuous program improvement.

Based on the pilot survey, distributed in 2022, this survey includes minor updates to sections about demographics, sexual orientation and gender identity (SOGI), and sexual misconduct. The 2024 survey will compare results with the pilot survey to find areas for improvement. It also will gather information from the Agency workforce allowing USAID to establish a baseline for DEIA-related metrics, create a more inclusive working environment, and promote long-term evaluation at the Agency level and within Missions, Bureaus, and Independent Offices (M/B/IOs).

Time Burden

OMB's approval enables USAID to engage 11,000 respondents. Each respondent will be able to provide 20 minutes in participation time, totaling 3,667 estimated time burden of this proposed information collection.

Yasmine Taylor-Hart,

Management Analyst.

[FR Doc. 2024-18780 Filed 8-21-24; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are required regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the

quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received September 23, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Representations for CCC and FSA Loans and Authorization to File a Financing Statement and Related Documents Under the Revised Article 9 of the Uniform Commercial Code.

OMB Control Number: 0560-0215.

Summary of Collection: Commodity Credit Corporation and the Farm Service Agency (FSA) programs require loans be secured with collateral. The security interest is created and attaches to the collateral when: (1) Value has been given, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral, and (3) the debtor has authenticated a security agreement that provides a description of the collateral. In order to perfect the security interest in collateral, a financing statement must be filed according to a State's Uniform Commercial Code. The revised Article 9 of the Uniform Commercial Code deals with secured transaction for personal property. The revised Article 9 affects the way the CCC and FSA, as well as any other creditor, perfect and liquidate security interests in collateral.

Need and Use of the Information: FSA will collect information using form CCC-10, Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents. The information obtained on CCC-10 is needed to not only obtain authorization from loan applicants to file a financing statement without their signature, but also to verify the exact legal name and location of the debtor. If this information is not collected, CCC and FSA will not be able to disburse loans because a security interest would not be perfected.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 3,734.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 299.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-18829 Filed 8-21-24; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 23, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this

particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: School Meals Operations Study.

OMB Control Number: 0584-0607.

Summary of Collection: Section 28(a) of the Richard B. Russell National School Lunch Act authorizes the USDA Secretary to conduct annual national performance assessments of the school meal programs, which include the National School Lunch Program (NSLP) and School Breakfast Program (SBP). The School Meals Operations (SMO) study was originally planned to conduct this annual assessment. When the COVID-19 pandemic closed schools and disrupted NSLP and SBP operation, the SMO study collected data about the Child Nutrition (CN) Programs used to feed children during the pandemic, which included the NSLP Seamless Summer Option (SSO), Summer Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP) in addition to NSLP and SBP. SMO study data correspond to school year (SY) 2019-2020 through SY 2022-2023 and help FNS answer annual research questions about (1) CN Program participation, (3) meal counting, (4) financial management, and (5) CN Program integrity.

Need and Use of the Information: As in previous study years, the respondents will be the State agencies that administer NSLP, SBP, SSO, SFSP, and CACFP in the 50 states, 3 territories, and District of Columbia. It will use the same administrative data request as previous years and an updated survey. The updated survey will collect timely data on policy, administrative, and operational issues for the CN Programs. This information collection will help FNS obtain:

1. General descriptive data on the characteristics of CN Programs to inform the budget process and answer questions about topics of current policy interest;

2. Data on CN Program operations to identify potential topics for training and technical assistance for States agencies and school food authorities responsible for administering the Programs; and

3. Administrative data to identify CN Program trends and predictors.

Description of Respondents: State, Local and Tribal Governments.

Number of Respondents: 68.

Frequency of Responses: Reporting; Once.

Total Burden Hours: 945.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-18830 Filed 8-21-24; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-017]

Certain Passenger Vehicles and Light Truck Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain passenger vehicle and light truck (PVL) tires from the People's Republic of China (China) during the period of review (POR) of January 1, 2022, through December 31, 2022.

DATES: Applicable August 22, 2024.

FOR FURTHER INFORMATION CONTACT:

Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1395.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2024, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited comments from interested parties.¹ We received no comments from interested parties on the *Preliminary Results*, and we have otherwise made no changes from the *Preliminary Results*. Accordingly, no decision memorandum accompanies this **Federal Register** notice; the

¹ See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, Part; 2022, 89 FR 38073 (May 7, 2024) (Preliminary Results)*, and accompanying Preliminary Decision Memorandum.

Preliminary Results are hereby adopted in these final results. On July 22, 2024, Commerce tolled certain deadlines in this administrative review by seven days.² The deadline for the final results of this review is now September 11, 2024.

Scope of the Order³

The product covered by the *Order* is PVL T tires from China. For a complete description of the scope of the *Order*, see the appendix to this notice.

Final Results of Review

For the period January 1, 2022, through December 31, 2022, we determine that the following net countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Jiangsu General Science Technology Co., Ltd	125.50
Winrun Tyre Co., Ltd	125.50

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results*, there are no calculations to disclose.

Cash Deposit Instructions

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), Commerce intends to instruct Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. 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).

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: August 16, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of this *Order* is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this Order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars

LT—Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a "P" or "LT" prefix, and all tires with an "LT" suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) racing car tires; such tires do not bear the symbol "DOT" on the sidewall and may be marked with "ZR" in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,

² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

³ See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order*; and

Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 80 FR 47902 (August 10, 2015) (*Order*).

(b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) the size designation molded on the tire’s sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

(b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only,”

(d) the load index molded on the tire’s sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an “M” rating; or

(ii) the tire’s speed rating molded on the sidewall is 87 MPH or an “N” rating, and in either case the tire’s maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire’s sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is “Not For Highway Service” or “Not for Highway Use,”

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a “G” rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by this Order are currently classified under the following Harmonized Tariff Schedule of the United

States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings:

4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.30, 8708.70.45.45, 8708.70.45.46, 8708.70.45.48, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2024–18834 Filed 8–21–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–093]

Refillable Stainless Steel Kegs From the People’s Republic of China: Rescission 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) is rescinding the administrative review of the antidumping duty order on refillable stainless steel kegs (kegs) from the People’s Republic of China (China) for the period of review (POR) December 1, 2022, through November 30, 2023.

DATES: Applicable August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Joshua Weiner AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3902.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2019, Commerce published in the **Federal Register** the antidumping duty order on kegs from China.¹ On December 1, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the Order.² On January 2, 2024, Commerce received a timely request from Chinese exporters of subject merchandise,

¹ See *Refillable Stainless Steel Kegs from the Federal Republic of Germany and the People’s Republic of China: Antidumping Duty Orders*, 84 FR 68405 (December 16, 2019) (*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 83917 (December 1, 2023).

Guangzhou Jingye Machinery Co., Ltd. (Jingye) and Guangzhou Ulix Industrial & Trading Co., Ltd. (Ulix), in accordance with 19 CFR 351.213(b)(1), to conduct an administrative review of the *Order* of those two companies.³

On February 8, 2024, Commerce published in the **Federal Register** a notice of initiation of administrative review with respect to imports of kegs exported by Jingye and Ulix, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i).⁴ On February 21, 2024, we placed on the record U.S. Customs and Border Protection (CBP) data for entries of kegs from China during the POR, showing no reviewable POR entries and invited interested parties to comment.⁵ No interested party submitted comments to Commerce regarding the CBP data.

On March 11, 2024, Ulix submitted a separate rate certification that it exported or sold subject merchandise to the United States during the POR.⁶ On July 16, 2024, Commerce issued a supplemental questionnaire to Ulix, and Ulix responded on July 26, 2024, certifying that it did not have a reviewable sale or entry during the POR and that their separate rate certification had been made in error.⁷

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁸ The deadline for the preliminary results is now September 9, 2024.

On July 29, 2024, Commerce notified all interested parties of its intent to rescind the instant review in full because there were no reviewable, suspended entries of subject merchandise by either of the two companies listed in the *Initiation Notice* during the POR and invited comments from interested parties.⁹ No interested party submitted comments to Commerce in response to this notice.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce’s practice to rescind an

³ See Jingye and Ulix’s Letter, “Request for Administrative Review,” dated January 2, 2024.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 8641 (February 8, 2024) (*Initiation Notice*).

⁵ See Memorandum, “Release of CBP Entry Data,” dated February 21, 2024.

⁶ See Ulix’s Letter, “Separate Rate Certification,” dated March 11, 2024, at 8.

⁷ See Commerce’s Letter, “SRC Supplemental Questionnaire,” dated July 16, 2024; see also Ulix’s Letter, “Rescission Letter,” dated July 26, 2024.

⁸ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁹ See Memorandum, “Notice of Intent to Rescind Review,” dated July 29, 2024.

administrative review of an antidumping duty order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.¹⁰ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.¹¹ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the antidumping duty assessment rate calculated for the review period.¹² As noted above, there were no entries of subject merchandise for either of the two companies listed in the *Initiation Notice* during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, 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 this rescission notice in the **Federal Register**.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

¹⁰ 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); and *Lightweight Thermal Paper from Japan: Rescission of Antidumping Administrative Review; 2022–2023*, 89 FR 18373 (March 13, 2024).

¹¹ See 19 CFR 351.212(b)(1).

¹² See 19 CFR 351.213(d)(3).

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 16, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–18823 Filed 8–21–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Corporation for Travel Promotion Board of Directors

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion (Corporation).

SUMMARY: The Department of Commerce (Department) is currently seeking applications from travel and tourism leaders from a specific industry sector for membership on the Board of Directors (Board) of the Corporation (doing business as Brand USA). The purpose of the Board is to guide the Corporation on matters relating to the promotion of the United States as a travel destination and communication of travel facilitation issues, among other tasks.

DATES: All applications must be received by the National Travel and Tourism Office by close of business on Friday, September 20, 2024.

ADDRESSES: Please submit application information by email to CTPBoard@trade.gov.

FOR FURTHER INFORMATION CONTACT: Curt Cottle, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–4601; email: CTPBoard@trade.gov.

SUPPLEMENTARY INFORMATION: The Travel Promotion Act of 2009 (TPA) was signed into law on March 4, 2010, and was amended in July 2010, December 2014, and again in December 2019. The TPA established the Corporation as a non-profit corporation charged with the development and execution of a plan to (A) provide useful information to those interested in traveling to the United States; (B) identify and address perceptions regarding U.S. entry policies; (C) maximize economic and

diplomatic benefits of travel to the United States through the use of various promotional tools; (D) ensure that international travel benefits all States, territories of the United States, and the District of Columbia; (E) identify opportunities to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers; (F) give priority to countries and populations most likely to travel to the United States; and (G) promote tourism to the United States through digital media, online platforms, and other appropriate mediums.

The Corporation is governed by a Board of Directors, consisting of 11 members with knowledge of international travel promotion or marketing, broadly representing various regions of the United States. The TPA directs the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State) to appoint the Board for the Corporation.

At this time, the Department will be selecting one individuals with the appropriate expertise and experience from the Land or Sea Passenger Transportation sector of the travel and tourism industry to serve the remainder of an unexpired term on the Board, which is one year with eligibility for reappointment.

To be eligible for Board membership, individuals must have international travel and tourism marketing experience, and be a current or former chief executive officer, chief financial officer, or chief marketing officer or have held an equivalent management position. Additional consideration will be given to individuals who have experience working in U.S. multinational entities with marketing budgets, and/or who are audit committee financial experts as defined by the Securities and Exchange Commission (in accordance with 15 U.S.C. 7265). Individuals must be U.S. citizens and, in addition, cannot be federally registered lobbyists or registered as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Members of the Board are selected, in accordance with applicable Department guidelines and after consultation with the Secretaries of State and Homeland Security, based on their ability to carry out the objectives of the Board and as set forth above. The diverse membership of the Board assures perspectives reflecting the breadth of the Board's responsibilities and, where possible, the Department will also consider the ethnic, racial, gender, sexual orientation, and gender identity

diversity and various abilities of the United States population.

Those selected for the Board must be able to meet the time and effort commitments of the Board.

Board members serve at the discretion of the Secretary of Commerce (who may remove any member of the Board for good cause). The terms of office of each member of the Board appointed by the Secretary is three (3) years but the term of this appointment is for one (1) year. Board members can serve a maximum of two consecutive full three-year terms. Board members are not considered Federal government employees by virtue of their service as a member of the Board and will receive no compensation from the Federal government for their participation in Board activities. Members participating in Board meetings and events may be paid actual travel expenses and per diem by the Corporation when away from their usual places of residence.

Individuals who want to be considered for appointment to the Board should submit the following information by the Friday, September 13, 2024, deadline to the email address listed in the **ADDRESSES** section above:

1. Name, title, and personal resume of the individual requesting consideration, including address, email address, and phone number.

2. A brief statement of why the person should be considered for appointment to the Board. This statement should also address the individual's relevant international travel and tourism marketing experience and audit committee financial expertise, if any, and indicate clearly the sector or sectors enumerated above in which the individual has the requisite expertise and experience. Individuals who have the requisite expertise and experience in more than one sector can be appointed for only one of those sectors. Appointments of members to the Board will be made by the Secretary of Commerce.

3. An affirmative statement that the applicant (1) is a U.S. citizen, (2) is not a federally-registered lobbyist and further, and (3) is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

4. A statement acknowledging that the applicant is or is not an audit committee financial expert as defined by the

Securities and Exchange Commission (in accordance with 15 U.S.C. 7265).

Curtis Cottle,

Senior Policy Advisor/Team Lead for Outreach and Engagement, National Travel and Tourism Office.

[FR Doc. 2024-18877 Filed 8-21-24; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Institute of Standards and Technology Performance Review Board Membership

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice lists the membership of the National Institute of Standards and Technology Performance Review Board (NIST PRB) and supersedes the list published on September 25, 2023.

DATES: The changes to the NIST PRB membership list announced in this notice are effective August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Didi Hanlein, (240) 449-6356 or by email at desiree.hanlein@nist.gov or Amy Laughter, (202) 845-5196 or by email at amy.laughter@nist.gov at the National Institute of Standards and Technology.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology Performance Review Board (NIST PRB or Board) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and Senior Professional employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in the **Federal Register** on September 25, 2023 (88 FR 65656).

NIST PRB Members

Mojdeh Bahar (C), Associate Director for Innovation and Industry Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/26
Hannah Brown (C) (alternate), Deputy Associate Director for Laboratory Programs, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/25

Marla Dowell (C), Director, CHIPS R&D Metrology Program, National Institute of Standards & Technology, Boulder, CO 80305, Appointment Expires: 12/31/24

Robert Fangmeyer (C) (alternate), Director, Baldrige Performance Excellence Program, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/24

Atissa Ladjevardian (NC), Director of External and Governmental Affairs, National Institute of Standards & Technology, Washington, DC 20230, Appointment Expires: 12/31/26

Paula Patrick (C), Strategic Advisor to Enterprise Services, Department of Commerce, Washington, DC 20230, Appointment Expires: 12/31/24

G. Nagesh Rao (C) (alternate), Deputy Director, Manufacturing Extension Partnership Program, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/26
Authority: 5 U.S.C. 4314(c).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024-18860 Filed 8-21-24; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Judge Panel of the Malcolm Baldrige National Quality Award will meet from Monday, September 9, 2024, through Friday, September 13, 2024, from 10:00 a.m. until 5:00 p.m. EST.

DATES: The Judges Panel of the Malcolm Baldrige National Quality Award will meet from Monday, September 9, 2024, through Friday, September 13, 2024, from 10:00 a.m. until 5:00 p.m. EST. All meetings during this time will be closed to the public.

ADDRESSES: The meeting will be held via webinar and/or teleconference. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program,

National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020, telephone number 301–975–2361. Mr. Fangmeyer's email address is robert.fangmeyer@nist.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.*, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will hold a meeting on the dates and times in the **DATES** section and will be closed to the public. The primary purpose of this meeting is to review recommendations from site visits and recommend 2024 Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting. During the closed session the Judges Panel of the Malcolm Baldrige National Quality Award, Judges will have discussions involving the examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients. The agenda may change to accommodate Judges Panel of the Malcolm Baldrige National Quality Award business. The final agenda will be posted on the NIST website at <https://www.nist.gov/baldrige/how-baldrige-works/baldrige-community/judges-panel>.

Authority: 15 U.S.C. 3711a(d)(1), and the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–18859 Filed 8–21–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of the Rhode Island Coastal Management Program; Notice of Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold an in-person public meeting to solicit input on the performance evaluation of the Rhode Island Coastal Management Program as implemented

through the Rhode Island Coastal Resources Management Council. NOAA also invites the public to submit written comments.

DATES: NOAA will hold an in-person public meeting at 6 p.m. Eastern Time (ET) on Tuesday, October 15, 2024. NOAA may close the meeting 10 minutes after the conclusion of public testimony and after responding to any clarifying questions from meeting participants. NOAA will consider all relevant written comments received by Friday, October 25, 2024.

ADDRESSES: Comments may be submitted by one of the following methods:

- **In-Person Public Meeting:** Provide oral comments during the in-person public meeting on Tuesday, October 15, 2024, at 6 p.m. ET at the Rhode Island Department of Administration, One Capitol Hill, 2nd Floor, Conference Room A, Providence, Rhode Island.

- **Email:** Send written comments to Michael Migliori, Evaluator, NOAA Office for Coastal Management, at czma.evaluations@noaa.gov. Include “Comments on Performance Evaluation of Rhode Island Coastal Management Program” in the subject line. NOAA will accept anonymous comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comments. Comments that are not related to the performance evaluation of the Rhode Island Coastal Management Program or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Michael Migliori, Evaluator, NOAA Office for Coastal Management, by email at Michael.Migliori@noaa.gov or by phone at (443) 332–8936. Copies of the previous evaluation findings and assessment and strategies may be viewed and downloaded at coast.noaa.gov/czm/evaluations. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Michael Migliori.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved coastal management programs. The evaluation process includes holding one or more public

meetings, considering public comments, and consulting with interested federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of Rhode Island has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Authority: 16 U.S.C. 1458.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–18867 Filed 8–21–24; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0102]

Agency Information Collection Activities; Comment Request; Federal Family Educational Loan Program—Servicemembers Civil Relief Act (SCRA)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before OCTOBER 21, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2024–SCC–0102. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments.

Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–570–8414.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Family Educational Loan Program—Servicemembers Civil Relief Act (SCRA).

OMB Control Number: 1845–0093.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 4,408.

Total Estimated Number of Annual Burden Hours: 13,216.

Abstract: The Department of Education (the Department) is requesting an extension of the currently approved OMB information collection

1845–0093, Federal Family Education Loan (FFEL) Program Servicemembers Civil Relief Act (SCRA) based on a decrease in the number of servicemembers accessing the benefit. The regulations require the FFEL loan holder to match its database against the Department of Defense (DOD) Defense Manpower Data Center (DMDC) or other official DOD database and automatically apply the interest rate limitation, as appropriate, to borrowers under the SCRA. There has been no change in the statute or in the regulations at 34 CFR 682.208(j). There is no form tied to this collection.

Dated: August 19, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–18870 Filed 8–21–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

21st Century Energy Workforce Advisory Board

AGENCY: Office of Energy Jobs, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open in-person meeting for members and virtual meeting for the public of the 21st Century Energy Workforce Advisory Board (EWAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, September 10, 2024; 11:05 a.m. to 12:00 p.m. EDT.

ADDRESSES: 1000 Independence Avenue SW, Washington, DC 20024.

This is a hybrid meeting, in-person for board members and virtual for the public.

Registration to participate remotely is available: <https://doe.webex.com/doe/j.php?MTID=m3696ca5650886232f12ede75461ec012>.

The meeting information will be posted on the 21st Century Energy Workforce Advisory Board website at: <https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab>, and can also be obtained by contacting EWAB@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Maya Goodwin, Acting Designated Federal Officer, EWAB; email: EWAB@hq.doe.gov or at 240–597–8804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The 21st Century Energy Workforce Advisory

Board (EWAB) advises the Secretary of Energy in developing a strategy for the Department of Energy (DOE) to support and develop a skilled energy workforce to meet the changing needs of the U.S. energy system. It was established pursuant to section 40211 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (42 U.S.C. 18744) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. This is the eighth meeting of the EWAB.

Tentative Agenda: The meeting will start at 11:05 a.m. Eastern Time on September 10, 2024. The tentative meeting agenda includes roll call, a vote by the Board to accept the report, a presentation by sub-committee chairs to the Secretary regarding the broad strategies and recommendations suggested in the report, acknowledgement of the Board's report by the Secretary, and a public comment period. The meeting will conclude at approximately 12:00 p.m.

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: <https://doe.webex.com/doe/j.php?MTID=m3696ca5650886232f12ede75461ec012>.

It is the policy of the EWAB to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The EWAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on September 10, 2024, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on the EWAB's work, not for business marketing purposes. The Designated Federal Officer will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak by contacting EWAB@hq.doe.gov no later than 12:00 p.m. Eastern Time on September 6, 2024. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, the EWAB will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the Board.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to EWAB@hq.doe.gov no later than 12:00 p.m. Eastern Time on September 6, 2024, so that the comments may be made available to the EWAB members prior to this meeting for their consideration. Please note that because EWAB operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the EWAB website.

Minutes: The minutes of this meeting will be available on the 21st Century Energy Workforce Advisory Board website at <https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab> or by contacting Maya Goodwin at EWAB@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on August 16, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 16, 2024.

Treena V. Garrett,
Federal Register Liaison Officer, U.S.
Department of Energy.

[FR Doc. 2024-18776 Filed 8-21-24; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 12183-01-R9]

Casmalia Resources Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice; request for public
comment.

SUMMARY: In accordance with the
Comprehensive Environmental
Response, Compensation, and Liability

Act, as amended (CERCLA) and the
Resource Conservation and Recovery
Act (RCRA), the Environmental
Protection Agency (EPA) is hereby
providing notice of a proposed
administrative *de minimis* settlement
concerning the Casmalia Resources
Superfund Site in Santa Barbara County,
California (the Casmalia Resources Site).
CERCLA provides EPA with the
authority to enter into administrative *de
minimis* settlements. This settlement is
intended to resolve the liabilities of the
fifteen settling parties identified below
for the Casmalia Resources Site. These
parties have also elected to resolve their
liability for response costs and potential
natural resource damage claims by the
United States Fish and Wildlife Service
(USFWS) and the National Oceanic and
Atmospheric Administration (NOAA).
These sixteen parties sent 15,407,266
lbs. of waste to the Casmalia Resources
Site, which represents 0.275% of the
total Site waste of 5.6 billion pounds.
This settlement requires these parties to
pay \$1,402,842 to EPA.

DATES: EPA will receive written
comments relating to the settlement
until September 23, 2024. EPA will
consider all comments it receives during
this period, and may modify or
withdraw consent to the settlement if
any comments disclose facts or
considerations indicating that the
settlement is inappropriate, improper,
or inadequate.

Public Meeting: In accordance with
section 7003(d) of RCRA, 42 U.S.C.
6973(d), commenters may request an
opportunity for a public meeting in the
affected area. The deadline for
requesting a public meeting is
September 5, 2024. Requests for a public
meeting may be made by contacting
Russell Mechem by email at
Mechem.russell@epa.gov. If a public
meeting is requested, information about
the date and time of the meeting will be
published in the local newspaper, *The
Santa Maria Times*, and will be sent to
persons on the EPA's Casmalia
Resources Site mailing list. To be added
to the mailing list, please contact:
Alejandro Diaz at (415) 972-3242 or by
email at diaz.alejandros@epa.gov.

ADDRESSES: Written comments should
be addressed to Casmalia Case Team,
U.S. Environmental Protection Agency
Region IX, 75 Hawthorne Street (mail
code SFD-7-1), San Francisco,
California 94105-3901, or may be sent
by email to Mechem.russell@epa.gov.

FOR FURTHER INFORMATION CONTACT: A
copy of the settlement document and
additional information about the
Casmalia Resources Site and the
proposed settlement may be obtained on

the EPA-maintained Casmalia Resources
Site website at: <https://www.epa.gov/region09/casmalia> or by calling Russell
Mechem at (415) 972-3192.

SUPPLEMENTARY INFORMATION: Section
122(g) of CERCLA gives EPA authority
to enter into administrative *de minimis*
settlements. Section 122(i) of CERCLA
and section 7003 of RCRA require that
EPA publish notice of a proposed
administrative *de minimis* settlement.
This settlement is intended to resolve
the liabilities of the settling parties
under sections 106 and 107 of CERCLA
and section 7003 of RCRA for the
Casmalia Resources Site.

The parties that have elected to settle
their liability with EPA at this time are
as follows:

Altria Group, Inc.; AmerisourceBergen
Services Corporation; Central Wire, Inc.;
City of Richmond; Del Taco, LLC; Dorel
Home Furnishings, Inc.; Ford Motor
Company; Hixson Metal Finishing;
Marriott International, Inc.;
Northeastern University; Parker
Hannafin Corporation; Parton &
Edwards Construction, Inc.; Pfizer Inc.;
Search Financial Services, LP; Valley
Garbage and Rubbish Company, Inc.;
Waste Management, Inc.

Dated: August 15, 2024.

Michael Montgomery,
Director, Superfund Division, U.S. EPA
Region IX.

[FR Doc. 2024-18854 Filed 8-21-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 10:01 a.m. on Tuesday,
August 20, 2024.

PLACE: The meeting was held in the
Board Room located on the sixth floor
of the FDIC Building located at 550 17th
Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board
of Directors of the Federal Deposit
Insurance Corporation met to consider
matters related to the Corporation's
resolution, supervision, and corporate
activities. In calling the meeting, the
Board determined, on motion of
Director Michael J. Hsu (Acting
Comptroller of the Currency), seconded
by Director Rohit Chopra (Director,
Consumer Financial Protection Bureau),
by the unanimous vote of Chairman
Martin J. Gruenberg, Vice Chairman
Travis Hill, Director Jonathan
McKernan, Director Michael J. Hsu
(Acting Comptroller of the Currency),

and Director Rohit Chopra (Director, Consumer Financial Protection Bureau), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A), (c)(9)(B), (c)(10), of the "Government in the Sunshine Act" (5 U.S.C. §§ 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A), (c)(9)(B), (c)(10)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202-898-8748.

Dated this the 20th day of August, 2024.
Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-18996 Filed 8-20-24; 4:15 pm]

BILLING CODE 6714-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, August 27, 2024 at 10:00 a.m. and its continuation at the conclusion of the open meeting on August 29, 2024.

PLACE: 1050 First Street NE, Washington, DC and virtual. (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024-18977 Filed 8-20-24; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 September 23, 2024.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. *Renasant Corporation, Tupelo, Mississippi*; to merge with The First Bancshares, Inc., and thereby indirectly acquire The First Bank, both of Hattiesburg, Mississippi.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024-18862 Filed 8-21-24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is seeking public comments on its proposal to extend for an additional three years the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the Red Flags, Card Issuers, and Address Discrepancy Rules ("Rules"). That clearance expires on January 31, 2025.

DATES: Comments must be filed by October 21, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Red Flags, Card Issuers, and Address Discrepancy Rules; PRA Comment: FTC File No. P072108" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Whitney Moore, Attorney, Division of Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC-8232, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2645.

SUPPLEMENTARY INFORMATION:

Title of Collection: Red Flags Rule, 16 CFR 681.1; Card Issuers Rule, 16 CFR 681.2; Address Discrepancy Rule, 16 CFR part 641.

OMB Control Number: 3084-0137.

Type of Review: Extension of currently approved collection.

Estimated Number of Respondents: 238,942 (165,494 for Red Flags Rule + 18,500 for Card Issuers Rule + 54,948 for Address Discrepancy Rule).

Estimated Annual Burden Hours: 398,479 hours (358,124 hours for Red Flags Rule + 18,608 hours for Card Issuers Rule + 21,747 hours for Address Discrepancy Rule).

Estimated Annual Labor Costs: \$22,350,652 (\$21,850,471 for Red Flags and Card Issuers Rule + \$500,181 for Address Discrepancy Rule).

Estimated Annual Non-Labor Costs: \$0.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's Rules.

A. Overview of the Rules

I. FACT Act Section 114

The FTC Red Flags and Card Issuers Rules implement requirements under Section 114 of the Fair and Accurate Credit Transactions Act of 2003, which is also commonly referred to as the FACT Act.¹

The Red Flags Rule requires financial institutions and covered creditors to develop and implement a written Program to detect, prevent, and mitigate identity theft in connection with existing accounts or the opening of new accounts (the "Program"). Under the Rule, financial institutions and certain creditors must conduct a periodic risk assessment to determine if they maintain "covered accounts." The Red Flags Rule defines the term "covered account" as either: (1) a consumer account that is designed to permit multiple payments or transactions, or (2) any other account for which there is a reasonably foreseeable risk of identity theft.

Under the Red Flags Rule, each financial institution and covered creditor that has covered accounts must create a written Program that contains reasonable policies and procedures to: (1) identify relevant indicators of the possible existence of identity theft ("red flags"); (2) detect red flags that have been incorporated into the Program; (3) respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and (4) update the Program periodically to ensure it reflects change in risks to customers.

¹ Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952 (2003) (codified at 15 U.S.C. 1681–1681x). The FACT Act added the red flags and card issuer requirements to the Fair Credit Reporting Act, 15 U.S.C. 1681m(e)(1). On December 11, 2018, the Commission initiated periodic review of the Red Flags and Card Issuers Rules. 83 FR 63604 (Dec. 11, 2018). The public comment period closed on February 11, 2019.

Additionally, the Red Flags Rule requires financial institutions and covered creditors to: (1) obtain approval of the initial written Program by the board of directors; a committee thereof; or, if there is no board, an appropriate senior employee; (2) ensure oversight of the development, implementation, and administration of the Program; and (3) exercise appropriate and effective oversight of service provider arrangements.

The Card Issuers Rule generally requires debit and credit card issuers, which include state-chartered credit unions, retailers, and certain universities, businesses, and telecommunications companies, to assess the validity of change of address notifications. Specifically, if the card issuer receives a notice of change of address for an existing account and, within a short period of time (during at least the first thirty days), receives a request for an additional or replacement card for the same account, the issuer must follow reasonable policies and procedures to assess the validity of the change of address.

II. FACT Act Section 315

The Address Discrepancy Rule, which implements section 315 of the FACT Act, requires each user of consumer reports to have reasonable policies and procedures in place to employ when the user receives a notice of address discrepancy from a consumer reporting agency ("CRA").² Specifically, each user must develop reasonable policies and procedures to: (1) enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report; and (2) in certain circumstances, provide to the CRA from which it received the notice an address for the consumer that the user has reasonably confirmed is accurate.

B. Burden Statement

I. Estimated Annual Burden Hours: 398,479 Hours

1. Red Flags Rule: 358,124 Hours.
Affected Public: Utilities; motor vehicle dealerships; telecommunications firms; colleges and universities; hospitals; nursing homes; public warehouse and storage firms; fuel dealers; financial transaction processing firms; certain creditors;³ and other

² The FACT Act added the address discrepancy requirement to the Fair Credit Reporting Act, 15 U.S.C. 1681c(h). On September 17, 2021, the Commission announced revisions to the Address Discrepancy Rule, but the revisions did not affect the burden to covered entities. See 86 FR 51817 (Sept. 17, 2021).

³ 15 U.S.C. 1681m(e)(4).

categories of persons that qualify as financial institutions.⁴

The Red Flags Rule requires financial institutions and certain creditors with covered accounts to develop and implement a written Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the Rule. Under the Rule, a "financial institution" is "a State or National bank, a State or Federal saving and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act, 12 U.S.C. ch. 3) belonging to a consumer."⁵

The Red Flags Rule applies to certain "creditors" as defined in section 702 of the Equal Credit Opportunity Act ("ECOA")⁶ that use consumer reports, furnish information to consumer reporting agencies, or advance funds.⁷ As a result, many small businesses, service providers, and other persons that would ordinarily satisfy the ECOA definition of "creditor" are excluded from the Red Flags Rule's definition of "creditor."

Nonetheless, the scope of entities covered by the Red Flags Rule within the FTC's jurisdiction is broad, making it difficult to determine precisely the number of financial institutions and creditors that are subject to the FTC's jurisdiction. There are numerous businesses under the FTC's jurisdiction, and there is no formal way to track them. Moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the Red Flag Rule's requirement to have a written Program affects over 6,027 financial institutions⁸ and 157,564 creditors.⁹

⁴ This analysis focuses on the categories described in this notice, but the Commission welcomes comments on whether there are other categories of creditors or financial institutions that should be included in the burden analysis.

⁵ The Red Flags Rule refers to the definition of "financial institution" in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).

⁶ 15 U.S.C. 1681a(r)(5).

⁷ 15 U.S.C. 1681m(e)(4).

⁸ The total number of financial institutions is derived from an analysis of state credit unions and insurers within the FTC's jurisdiction using 2021 Census data ("County Business Patterns," U.S.) and other online industry data.

⁹ This figure comprises 157,564 creditors (91,743 high-risk creditors + 65,821 low-risk creditors). The total number of creditors draws from FTC staff analysis of 2021 Census data and industry data for businesses or organizations that market goods and services to consumers or other businesses or

To estimate burden hours for the Red Flags Rule under section 114, FTC staff has divided affected entities into two categories, based on the nature of their businesses: (1) entities that are subject to a high risk of identity theft;¹⁰ and (2) entities that are subject to a low risk of identity theft.¹¹

a. High-Risk Entities

FTC staff estimates that, on an annual basis, there are approximately 1,447 new high-risk entities,¹² and there are currently approximately 97,770 existing high-risk entities.¹³ Thus, in order to account for the fact that the number of high-risk entities will most likely increase over the 3-year clearance period, the remainder of this burden analysis relies on the average number of high-risk entities that will be subject to the FTC's jurisdiction over the next three years (99,217).

FTC staff estimates that new high-risk entities will each require 25 hours to create and implement a written Program. FTC staff estimates that existing high-risk entities have likely already created and implemented a written Program, but will require an annual recurring burden of one hour. Further, FTC staff estimates that existing high-risk entities have already prepared an annual report and will have an annual recurring burden of one hour to update the report for each year, but that preparation of an annual report will require four hours initially for each new

organizations subject to the FTC's jurisdiction, excluding entities not likely to (1) obtain credit reports, report credit transactions, or advance loans, and (2) have covered accounts under the Rule. Currently, no further updated Census data is available online to inform revised estimates.

¹⁰In general, high-risk entities include, for example, financial institutions within the FTC's jurisdiction and utilities, motor vehicle dealerships, telecommunications firms, colleges and universities, and hospitals.

¹¹Low-risk entities have a minimal risk of identity theft, but have covered accounts. These include, for example, public warehouse and storage firms, nursing and residential care facilities, automotive equipment rental and leasing firms, office supplies and stationery stores, fuel dealers, and financial transaction processing firms.

¹²For the purpose of the 2022 renewal request for this information collection clearance, FTC staff estimated that there were approximately 98,393 existing high-risk entities and approximately 1,447 new high-risk entities. See 86 FR 57425 (Oct. 15, 2021); 87 FR 4239 (Jan. 27, 2022). FTC staff estimates that there are currently 97,770 high-risk entities, which represents a 0.63 percent decrease from the previous estimate. As this decrease is not significant, FTC staff believes that, for the purpose of an approximation, it is appropriate to continue to assume that, each year, there will be approximately 1,447 new high-risk entities.

¹³This number was derived from the average annual number of existing high-risk entities, taking into account that the new entities from year one will become existing entities in year two and the new entities from year two will become existing entities in year three.

high-risk entity. Finally, FTC staff believes that many of the high-risk entities, as part of their usual and customary business practices, already take steps to minimize losses due to fraud, including employee training. Thus, only relevant staff need to be trained to implement the Program. For example, staff already trained as part of a covered entity's anti-fraud prevention efforts do not need to be re-trained except as incrementally needed. FTC staff estimates that recurring annual training in connection with the implementation of a Program of an existing high-risk entity will require one hour each year, and for new entities will require four hours initially.

Accordingly, FTC staff anticipates that high-risk entities will incur the following burden:

- 1,447 new high-risk entities subject to the FTC's jurisdiction at an average annual burden of 33 hours per entity (including 25 hours to create and implement the Program, plus 4 hours for staff training, plus 4 hours for preparing annual report), for an annual total of 47,751 hours.
- 97,770 existing high-risk entities subject to the FTC's jurisdiction at an average annual burden of 3 hours per entity (including 1 hour to update the Program, plus 1 hour for staff training, plus 1 hour for preparing the annual report), for an annual total of 293,310 hours.
- In total, 99,217 high-risk entities subject to the FTC's jurisdiction, for an annual total of 341,061 hours.

b. Low-Risk Entities

FTC staff estimates that, on an annual basis, there are approximately 456 new low-risk entities, and there are currently approximately 65,821 existing low-risk entities. Thus, in order to account for the fact that the number of low-risk entities will steadily increase over the 3-year clearance period, the remainder of this burden analysis relies on the average number of low-risk entities that will be subject to the FTC's jurisdiction over the next three years (66,277).

FTC staff believes that the burden on low-risk entities to comply with the Rules is minimal. Entities that have a low risk of identity theft, but that have covered accounts, will likely only need a streamlined Program. FTC staff estimates that any such new entities will require one hour to create such a Program. Existing low-risk entities will only have an annual recurring burden of 5 minutes. Training staff of low-risk entities to be attentive to future risks of identity theft and preparing an annual report should require no more than 10 minutes each in an initial year for new

low-risk entities. Existing low-risk entities will only have an annual recurring burden of 5 minutes each.

Accordingly, FTC staff anticipates that low-risk entities will incur the following burden:

- 456 new low-risk entities¹⁴ that have covered accounts subject to the FTC's jurisdiction at an average annual burden of approximately 80 minutes per entity (including 60 minutes to create and implement a streamlined Program, plus ten minutes for staff training and ten minutes for preparing the annual report), for an annual total of 608 hours.
- 65,821 existing low-risk entities¹⁵ that have covered accounts subject to the FTC's jurisdiction at an average annual burden of approximately 15 minutes per entity (including 5 minutes for updating of streamlined Program, plus 5 minutes for staff training, and 5 minutes for preparing annual report), for an annual total of 16,455 hours.
- In total, 66,277 low-risk entities subject to the FTC's jurisdiction, for an annual total of 17,063 hours.

c. Combined Annual Burden Hours

Based on the foregoing, FTC staff estimates that the 165,494 entities (99,217 high-risk entities + 66,277 low-risk entities) subject to the Red Flags Rule will incur a total annual burden of 358,124 hours (341,061 hours for high-risk entities + 17,063 hours for low-risk entities).

2. Card Issuers Rule: 18,608 Hours.

Affected Public: State-chartered credit unions; general merchandise stores; colleges and universities; telecommunications firms; and certain "creditors."¹⁶

The Card Issuers Rule requires credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request, including notifying the cardholder or using another means of assessing the validity of the change of address. FTC staff estimates that there are currently 18,464 credit and debit card issuers under the FTC's jurisdiction, and there are approximately 36 new entrants each year. Thus, in order to account for this

¹⁴Estimates of new and existing low-risk entities are derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers or other businesses within the FTC's jurisdiction, reduced further to: (1) those that satisfy the Red Flag Rule's definition of "creditor;" and (2) those that are likely to have covered accounts.

¹⁵This number was derived from the average annual number of existing low-risk entities, taking into account that the new entities from year one will become existing entities in year two and the new entities from year two will become existing entities in year three.

¹⁶15 U.S.C. 1681m(e)(4).

annual increase in the number of credit and debit card issuers, FTC staff will assume that, in each year of the 3-year clearance period, there will be a total of 18,500 credit and debit card issuers, which represents the average number of credit and debit card issuers during the 3-year clearance period.

FTC staff believes that each of the 36 new entrants will spend approximately 4 hours developing and implementing policies and procedures to assess the validity of a change of address request. Additionally, FTC staff believes that existing card issuers will likely already have automated the process of notifying the cardholder or are using other means to assess the validity of the change of address, such that implementation will pose no further burden. However, in order to provide a conservative estimate, FTC staff will assume that each existing card issuer will spend approximately one hour each year reviewing and maintaining policies and procedures in order to assess the validity of a change of address request.

Accordingly, FTC staff anticipates that card issuers will incur the following burden:

- 36 new credit and debit card issuers under the FTC's jurisdiction, at an annual average burden of approximately 4 hours per entity, for an annual total of 144 hours.
- 18,464 existing credit and debit card issuers subject to the FTC's jurisdiction, at an average annual burden of approximately 1 hour per entity, for an annual total of 18,464 hours.
- In total, 18,500 credit and debit card issuers subject to the FTC's jurisdiction, for an annual total of 18,608 hours.

3. Address Discrepancy Rule: 21,747 Hours.

Affected Public: Users of consumer reports that are motor vehicle dealers described in section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), 12 U.S.C. 5519, and that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both (below, referenced as "users").

As discussed above, the Address Discrepancy Rule provides guidance on reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency. The FTC Address Discrepancy Rule covers only users of consumer reports that are motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act and that are predominantly engaged in the sale and

servicing of motor vehicles, the leasing and servicing of them, or both.

Assuming that every covered motor vehicle dealer is a user of consumer reports, FTC staff estimates that the Address Discrepancy Rule currently affects approximately 52,211 entities. FTC staff further estimates that there are approximately 2,737 new entrants each year, representing motor vehicle dealers that have not previously implemented procedures to comply with this Rule. Thus, in order to account for the fact that the number of entities that are subject to the FTC's Address Discrepancy Rule will increase during the 3-year clearance period, this burden analysis relies on the average count of entities that will be subject to the Rule during the 3-year clearance period (54,948).

For the 2,737 new entrants, FTC staff estimates that it would take an infrequent user of consumer reports no more than 16 minutes to develop and follow the policies and procedures that it will employ when it receives a notice of address discrepancy, whereas a frequent user may take 1 hour. Taking into account these extremes, FTC staff estimates that, during the first year of the clearance, for the 2,737 new entrants, it will take users of consumer reports an average of 38 minutes (the average of 16 minutes and 60 minutes) to develop and comply with the policies and procedures that they will employ when they receive a notice of address discrepancy.

FTC staff assumes that the 52,211 existing motor vehicle dealers will already have developed the necessary compliance policies and procedures, and will only incur a burden in complying with those policies and procedures. Specifically, FTC staff estimates that it may take an infrequent user of consumer reports no more than 1 minute to comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, whereas a frequent user of consumer reports may take 45 minutes. FTC staff estimates that the average annual burden for the 52,211 existing motor vehicle dealers will be 23 minutes (the average of one minute and 45 minutes).

Thus, for the 2,737 new entrants, the average annual burden for each of them to perform these collective tasks will be 38 minutes; cumulatively, 1,733 hours. For the 52,211 existing motor vehicle dealers, the average annual burden for each of them to perform these collective tasks will be 23 minutes; cumulatively, 20,014 hours. Collectively, the total

burden for the 54,948 motor vehicle dealers will be 21,747 hours.¹⁷

4. Combined Annual Burden Hours

Based on the foregoing, FTC staff estimates that the 238,942 entities subject to the Red Flags, Card Issuers, and Address Discrepancy Rules (165,494 for Red Flags Rule + 18,500 for Card Issuers Rule + 54,948 for Address Discrepancy Rule) will incur a total annual burden of 398,479 hours (358,124 hours for Red Flags Rule + 18,608 hours for Card Issuers Rule + 21,747 hours for Address Discrepancy Rule).

II. Estimated Annual Labor Cost: \$22,350,652

1. Section 114—Red Flags and Card Issuers Rules: \$21,850,471.

FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate the labor costs associated with the Rules with precision, as they entail varying compensation levels of management and/or technical staff among companies of different sizes. In calculating the cost figures, FTC staff assumes that entities' professional technical personnel and/or managerial personnel will create and implement the Program, prepare the annual report, train employees, and assess the validity of a change of address request at an hourly rate of \$58.¹⁸

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the Red Flags and Card Issuers Rules for section 114 is \$21,850,471 (376,732 hours × \$58).

2. Section 315—Address Discrepancy Rule: \$500,181.

¹⁷ The above-noted customer verification requirements and the estimate of 21,747 hours concern 16 CFR 641.1(c). In addition, 16 CFR 641.1(d) requires users that (1) furnish a consumer's address to a consumer reporting agency, and (2) have established a continuing relationship with the consumer, to develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate. The FTC previously estimated that the cumulative burden hours associated with 16 CFR 641.1(d) would be *de minimis*. Thus, the estimate above concerns solely 16 CFR 641.1(c).

¹⁸ This estimate is based on mean hourly wages rates found at <https://www.bls.gov/news.release/pdf/ocwage.pdf> ("Bureau of Labor Statistics, Occupational Employment and Wages—May 2023," April 3, 2024, Table 1, "National employment and wage data from the Occupational Employment and Wage Statistics survey by occupation, May 2023") for the various managerial and technical staff support exemplified above (administrative service managers, computer and information systems managers, training and development managers, computer systems analysts, network and computer systems analysts, computer support specialists) (hereinafter "BLS Table 1").

FTC staff assumes that the policies and procedures for compliance with the Address Discrepancy Rule will be set up by administrative support personnel at an hourly rate of \$23.¹⁹ Based on the above estimates and assumptions, the total annual labor cost for the two categories of burden under section 315 is \$500,181 (21,747 hours × \$23).

3. Combined Annual Labor Costs

Based on the foregoing, FTC staff estimates that the Red Flags, Card Issuers, and Address Discrepancy Rules will result in total annual labor costs of approximately \$22,350,652 (\$21,850,471 + \$500,181).

III. Estimated Annual Capital/Non-Labor Costs: De Minimis

FTC staff believes that the Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., offices and computers) for the information collections described herein.

C. Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before October 21, 2024. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write “Red Flags, Card Issuers, and Address Discrepancy Rules; PRA Comment: FTC File No. P072108” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue

NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled “Confidential,” and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 21, 2024. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see

<https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–18772 Filed 8–21–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund the CDC Foundation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately \$17,000,000, with an expected total funding of approximately \$68,000,000 over a four-year period, to the National Foundation for the Centers for Disease Control & Prevention, Inc (CDCF). The award will use a national public health organization to strengthen the capacity of state, local and territorial public health departments to implement overdose surveillance and prevention strategies through increased staffing support and strengthen efforts to build and maintain public health/public safety partnerships.

DATES: The period for this award will be September 30, 2024, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT:

Cherie Rooks-Peck, National Center of Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy., Atlanta, GA 30341 USA, Telephone: (404) 639–6429, Email: whq4@cdc.gov.

SUPPLEMENTARY INFORMATION: The sole source award will use a national organization to support state, local and territorial health departments in their implementation of evidence-based overdose prevention and response activities and enhance their partnerships with public safety. Through this project, CDC will support the awardee to (1) hire, train, and support staff for positions supporting critical overdose surveillance and prevention activities; (2) build, enhance, maintain vital partnerships with public safety entities; (3) strengthen collaborations between the health

¹⁹ This estimate is based on mean hourly wage rate for office and administrative support occupations found within BLS Table 1 (see *supra* note 19), rounded to the nearest whole dollar amount.

department and other public health and community partners; and (4) provide technical assistance to field staff.

The National Foundation for the Centers for Disease Control & Prevention, Inc (CDCF) is the only entity that can carry out this work because they have earned the trust of health departments and their partners and have been supporting them with this very need by strengthening the public health infrastructure, systems and services for overdose prevention and surveillance efforts for five years through CDC-RFA-OT18-1802. CDCF has a proven track record of successfully recruiting, training, retaining, and building capacity of the public health workforce to support overdose prevention programs such as Overdose Data to Action (OD2A) and the Overdose Response Strategy (ORS) and has established a clear process for infrastructure and capacity building needs. CDCF is widely recognized by public health entities and partners and is the only organization that was created by Congress to mobilize philanthropic and private-sector resources to support the Centers for Disease Control and Prevention's (CDC) critical health protection work which has been critical in allowing this program to support capacity building within state, tribal, local, and territorial health departments and partnership development across all facets of public health.

Summary of the Award

Recipient: National Foundation for the Centers for Disease Control & Prevention, Inc. (CDCF).

Purpose of the Award: The purpose of this award is to support a national organization that will work with state, local and territorial health departments in their implementation of evidence-based overdose prevention and response activities that support OD2A in States, OD2A: LOCAL, and ORS recipients through staffing support and enhance their partnerships with public safety entities. CDCF will also provide training and technical assistance opportunities to field staff to enhance their capacity to support the implementation of evidence-based overdose prevention and response activities, and engage in various evaluation, reporting, communication, and dissemination activities to demonstrate the reach, success, and effectiveness of these capacity building activities.

Amount of Award: \$17,000,000 in Federal Fiscal Year (FFY) 2024 funds, with a total estimated \$68,000,000 for the four-year period of performance, subject to availability of funds.

Authority: This program is authorized under section 392(b)(1) and (2) of the Public Health Service (PHS) Act (42 U.S.C. 280b-0(b)(1) and (2)) and section 301(a) of the PHS Act (42 U.S.C. 241(a)).

Period of Performance: September 30, 2024, through September 29, 2028.

Dated: August 14, 2024.

Terrance Perry,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024-18782 Filed 8-21-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 18-812, NIOSH Member Conflict Review.

Date: October 29, 2024.

Time: 1 p.m.—4 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285-5951; Email: MGoldcamp@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for

both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024-18857 Filed 8-21-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10767]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *September 23, 2024*.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open

for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Patient Access through Application Programming Interfaces (API); *Use:* This final rule is the first phase of policies centrally focused on advancing interoperability and patient access to health information using the authority available to the Centers for Medicare & Medicaid Services (CMS). We believe this is an important step in advancing interoperability, putting patients at the center of their health care, and ensuring they have electronic access to their health information. We are committed to working with stakeholders to solve the issue of interoperability and getting patients access to information about their health care, and we are taking an active approach to move participants in the health care market toward interoperability and the secure and timely exchange of electronic health information by adopting policies for the Medicare and Medicaid programs, the Children’s Health Insurance Program

(CHIP), and qualified health plan (QHP) issuers on the individual market Federally-facilitated Exchanges (FFE). For purposes of this rule, references to QHP issuers on the FFEs excludes issuers offering only stand-alone dental plans (SADPs). Likewise, we are also excluding QHP issuers only offering QHPs in the Federally-facilitated Small Business Health Options Program Exchanges (FF-SHOPs) from the provisions of this rule. This rule requires these impacted payers to maintain and use standards-based APIs to make certain information available to enrollees. CMS regulations at 42 CFR 417.414, 417.416, 422.112(a)(1)(i), and 422.114(a)(3)(ii) require that all Medicare Advantage organizations (MAOs) offering coordinated care plans, network-based private fee-for-service (PFFS) plans, and as well as section 1876 cost organizations, maintain a network of appropriate providers that is sufficient to provide adequate access to covered services to meet the needs of the population served. To enforce this requirement, CMS regulations at § 422.116 outline network adequacy criteria which set forth the minimum number of providers and maximum travel time and distance from enrollees to providers, for required provider specialty types in each county in the United States and its territories. Organizations must be in compliance with the current CMS network adequacy criteria guidance, which is updated and published annually on CMS’s website. This collection of information is essential to appropriate and timely compliance monitoring by CMS, in order to ensure that all active contracts offering network-based plans maintain an adequate network. *Form Number:* CMS-10767 (OMB control number: 0938-1412); *Frequency:* Occasionally; *Affected Public:* Private sector; *Number of Respondents:* 345; *Number of Responses:* 345; *Total Annual Hours:* 589,950. (For policy questions regarding this collection contact Lorraine Doo at 410-786-6597.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-18868 Filed 8-21-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10653]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 21, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10653 Coverage of Certain Preventive Services Under the Affordable Care Act

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Coverage of Certain Preventive Services Under the Affordable Care Act; *Use:* Section 2713 of the PHS Act requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide benefits for certain preventive services without cost sharing, including benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA). The 2018 final regulations titled "Religious Exemptions

and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act" (83 FR 57536) and "Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act" (83 FR 57592) finalized interim final rules that expanded exemptions for religious beliefs and established an exemption for moral convictions for certain entities or individuals whose health plans may otherwise be subject to the mandate of contraceptive coverage. The final regulations extended the exemption to health insurance issuers that hold religious or moral objections in certain circumstances, as well as to additional categories of group health plan sponsors.

The 2018 final regulations also left in place, from previous rulemaking, an accommodation process for objecting entities who wish to use it to avoid contracting, arranging, paying, or referring for contraceptive coverage, but made use of the accommodation optional for such entities. An organization seeking to be treated as an eligible organization may self-certify (by using EBSA Form 700), prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization. The eligible organization must provide a copy of its self-certification to each health insurance issuer that would otherwise provide such coverage in connection with the health plan (for insured group health plans or student health insurance coverage). The issuer that receives the self-certification must provide separate payments for contraceptive services for plan participants and beneficiaries (or students and dependents). For a self-insured group health plan, the self-certification must be provided to its third party administrator, which must provide or arrange separate payments for contraceptive services. An eligible organization may submit a notification to the Department of Health and Human Services (HHS) as an alternative to submitting EBSA Form 700 to the eligible organization's health insurance issuer or third party administrator. A health insurance issuer or third party administrator providing or arranging payments for contraceptive services for participants and beneficiaries in plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations must provide a written notice to such plan participants and beneficiaries (or such student enrollees and covered

dependents) informing them of the availability of such payments.

Under the 2018 final regulations, eligible organizations can revoke the accommodation process if participants and beneficiaries (or student enrollees and covered dependents) receive written notice of such revocation from the issuer or third party administrator, and such revocation will be effective on the first day of the first plan year that begins on or after thirty days after the date of revocation. The Centers for Medicare & Medicaid Services is requesting an extension of OMB approval for the data collections included in this information collection request. HHS will only implement the information collections to the extent they are consistent with regulations that are in effect. *Form Number:* CMS-10653 (OMB control number: 0938-1344); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 60; *Total Annual Responses:* 595,312; *Total Annual Hours:* 72. (For policy questions regarding this collection contact Russell Tipps at 301-869-3502).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-18866 Filed 8-21-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2338]

Predetermined Change Control Plans for Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Predetermined Change Control Plans for Medical Devices." A predetermined change control plan (PCCP) is the documentation describing what modifications will be made to a device and how the modifications will be assessed. This draft guidance provides FDA's current thinking on a policy for PCCPs and recommendations on the information to include in a PCCP in a marketing submission for a device. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 20, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2024-D-2338 for "Predetermined Change Control Plans for Medical Devices." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Predetermined Change Control Plans for Medical Devices" to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:

Jessica Paulsen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1652, Silver Spring, MD 20993-0002, 301-796-6883, or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

While this draft guidance proposes recommendations for PCCPs, the concept of a PCCP is not entirely new to FDA. FDA has previously issued guidance related to this concept, including, for example, how changes in the expiration date for use of a device generally do not require submission of a new premarket notification (510(k)) when the same methods or protocols that are described in the previously cleared 510(k) are used to support the change;¹ and how manufacturers may add certain additional instruments for use with an in vitro diagnostic (IVD) assay that was previously cleared for use with a specific instrument without submission of a new 510(k), in part, by conducting a risk-based assessment and design verification and/or validation activities to assess the use of the IVD assay with the new instrument(s).²

FDA initially introduced the term and description of a PCCP in the "Proposed Regulatory Framework for Modifications to Artificial Intelligence/Machine Learning (AI/ML)-Based Software as a Medical Device (SaMD)—Discussion Paper and Request for Feedback,"³ which described a potential approach to premarket review of PCCPs for AI/ML-based software modifications. On December 29, 2022, section 3308 of the Food and Drug Omnibus Reform Act (FDORA) of 2022, Title III of Division FF of the Consolidated Appropriations Act, 2023, Public Law 117-328 added section 515C "Predetermined Change Control Plans for Devices" to the

¹ See FDA's guidance "Deciding When to Submit a 510(k) for a Change to an Existing Device," available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/deciding-when-submit-510k-change-existing-device>.

² See FDA's guidance "Replacement Reagent and Instrument Family Policy for In Vitro Diagnostic Devices," available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/replacement-reagent-and-instrument-family-policy-in-vitro-diagnostic-devices>.

³ Available at <https://www.fda.gov/media/122535/download?attachment> and <https://www.fda.gov/medical-devices/software-medical-device-samd/artificial-intelligence-and-machine-learning-software-medical-device>.

Federal Food, Drug, and Cosmetic (FD&C) Act (21 U.S.C. 360e–4). Section 515C of the FD&C Act has provisions regarding PCCPs for devices requiring premarket approval or premarket notification. After the enactment of FDORA, FDA issued a draft guidance titled “Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence/Machine Learning (AI/ML)-Enabled Device Software Functions,”⁴ which incorporated stakeholder feedback on the discussion paper and reflected our initial thinking on the statutory change and the types of information we recommend be submitted in a PCCP in a marketing submission for AI/ML-enabled software functions.

This draft guidance provides FDA’s current thinking on a policy for PCCPs and recommendations on the information to include in a PCCP in a marketing submission for a device. This draft guidance recommends that a PCCP for a device describe the planned device modifications, the associated methodology to develop, validate, and implement those modifications, and an assessment of the impact of those

modifications. FDA reviews the PCCP as part of a marketing submission for a device to ensure the continued safety and effectiveness of the device without necessitating additional marketing submissions for implementing each modification described in the PCCP.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Predetermined Change Control Plans for Devices.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and->

radiation-emitting-products. This guidance document is also available at <https://www.regulations.gov>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>. Persons unable to download an electronic copy of “Predetermined Change Control Plans for Devices” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number GUI0007026 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
860, subpart D	De Novo classification process	0910–0844
“Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program”.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756
800, 801, 809, and 830	Medical Device Labeling Regulations; Unique Device Identification.	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
822	Postmarket Surveillance of Medical Devices	0910–0449
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119

Dated: August 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–18828 Filed 8–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Council on Graduate Medical Education

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a change to the 2-day Council on Graduate Medical Education (COGME or Council) public meeting

scheduled for September 12, 2024, and September 13, 2024. The meeting will now be a 1-day meeting held on September 12, 2024. Information about COGME, agendas, and materials for this meeting can be found on the COGME website at <https://www.hrsa.gov/advisory-committees/graduate-medical-edu/meetings>. This notice supersedes information about COGME’s 2024 meetings found in the **Federal Register** notice dated December 15, 2023, Meeting of the Council on Graduate Medical Education.

DATES: The COGME meeting will be held on:

⁴ Available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/>

[marketing-submission-recommendations-predetermined-change-control-plan-artificial.](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/marketing-submission-recommendations-predetermined-change-control-plan-artificial-)

- September 12, 2024, 10:00 a.m.–5:30 p.m. Eastern Time

ADDRESSES: The meeting will be held by teleconference and/or a video conference platform. For updates on how the meeting will be held, visit the COGME website 20 calendar days before the date of the meeting, where instructions for joining meetings will be posted. For meeting information updates, go to the COGME website meeting page at <https://www.hrsa.gov/advisory-committees/graduate-medical-edu/meetings>.

FOR FURTHER INFORMATION CONTACT: Shane Rogers, Designated Federal Officer, Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301-443-5260; or SRogers@hrsa.gov.

SUPPLEMENTARY INFORMATION: COGME provides advice and recommendations to the Secretary of Health and Human Services and Congress on policy, program development, and other matters of significance regarding the issues listed in section 762(a)(1) of the Public Health Service Act. Issues addressed by COGME include the supply and distribution of the physician workforce in the United States, including any projected shortages or excesses; foreign medical school graduates; the nature and financing of undergraduate and graduate medical education (GME); appropriation levels for certain programs under Title VII of the Public Health Service Act; and deficiencies in databases concerning the supply and distribution of the physician workforce and postgraduate programs for training physicians. COGME submits reports to the Secretary of Health and Human Services; the Senate Committee on Health, Education, Labor and Pensions; and the House of Representatives Committee on Energy and Commerce. COGME encourages entities providing GME to conduct activities to voluntarily achieve the recommendations of the Council related to appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathic medicine, and accrediting bodies with respect to the supply and distribution of physicians in the United States; current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties; and issues relating to foreign medical school graduates, including efforts for changes in undergraduate and GME programs.

Since priorities dictate meeting times, be advised that start times, end times, and agenda items are subject to change. For the September 12, 2024, meeting,

agenda items may include, but are not limited to, discussions on team-based care, the Senate Finance Committee's Medicare GME draft policy document, and the 2018 Government Accountability Office's Report on Physician Workforce. Refer to the COGME website listed above for all current and updated information concerning the September meeting, including agendas and meeting materials that will be posted 20 calendar days before the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to COGME should be sent to Shane Rogers using the contact information above at least 5 business days before the meeting date.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024-18791 Filed 8-21-24; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Performance Report

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than September 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 443-3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Performance Report, OMB No. 0906-0016, Revision.

Abstract: This request is for continued approval of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Quarterly Performance Report. The MIECHV Program is administered by the Maternal and Child Health Bureau within HRSA in partnership with the Administration for Children and Families, and provides support to all 56 states and jurisdictions, as well as tribes and tribal organizations. Through a needs assessment, states, jurisdictions, tribes, and tribal organizations identify target populations and select the home visiting service delivery model(s) that best meet their needs. In response to awardee feedback, HRSA is proposing the following revisions to the data collection forms to reduce administrative burden related to this performance report:

- Form 4, Table A.2: Remove Column D: ZIP Codes
- Form 4, Definition of Key Terms: Update definitions for Table A.2
- Form 4: Remove Section B

A 60-day notice published in the **Federal Register** on May 2, 2024, vol. 89, No. 86; pp. 35841–42. HRSA received one comment from an awardee. The commenter discussed the usefulness of collecting ZIP codes of families served by MIECHV-funded sites, suggested considering collection of data on Tables A.2, A.3, and A.4 on an annual basis, and supported the burden estimate. While HRSA recognizes the value of collecting participant ZIP code data, after weighing the significant burden awardees have reported on collecting and reporting this data, and considering that its continued collection of participant county data supports its data needs, HRSA has decided to make no changes to the proposed information

collection tools in response to this comment. HRSA intends to re-assess the current performance measurement system over the next 3 years including identifying opportunities to reduce administrative burden related to performance reporting and will consider frequency of the proposed information collection in the future.

Need and Proposed Use of the Information: HRSA uses quarterly performance information to demonstrate program accountability and continuously monitor and provide oversight to MIECHV Program awardees. The information is also used to provide

quality improvement guidance and technical assistance to awardees and help inform the development of early childhood systems at the national, state, and local level. HRSA is seeking to remove collection of a variable and update key terms given this deletion.

Likely Respondents: MIECHV Program awardees that are states, jurisdictions, and where applicable, nonprofit organizations providing home visiting services within states.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information

requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Form 4: Section A—Quarterly Performance Report	56	4	224	21	4,704
Total	56	.....	224	.....	4,704

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–18840 Filed 8–21–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Annual Meeting of the President's Council on Sports, Fitness & Nutrition

AGENCY: Department of Health and Human Services (HHS), Office of the Assistant Secretary for Health (OASH), Office of Disease Prevention and Health Promotion (ODPHP)

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is giving notice that the President's Council on Sports, Fitness & Nutrition (PCSFN) will hold its annual meeting. The meeting will be open to the public.

DATES: The PCSFN annual meeting will be held on September 6, 2024, from 1:30 p.m. to 4:00 p.m. ET.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Ave. SW, Washington, DC 20001 and accessible online via livestream and recorded for later viewing. Registrants will receive information on how to access it before the meeting.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer for the

PCSFN, Rachel Fisher, MS, MPH, RD; Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420S, Rockville, MD 20852; Phone 240–453–8257; Email fitness@hhs.gov. Additional information is at <https://health.gov/our-work/nutrition-physical-activity/presidents-council>.

SUPPLEMENTARY INFORMATION:

Authority and Purpose: The primary functions of the PCSFN include: (1) Advising the President, through the Secretary, concerning the progress made in carrying out the provisions of Executive Order 13265, as amended by Executive Order 14048, and recommending to the President, through the Secretary, actions to accelerate such progress; (2) recommending to the Secretary, actions to expand opportunities at the national, state, and local levels for participation in sports and engagement in physical fitness and activity (taking into account the HHS Physical Activity Guidelines for Americans, including consideration for youth with disabilities); and (3) functioning as liaisons and spokespersons on behalf of the PCSFN to relevant State, local, and private entities, and sharing information about the work of the PCSFN in order to advise the Secretary regarding opportunities to extend and improve physical activity, fitness, sports, and nutrition programs and services at the State, local, and national levels.

Purpose of the Meeting: At the September 2024 meeting, the PCSFN will share highlights from the previous

year, present the 2024 PCSFN Awards, and discuss priorities for the future. In February 2024, the White House announced a historic partnership between the PCSFN and every major sports league and players association. A panel of representatives from the professional sports partners will discuss activities related to the partnership.

Meeting Agendas: The meeting agenda is in development and will be posted at <https://health.gov/our-work/nutrition-physical-activity/presidents-council/council-meetings> when finalized.

Meeting Registration: The meeting is open to the public and the media. Members of the public who wish to attend the meeting are asked to pre-register. Registration information can be found at <https://health.gov/pcsfn/council-meetings>. HHS will also stream the meeting online via [HHS.gov/live](https://www.hhs.gov/live). Registration for in-person public attendance must be completed before 5:00 p.m. (ET) on Friday, August 23, 2024. To request a sign language interpreter or other special accommodations, please indicate this when registering online or by notifying fitness@hhs.gov, no later than 5:00 p.m. (ET) on Friday, August 23, 2023.

Paul Reed,

Office of Disease Prevention and Health Promotion, Deputy Assistant Secretary for Health.

[FR Doc. 2024–18783 Filed 8–21–24; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Study Section.

Date: November 8, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton Washington, DC-North Bethesda, 904 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Chi-Tso Chiu, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Child Health & Human Development, 6710B Rockledge Drive, Rm. 2127B, Bethesda, MD 20817, (301) 435-7486, chiuc@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-18787 Filed 8-21-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a

meeting of the Board of Scientific Counselors, National Institute of Biomedical Imaging and Bioengineering. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Biomedical Imaging and Bioengineering, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Board of Scientific Counselors.

Date: September 24-25, 2024.

Time: September 24, 2024, 11:00 a.m.-5:15 p.m.; September 25, 2024, 11:00 a.m.-3:00 p.m.

Agenda: To review, discuss, and evaluate individual intramural programs and projects conducted by the National Institute of Biomedical Imaging and Bioengineering, including consideration of personnel qualifications and performance, and the competence of individual investigators.

Address: National Institutes of Health, Bethesda, MD 20892, Virtual Meeting.

Contact Person: Richard D. Leapman, Ph.D., Intramural Scientific Director, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, Building 13, Room 3E 73, Bethesda, MD 20892, (301) 496-2599, leapmanr@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: August 15, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-18831 Filed 8-21-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 SEP Review Meeting.

Date: October 16, 2024.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xiaodu Guo, M.D., Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Boulevard, Rm 7023, Bethesda, MD 20892-5452 (301) 594-4719 guox@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-18826 Filed 8-21-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Aging; Notice of Closed Meeting**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development for Clinicians/Health Professionals Study Section Career Development Awards for Clinicians.

Date: October 29–30, 2024.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Lane, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, M.D., Ph.D., Scientific Review Officer, National Institute of Aging, National Institute of Health, 5601 Fishers Lane, Rm. 2W200, Rockville, MD 20852, 301–496–9374, maurizio.grimaldi@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–18827 Filed 8–21–24; 8:45 am]

BILLING CODE 4140–01–P

Clinical Informatics and Digital Health Study Section.

Date: September 26–27, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 (In-Person Meeting).

Contact Person: Paul Hewett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room, Bethesda, MD 20892, (240) 672–8946, hewettmarxpn@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–18832 Filed 8–21–24; 8:45 am]

BILLING CODE 4140–01–P

Diseases, National Institutes of Health, 6707 Democracy Boulevard, Room: 7345, Bethesda, MD 20892–5452, (301) 594–8895, rushingp@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–18796 Filed 8–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

This meeting will be held in-person and will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should register at: Registration for in-person attendance at the 9:00 a.m. September 23, 2024 CSR Advisory Council meeting | NIH Center for Scientific Review.

The meeting can be viewed remotely via the NIH Videocasting website: <https://videocast.nih.gov/watch=55107>.

Name of Committee: Center for Scientific Review Advisory Council.

Date: September 23, 2024.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Room 160A, Bethesda, MD 20892 (In-person Meeting).

Contact Person: Bruce Reed, Ph.D., Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–9159, reedbr@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentations: NMR/X-ray/Computational Server/EM (S10).

Date: September 19–20, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4390, shan.wang@nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group;

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Data Coordinating Center for the Nonalcoholic Steatohepatitis Clinical Research Network (NASH CRN) Continuation.

Date: October 3, 2024.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney

In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–18838 Filed 8–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Multicenter Clinical Trials; Leveraging Network (U01 Clinical Trial Optional).

Date: October 17, 2024.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vera A. Cherkasova, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892, (240) 478–4580, vera.cherkasova@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–18792 Filed 8–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0433]

National Merchant Mariner Medical Advisory Committee; September 2024 Virtual Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee virtual meeting.

SUMMARY: The National Merchant Mariner Medical Advisory Committee (Committee) will conduct a virtual open meeting to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents, medical standards, and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The virtual meeting will be open to the public.

DATES:

Meeting: The Committee will meet virtually on Wednesday, September 11, 2024, from 9 a.m. until 4 p.m. Eastern Daylight Time (EDT). The virtual meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by the Committee before the virtual meeting, submit your written comments no later than September 3, 2024.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on September 3, 2024, to obtain the specific meeting

information. The number of virtual lines is limited and will be available on a first-come, first-served basis.

The Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email the individual in the **FOR FURTHER INFORMATION CONTACT** section above as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the virtual meeting as time permits, but if you want Committee members to review your comment before the virtual meeting, please submit your comments no later than September 3, 2024. We are particularly interested in comments on the issues in the “Agenda” section below. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0433 in the search box and click “Search”. Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2024–0433. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice, found via link on the homepage <https://www.regulations.gov> and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Moore, Alternate Designated Federal Officer of the National Merchant Mariner Medical Advisory Committee, telephone 202–372–1361 or email pamela.j.moore@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of the virtual meeting is in compliance

with the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C. ch. 10). The Committee is authorized on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* and is codified in 46 U.S.C. 15104. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The Committee advises the Secretary of Homeland Security through the Commandant, Coast Guard on matters relating to: (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda

The National Merchant Mariner Medical Advisory Committee will meet virtually on Wednesday, September 11, 2024:

- (1) Introduction.
- (2) Designated Federal Officer Remarks.
- (3) Remarks from U.S. Coast Guard Leadership.
- (4) Swearing In of New Members.
- (5) Roll call of Committee members and determination of a quorum.
- (6) Acceptance of Minutes from NMEDMAC Meeting 7.
- (7) Presentation of New Task—Task Statement 24–X4, Mariner Credentialing Program (MCP) Transformation.

Following presentation of the new task, the Committee will request public feedback, deliberate on any questions raised, and then vote on acceptance of the task.

- (8) U.S. Coast Guard Presentations.
 - (9) Subcommittee Briefings (six).
- The Subcommittee Chairs for the six subcommittees listed below will brief the Committee on the status of their work on their assigned Task Statement. Following each subcommittee briefing, the Committee will request public feedback, deliberate on any proposed recommendations, and then vote on the proposed recommendations.

The following six subcommittees will brief the Committee.

- (a) Task Statement 21–01, Recommendations on Mariner Mental Health Subcommittee;
- (b) Task Statement 21–02, Communication Between External Stakeholders and the Mariner Credentialing Program Subcommittee;
- (c) Task Statement 23–01, Directed Review of the COMDTINST M16721.48, Merchant Mariner Medical Manual Subcommittee;

- (d) Task Statement 24–01, Sharing Committee Recommendations for Mariner Health and Wellness through Proceedings Magazine Subcommittee;
 - (e) Task Statement 24–02, Review of the 1978 STCW Convention and Code Seafarer Medical Standards Subcommittee; and
 - (f) Task Statement 24–03, Recommendations for Seafarer Training Requirements in Mental Health and Women's Health Subcommittee.
- (10) Committee public comment period (opportunity for public comment regarding the full Committee meeting).
- (11) Closing remarks.
- (12) Adjournment of meeting.

A copy of all meeting documentation will be available at [https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-mariner-medical-advisory-committee-\(nmedmac\)](https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-mariner-medical-advisory-committee-(nmedmac)) no later than September 3, 2024. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments can be made after each subcommittee briefing and at the end of the full Committee meeting. Each public comment in the plenary session will be limited to 3 minutes per speaker. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: August 19, 2024.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2024–18878 Filed 8–21–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0140]

Agency Information Collection Activities; Emergency Revision; Collection of Advance Information From Certain Undocumented Individuals on the Land Border

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: General notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for emergency review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). CBP is

requesting OMB approve this emergency revision by Friday, August 23, 2024.

SUPPLEMENTARY INFORMATION:

Overview of This Information Collection

Title: Collection of Advance Information from Certain Undocumented Individuals on the Land Border

OMB Number: 1651–0140

Abstract: The emergency clearance requested will allow CBP to make certain changes to this information collection, allow the Government of Mexico access to a tool which will permit certain Government of Mexico personnel to validate an individual's CBP One appointment and change the locations in Mexico from which individuals can request appointments via CBP One. These changes are needed to ensure that the process remains a safe, orderly, and humane way to manage migration in the region; and respond to requests from the Government of Mexico—a critical regional partner in these efforts. During the next renewal or revision, CBP will seek public comment as stipulated under 5 CFR 1320.5(d) of the Paperwork Reduction Act.

Dated: August 19, 2024.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–18847 Filed 8–21–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to

adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of December 20, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibt, Chief, Engineering Services

Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibt@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the

Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Palm Beach County, Florida and Incorporated Areas Docket No.: FEMA-B-2102	
City of Boca Raton	Zoning Department, 200 Northwest 2nd Avenue, Boca Raton, FL 33432.
City of Boynton Beach	City Hall, 100 East Ocean Avenue, Boynton Beach, FL 33435.
City of Delray Beach	Building Division, 100 Northwest 1st Avenue, Delray Beach, FL 33444.
City of Lake Worth Beach	Community Sustainability Department, 1900 2nd Avenue North, Lake Worth Beach, FL 33461.
City of Palm Beach Gardens	Engineering Department, 10500 North Military Trail, Palm Beach Gardens, FL 33410.
City of Riviera Beach	Development Services, 600 West Blue Heron Boulevard, Riviera Beach, FL 33404.
City of West Palm Beach	Building Department, 401 Clematis Street, West Palm Beach, FL 33401.
Town of Briny Breezes	Town Hall, 4802 North Ocean Boulevard, Briny Breezes, FL 33435.
Town of Gulf Stream	Town Hall, 100 Sea Road, Gulf Stream, FL 33483.
Town of Highland Beach	Building Department, 3616 South Ocean Boulevard, Highland Beach, FL 33487.
Town of Hypoluxo	Town Hall, 7580 South Federal Highway, Hypoluxo, FL 33462.
Town of Juno Beach	Building Department, 340 Ocean Drive, Juno Beach, FL 33408.
Town of Jupiter	Utilities Department, 210 Military Trail, Jupiter, FL 33458.
Town of Jupiter Inlet Colony	Building and Zoning Department, 50 Colony Road, Jupiter Inlet Colony, FL 33469.
Town of Lake Park	Community Development Department, 535 Park Avenue, Lake Park, FL 33403.
Town of Lantana	Building Department, 504 Greynolds Circle, Lantana, FL 33462.
Town of Manalapan	Town Hall, 600 South Ocean Boulevard, Manalapan, FL 33462.
Town of Ocean Ridge	Building Department, 6450 North Ocean Boulevard, Ocean Ridge, FL 33435.
Town of Palm Beach	Building Division, 360 South County Road, Palm Beach, FL 33480.
Town of Palm Beach Shores	Building Department, 247 Edwards Lane, Palm Beach Shores, FL 33404.
Town of South Palm Beach	Building Department, 3577 South Ocean Boulevard, South Palm Beach, FL 33480.
Unincorporated Areas of Palm Beach County	Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, FL 33411.
Village of North Palm Beach	Community Development Department, 701 US Highway 1, North Palm Beach, FL 33408.
Village of Tequesta	Building Department, 345 Tequesta Drive, Tequesta, FL 33469.

Madison County, Montana and Incorporated Areas
Docket No.: FEMA-B-2351

Town of Ennis	Town Hall, 328 West Main Street, Ennis, MT 59729.
Town of Sheridan	Town Hall, 103 East Hamilton Street, Sheridan, MT 59749.

Community	Community map repository address
Town of Twin Bridges	Town Hall, 104 East 6th Avenue, Twin Bridges, MT 59754.
Unincorporated Areas of Madison County	Madison County Commissioners, 103 West Wallace Street, Virginia City, MT 59755.
Hamilton County, Ohio and Incorporated Areas Docket No.: FEMA-B-2364	
City of Forest Park	City Hall, 1201 West Kemper Road, Forest Park, OH 45240.
Unincorporated Areas of Hamilton County	Hamilton County Department of Planning and Development, 138 East Court Street, Room 800, Cincinnati, OH 45202.
Village of Cleves	Administration Offices, 92 Cleves Avenue, Cleves, OH 45002.
Williamson County, Tennessee and Incorporated Areas Docket Nos.: FEMA-B-2062 and 2366	
City of Brentwood	City Hall, 5211 Maryland Way, Brentwood, TN 37027.
City of Franklin	City Hall, 109 3rd Avenue South, Suite 110, Franklin, TN 37064.
Town of Thompson's Station	Town Hall, 1110 Fountain View Boulevard, Thompson's Station, TN 37179.
Unincorporated Areas of Williamson County	Williamson County Administrative Complex, 1320 West Main Street, Suite 400, Franklin, TN 37064.
Fond du Lac County, Wisconsin and Incorporated Areas Docket No.: FEMA-B-2293	
Unincorporated Areas of Fond du Lac County	City-County Government Center, Code Enforcement Office, 160 South Macy Street, Fond du Lac, WI 54935.
Village of Kewaskum	Village Hall, 204 First Street, Kewaskum, WI 53040.
Carbon County, Wyoming and Incorporated Areas Docket No.: FEMA-B-2102 and FEMA-B-2336	
City of Rawlins	Public Works Department, 915 3rd Street, Rawlins, WY 82301.
Town of Baggs	Town Hall, 130 Penland Street, Baggs, WY 82321.
Town of Dixon	Town Hall, 301 Cottonwood Street, Dixon, WY 82323.
Town of Elk Mountain	Town Hall, 206 Bridge Street, Elk Mountain, WY 82324.
Town of Encampment	Town Hall, 614 McCaffrey Avenue, Encampment, WY 82325.
Town of Hanna	Town Hall, 301 South Adams Street, Hanna, WY 82327.
Town of Medicine Bow	Town Hall, 319 Pine Street, Medicine Bow, WY 82329.
Town of Riverside	Town Hall, 207 West Welton Street, Riverside, WY 82325.
Town of Saratoga	Town Hall, 110 East Spring Avenue, Saratoga, WY 82331.
Town of Sinclair	Town Hall, 300 Lincoln Avenue, Sinclair, WY 82334.
Unincorporated Areas of Carbon County	Carbon County Planning and Development Department, 215 West Bufalo Street, Suite 336, Rawlins, WY 82301.

[FR Doc. 2024-18881 Filed 8-21-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Agency Information Collection Activities: Science and Technology Collection of Qualitative Feedback; Correction****AGENCY:** Science and Technology Directorate (S&T), DHS.**ACTION:** 30-Day notice and request for comments; correction.

SUMMARY: The Department of Homeland Security, S&T, DHS is correcting a notice published in the **Federal Register** on July 08, 2024, regarding the Generic Information Collection: Science and Technology Collection of Qualitative Feedback. will submit the following information collection request (ICR) to

the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The notice listed incorrect dates for the publication of the 60-day notice, the 60-day public comment period. ONE comment was received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until September 23, 2024. This process is conducted in accordance with 5 CFR 1320.10.

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.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: DHS/S&T/OES/CIO/Business Management Office: Heather Erhuanga, heather.erhuanga@hq.dhs.gov, 202–254–6496 (Office).

SUPPLEMENTARY INFORMATION: This notice allows an additional 30 days for public comment on the notice that published July 8, 2024 at 89 FR 55963. This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a S&T collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

S&T invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, S&T would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.

Analysis

Agency: DHS/Science and Technology.

Title: Science and Technology Collection of Qualitative Feedback.

OMB Number: 1640–0018.

Frequency: Once.

Affected Public: Individuals.

Number of Respondents: An estimated 400,000 respondents will take the survey.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 200,000 hours.

Total Burden Cost (capital/startup): there is no cost to participants other than their time.

Total Burden Cost (operating/maintaining): there is no cost to participants other than their time.

Dated: August 7, 2024.

Jon J Robinson,

Deputy Chief Information Officer, Science and Technology Directorate, Department of Homeland Security.

[FR Doc. 2024–17932 Filed 8–21–24; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–40]

30-Day Notice of Proposed Information Collection; HUD Correspondence Tracking System Correspondence Portal, OMB Control No: 2501–NEW

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 23, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street

SW, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 15, 2024 at 89 FR 26181.

A. Overview of Information Collection

Title of Information Collection: HUD Correspondence Tracking System Correspondence Portal.

OMB Approval Number: 2501–NEW.

Type of Request: New collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD collects information about customers for mission-related use that contact the Agency with questions and/or comments. Respondents have the ability to submit their electronic requests through the Public Access Link. The HUD staff then enters the information into the system to support answering the public question/comment. If the inquiry can be answered immediately, then HUD addresses the request. If the inquiry requires follow-up, then the customer's information is collected for a future response. Minimum data is collected to create an interaction history between the individual and HUD, name, home address, email address, or phone number. HUD accepts electronic submissions from respondents through the Public Access Link, which reduces the burden on the public.

Respondents: Individuals who wish to contact the Agency with questions and/or comments.

Estimated Number of Respondents: 582.

Frequency of Response: 1.

Estimated Number of Responses: 582.

Average Hours per Response: 0.33.

Total Estimated Burdens: 192.06.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Office of the Executive Secretariat	582	1	582	0.33	192.06	\$29.76	\$5,715.71

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2024-18850 Filed 8-21-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7086-N-24]

60-Day Notice of Proposed Information Collection: Single Family Premium Collection Subsystem—Periodic (SFPCS-P), OMB Control No.: 2502- 0536

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 21, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; telephone (202) 402-3400 (this is not a toll-free number) or email:

PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone (202) 402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Single Family Premium Collection Subsystem—Periodic (SFPCS-P).

OMB Approval Number: 2505-0536.

OMB Expiration Date: March 31, 2025.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The Single Family Insurance Operations Division (SFIOD) is seeking to account for the data collected from FHA Lenders pertaining to Batch Payment FHA Periodic MIP remittance signups currently on the Single Family Alternate Report Retrieval web page.

Respondents: Businesses or other for-profits.

Estimated Number of Respondents: 649.

Estimated Number of Responses: 7,696.

Frequency of Response: 16.

Average Hours per Response: .15.

Total Estimated Burden: 1,156 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Vance Morris,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2024-18851 Filed 8-21-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR**Geological Survey**

[GX23WC000JU4200; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Next Generation Volcano Hazards Assessment (NGVHA)

AGENCY: Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Jessica Ball, P.O. Box 158, Moffett Field, CA 94035; or by email to jlball@usgs.gov. Please reference OMB Control Number 1028–NEW Next Generation Volcano Hazards Assessments in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Jessica Ball by email at jlball@usgs.gov, or by telephone at 650–439–2597. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 15, 2023 (88 FR 63600). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: This project will collect usability data and user feedback for the purpose of updating and improving USGS Volcano Hazards Assessment (VHAs) and associated hazard communication products. This collection may take place via survey, direct interview, focus groups, listening sessions, workshops, or visual exercises such as eye-movement tracking or map annotation. Collection may be done either in-person or virtually (to reduce travel burdens). The questions asked will be consistent across all various methods of collection. This information will be used to assess partner needs with regard to the VHAs and to assess derivative products created by the USGS Volcano Science Center. It will

ultimately be published in the form of white papers and journal articles as well as being used to create internal templates for the future production (and co-production) of hazard products.

Title of Collection: Next Generation Volcano Hazards Assessments.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Federal, State, local, and Tribal government officials; emergency managers; first responders; community groups; individuals/households.

Total Estimated Number of Annual Respondents: 400 (across all methods).

Total Estimated Number of Annual Responses: 670.

Estimated Completion Time per Response: Varies from 15 minutes to 8 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,035 hours.

Respondent’s Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour

Burden Cost: None.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Christina Neal,

Director, USGS Volcano Science Center.

[FR Doc. 2024–18774 Filed 8–21–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs**

[245A2100DD/AAKC001030/
A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Between the Mille Lacs Band of Ojibwe and the State of Minnesota for Blackjack

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Addendum to Tribal-State Compact for Control of Class III Blackjack on the Mille Lacs Band of Chippewa Reservation in Minnesota for Class III Card Games.

DATES: The compact takes effect on August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant

Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov*; (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes Class III card games in addition to blackjack, adds definitions, regulatory standards for Class III card games, background investigations, and provisions for enforcement and dispute resolution. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–18835 Filed 8–21–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/
A0A501010.999900]

Indian Gaming; Approval by Operation of Law of Amendment to Class III Gaming Compact (Swinomish Indian Tribal Community and the State of Washington)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval by operation of law of the 8th Amendment to the Tribal-State Compact for Class III Gaming between the Swinomish Indian Tribal Community and the State of Washington.

DATES: The Amendment takes effect on August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of Class III gaming activity on the Tribe's Indian lands. *See* 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact

within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C). The IGRA also requires the Secretary to publish in the **Federal Register** a notice of any approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. *See* 25 U.S.C. 2710(d)(8)(D).

The Department's regulations at 25 CFR 293.4 require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect.

The Secretary took no action on the Amendment to the compact between the Swinomish Indian Tribal Community and the State of Washington within the 45-day statutory review period. Therefore, the Amendment is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–18836 Filed 8–21–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/
A0A501010.999900]

Proclaiming Certain Lands as Reservation for the Bay Mills Indian Community of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 37.61 acres, more or less, an addition to the reservation of the Bay Mills Indian Community of Michigan.

DATES: This proclamation was made on August 16, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road, NW, Box #44, Albuquerque, New Mexico 87104, *carla.clark@bia.gov*, (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. The lands are proclaimed to be reservation land for the Bay Mills Indian Community, Michigan in Chippewa County, Michigan.

Bay Mills Indian Community, Michigan, Chippewa County, Michigan, Legal Descriptions Containing 37.61 Acres, More or Less

Parcel A

The East $\frac{1}{3}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, Section 31, Township 47 North, Range 2 West.

Parcel B

The West $\frac{1}{2}$ of the East $\frac{2}{3}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 31, Township 47 North, Range 2 West.

Parcel C

The West $\frac{1}{3}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, Section 31, Township 47 North, Range 2 West.

Also Described as

The Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, Section 31, Township 47 North, Range 2 West.

The above-described lands contain a total of 36.71 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2024–18839 Filed 8–21–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–IEV–NPS0037907;
22XP103905 PPWOHAFCD0
PMO00HF05.D00000; OMB Control Number
1024–NEW (UniD)]

Agency Information Collection Activities; The UniDescription Project: Audio Description Research

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular ICR by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR-ICCO), 13461 Sunrise Valley Drive (MS-244) Herndon, VA 20171; or at phadrea_ponds@nps.gov (email). Please reference OMB Control Number 1024-NEW (UniD) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Michele Hartley, Media Accessibility Coordinator at michele_hartley@nps.gov (email) or at 304-535-6083 (telephone), or contact Brett Oppegaard at brett.oppegaard@hawaii.edu (email). Please reference OMB Control Number 1024-NEW (UniD) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1) we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A Federal Register notice with a 60-day public comment period soliciting comments on this collection of information was published on February 21, 2023 (88 FR 10537). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Sections 504 and 508 of the Rehabilitation Act of 1973, require equivalent access for persons with disabilities to public facilities, learning materials, and other types of information resources. Traditionally, National Park Service brochures combine text, illustrations, photographs, and maps to provide an overview of the park's history and significance. Nearly 80% of park visitors report looking at the park's printed brochure as the most common activity at any NPS site.

Alternative formats that make equivalent experiences and information in print materials accessible to people who are blind, have low vision or have a print disability are limited or non-existent. The NPS is working with the UniDescription research project at the University of Hawaii to conduct focus groups and user evaluations of digital content, web tools, and mobile apps

designed to address and develop alternate formats that will make equivalent experiences and information in print materials accessible.

Title of Collection: The UniDescription Project: Audio Description Research.

OMB Control Number: 1024-NEW (UniD).

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General Public.

Total Estimated Number of Annual Responses: 132.

Estimated Completion Time per Response: Varies depending on the type of respondent (Initial contact 15 minutes, Onsite Activity 60 minutes, Focus Group Sessions 60 minutes, Online survey 60 minutes).

Total Estimated Number of Annual Burden Hours: 108.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time, on occasions.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

*Information Collections Clearance Officer,
National Park Service.*

[FR Doc. 2024-18863 Filed 8-21-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2024-0040]

Commercial Leasing for Wind Power Development on the Central Atlantic Outer Continental Shelf—Central Atlantic 2—Call for Information and Nominations

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Call for information and nominations; request for comments.

SUMMARY: This call for information and nominations (Call or notice) invites public comment on, and assesses interest in, possible commercial wind energy leasing on the Outer Continental Shelf (OCS) offshore the U.S. central Atlantic coast as part of a second round of planning for commercial leasing in the region (hereinafter, Central Atlantic

2). The Bureau of Ocean Energy Management (BOEM) will consider information received in response to this Call to determine whether to schedule a competitive lease sale or to issue a noncompetitive lease for any portion of the area described in this Call (Call Area). Those interested in providing comments or information regarding site conditions, resources, and multiple uses in close proximity to or within the Call Area should provide the information requested in section 8, “Requested Information from Interested or Affected Parties,” under the “Supplementary Information” heading of this Call. Those interested in leasing within the Call Area for a commercial wind energy project should provide the information described in section 9, “Required Nomination Information,” under “Supplementary Information.” BOEM may or may not offer a lease for a commercial offshore wind energy project within the Call Area after further government consultations, public participation, and environmental analyses.

DATES: BOEM must receive your interest in or comments on commercial leasing within the Call Area no later than October 21, 2024. Late submissions may not be considered.

ADDRESSES: Please submit nomination information for commercial leasing as discussed in section 9 entitled, “Required Nomination Information,” electronically via email to renewableenergy@boem.gov or by hard copy by mail to the following address: Seth Theuerkauf, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166. If you elect to mail a hard copy, also include an electronic copy on a portable storage device. Do not submit nominations via the Federal eRulemaking Portal. BOEM will list the qualified parties that submitted nominations and the aggregated locations of nominated areas on its website after review of the nominations.

Please submit all other comments and information by either of the following two methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the search box at the top of the web page, enter BOEM–2024–0040 and then click “search.” Follow the instructions to submit public comments and to view supporting and related materials.

2. *By mail to the following address:* Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166.

Treatment of confidential information is addressed in section 10 of this notice entitled, “Protection of Privileged, Personal, or Confidential Information.” BOEM will post all comments received on [regulations.gov](https://www.regulations.gov) unless labeled as confidential.

FOR FURTHER INFORMATION CONTACT: Seth Theuerkauf, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road (VAM–OREP), Sterling, Virginia 20166. (202) 368–0644 or Seth.Theuerkauf@boem.gov.

For information regarding qualification requirements to hold an OCS wind energy lease, contact Gina Best, BOEM Office of Renewable Energy Programs, at Gina.Best@boem.gov or (703) 787–1341.

SUPPLEMENTARY INFORMATION:

1. Authority

This Call is published under subsection 8(p)(3) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1337(p)(3), and its implementing regulations at 30 CFR 585.210 and 585.211.

2. Purpose

The OCSLA requires BOEM to award leases competitively unless BOEM determines that there is no competitive interest (43 U.S.C. 1337(p)(3)). The primary purpose of this Call is to collect further information and feedback on industry interest, site conditions, resources, and ocean uses within, and surrounding, the Call Area.

An essential part of BOEM’s renewable energy leasing process is working closely with Federal agencies, Tribes, State and local governments, industry, and ocean users to identify areas that may be suitable for potential offshore wind development to power the Nation. BOEM has not yet determined which areas, if any, within the Call Area may be offered for lease. Your input is essential and will help BOEM determine areas that may be suitable for offshore wind energy development. There will be multiple opportunities to provide feedback throughout the renewable energy planning and leasing process. A detailed description of the Call Area may be found below in section 6, “Description of Call Area.” For more information about BOEM’s competitive and noncompetitive leasing processes, please see section 4, “BOEM’s Planning and Leasing Process.”

3. Background

The Energy Policy Act of 2005 amended OCSLA by adding subsection

8(p)(1)(C), which authorizes the Secretary of the Interior (Secretary) to grant leases, easements, and rights-of-way on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas, including renewable energy sources. The Secretary delegated this authority to the BOEM Director. On April 29, 2009, the Department of the Interior (Department) published regulations entitled, “Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf,”¹ which were subsequently re-codified at 30 CFR part 585.²

On May 15, 2024, the Department amended its offshore renewable energy regulations through the publication of the final Renewable Energy Modernization Rule.³ This final rule reduces regulatory burdens and streamlines processes, incorporates recommendations from stakeholders, and will assist the U.S. in reaching its climate and renewable energy goals. It also eliminates unnecessary requirements for the deployment of meteorological buoys; increases survey flexibility; improves the project design and installation verification process; establishes a public Renewable Energy Leasing Schedule; reforms BOEM’s renewable energy auction regulations; tailors financial assurance requirements and instruments; clarifies safety management system regulations; revises other provisions; and makes technical corrections. The Renewable Energy Modernization Rule became effective on July 15, 2024.

In March 2021, the Biden-Harris administration established a goal to deploy 30 gigawatts (GW) of offshore wind energy capacity by 2030. BOEM is committed to this ambitious goal by responsibly fostering the growth of offshore wind energy capacity and participating in collaborative, data-based planning to inform decisions involving shared ocean resources and the many users that depend on them.

BOEM appreciates the importance of coordinating its planning with other OCS users, regulators, and relevant Federal agencies including, but not limited to, the U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), the U.S. Army Corps of Engineers (USACE), the U.S. Coast Guard (USCG), the National Aeronautics and Space Administration (NASA), the National Oceanic and Atmospheric

¹ 74 FR 19638 (April 29, 2009).

² 76 FR 64432 (October 18, 2011).

³ 89 FR 42602 (May 15, 2024).

Administration (NOAA), and the Department of Defense (DOD). BOEM also regularly coordinates with, and requests input from, the Mid-Atlantic Regional Council on the Ocean (MARCO) and Northeast Regional Ocean Council (NROC), which includes federally recognized Tribes, Federal and State agencies, and fishery management councils. BOEM also uses information contained in the Mid-Atlantic and Northeast Ocean Data Portals⁴ in its decision-making, among other sources of information, because the portal includes maps of marine life, habitat areas, cultural resources, transportation links, fishing areas, and other human uses that must be considered when offshore energy or other infrastructure projects are proposed.

a. Central Atlantic Task Force

In 2020 and 2021, BOEM received requests from the Commonwealth of Virginia and the State of Maryland,

⁴ The Mid-Atlantic and Northeast Ocean Data Portals (maintained by the Mid-Atlantic Committee on the Ocean [<http://portal.midatlanticocean.org/>] and Northeast Regional Ocean Council [<https://www.northeastoceanandata.org/>], respectively) draw upon data from the MarineCadastre.gov national data portal, which was developed through a partnership between NOAA and BOEM. MarineCadastre.gov is an integrated marine information system that provides data, tools, and technical support for ocean and Great Lakes planning, designed specifically to support renewable energy siting on the OCS, but also used for other ocean-related efforts and recognized by regional ocean governance groups as the central place for authoritative Federal ocean data, metadata, and map services.

respectively, to convene a regional renewable energy task force and begin the process that could lead to a lease sale. In response, BOEM established the Central Atlantic Intergovernmental Renewable Energy Task Force to facilitate coordination among relevant Federal agencies and Tribal, State, and local governments throughout the leasing process. The first task force meeting was held virtually on February 16, 2022, with the most recent task force meeting occurring on October 10, 2023. Materials from the task force meeting are available on the BOEM website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

b. Central Atlantic 1 Planning and Leasing

On April 29, 2022, BOEM published the “Call for Information and Nominations-Commercial Leasing for Wind Power Development on the Central Atlantic Outer Continental Shelf (OCS)” (hereinafter, Central Atlantic 1; BOEM–2022–0023) in the **Federal Register**.⁵ The Central Atlantic 1 Call Area (Figure 1) included six distinct areas (known as areas A–F) offshore the Commonwealth of Virginia and the States of Delaware, Maryland, and North Carolina, roughly bounded to the north by the mouth of Delaware Bay and to the south by Cape Hatteras, and comprising approximately 3,897,388 acres (1,577,217 hectares). On

⁵ 87 FR 25539 (April 29, 2022).

November 16, 2022, BOEM announced eight draft Wind Energy Areas (WEAs) within the Central Atlantic 1 Call Area covering approximately 1.7 million acres and located approximately 19 to 77 nautical miles off the Central Atlantic coast. On July 31, 2023, BOEM announced three final WEAs offshore Delaware, Maryland, and Virginia, including WEA A–2 (101,767 acres, located 26 nautical miles (nm) from Delaware Bay), WEA B–1 (78,285 acres, located 23 nm from Ocean City, MD), and WEA C–1 (176,506 acres, located 35 nm from Chesapeake Bay). The three final WEAs are in comparatively shallow water; BOEM deferred a decision on identification of additional final WEAs in deepwater areas (*i.e.*, those within Central Atlantic 1 Call Area areas E and F) until further study can be completed. On December 11, 2023, BOEM published the Proposed Sale Notice for the Central Atlantic region, including Lease Area A–2 (comprised of the entirety of WEA A–2) and Lease Area C–1 (comprised of the entirety of WEA C–1), but excluding WEA B–1 due to the significant cost and mitigation needed to accommodate offshore wind construction and operations in that area. BOEM published a Final Sale Notice on July 1, 2024, which included OCS–A 0557 (Lease Area A–2) and OCS–A 0558 (Lease Area C–1). BOEM held the lease sale (ATLW–10) for these two lease areas on August 14, 2024.

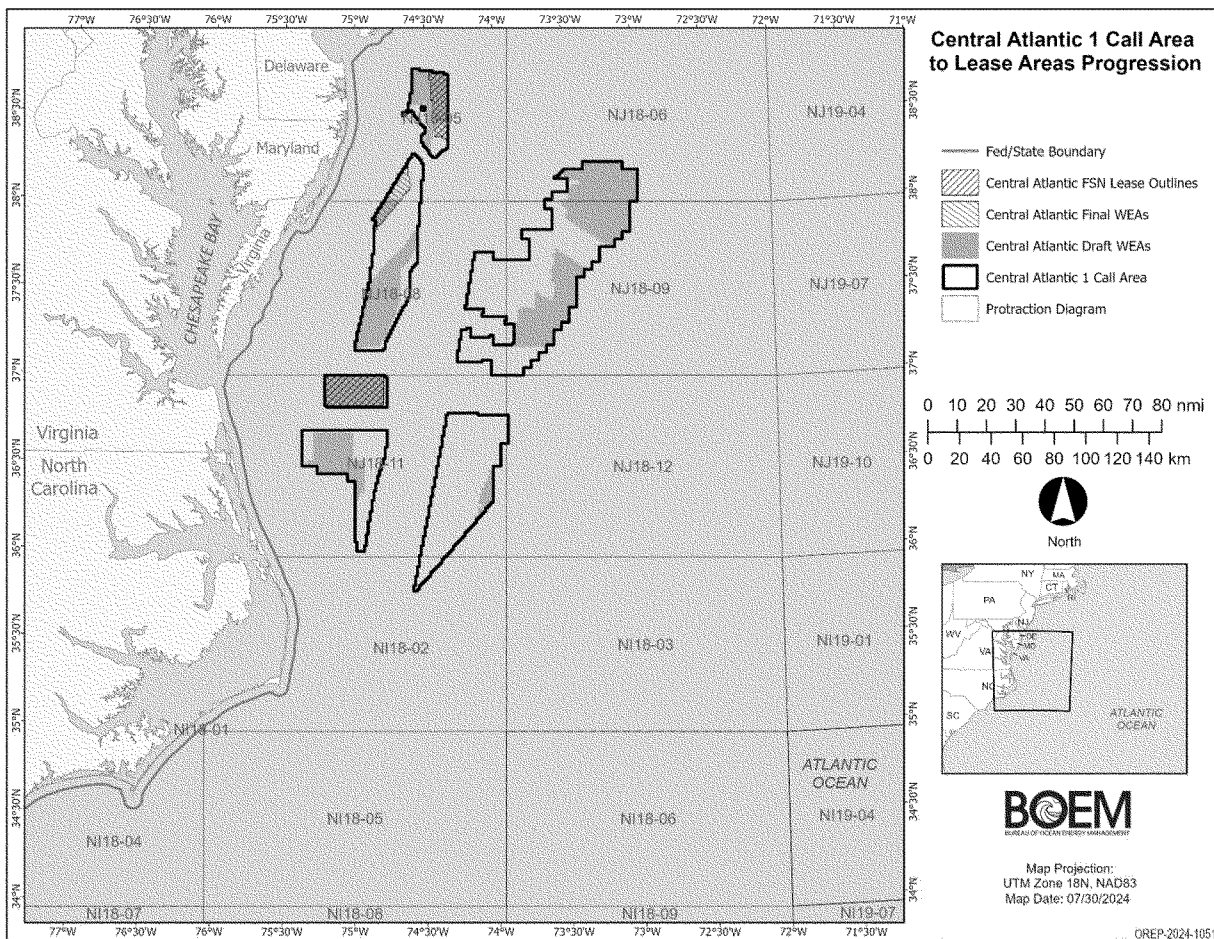


Figure 1: Outcomes of the Central Atlantic 1 lease planning process, including the original Central Atlantic 1 Call Area, draft Wind Energy Areas (WEAs), final WEAs, and Final Sale Notice (FSN) areas.

c. Central Atlantic 2 Planning and Leasing

Throughout early 2024, BOEM held a series of meetings with States throughout the Central Atlantic region, including North Carolina, Virginia, Maryland, Delaware, and New Jersey to determine interest from the States in pursuing additional planning for offshore wind lease areas to support each States' offshore wind energy goals through Central Atlantic 2. The State of North Carolina indicated interest in identification of additional lease areas to accommodate 3.0 GW of capacity (*i.e.*, on the order of approximately 185,000 acres⁶) to fulfill its remaining

offshore wind energy goal of 8.0 GW by 2040. The State of Maryland indicated interest in identification of additional lease areas to accommodate between 1.5–4.0 GW (*i.e.*, between approximately 95,000–250,000 acres⁶) of remaining need to meet its 8.5 GW by 2031 goal. The State of Delaware's General Assembly recently passed the Delaware Energy Solutions Act (which Governor John Carney is expected to sign) that authorizes the State Energy Office to procure up to 1.2 GW (*i.e.*, on the order of approximately 75,000 acres⁶) of offshore wind energy through one or multiple offshore wind projects, either as standalone projects or in partnership with other states' project. North Carolina indicated interest in analysis of areas farther south than Cape Hatteras, which was the original southern boundary of the Central Atlantic 1 Call Area, towards a full evaluation of the OCS offshore of North Carolina. Maryland indicated potential interest in exploring areas farther north of Delaware Bay, which was the original northern boundary of the Central Atlantic 1 Call Area. Additionally, Maryland expressed interest in further analysis of the deepwater portions of the

Central Atlantic 1 Call Area (*i.e.*, areas E and F).

4. BOEM's Planning and Leasing Process

a. Determination of Competitive Interest

Subsection 8(p)(3) of OCSLA states that "the Secretary shall issue a lease, easement, or right-of-way. . . on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest."

If BOEM determines that competitive interest exists in acquiring a lease to develop offshore wind energy and the areas within the Call Area are appropriate to lease, BOEM may hold one or more competitive lease sales for those areas. If BOEM holds a lease sale, all qualified bidders, including bidders that did not submit a nomination in response to this Call, will be able to participate in the lease sale.

BOEM reserves the right to refrain from offering for lease any areas that are nominated as a result of this Call and to modify nominated areas before offering them for lease.

⁶ Acreage estimates are based upon power density estimates of 4.0 megawatts (MW) per square kilometer, as described in the U.S. Department of Energy Office of Energy Efficiency and Renewable Energy's Offshore Wind Market Report: 2023 Edition, available at: <https://www.energy.gov/sites/default/files/2023-09/doe-offshore-wind-market-report-2023-edition.pdf>.

b. Competitive Leasing Process

BOEM will follow the steps required by 30 CFR 585.211 through 585.226 if it decides to proceed with the competitive leasing process after analyzing the responses to this Call. Those steps are:

(1) Area Identification: Based on the information received in response to this Call, BOEM will identify areas for environmental analysis and consideration for leasing. Those areas will constitute WEAs and will be subject to environmental analysis in consultation with appropriate Federal agencies, federally recognized Tribes, State and local governments, and other interested parties. Before finalizing the WEAs, BOEM has committed to publishing draft WEAs and will hold a 30-day comment period with a docket on [regulations.gov](https://www.regulations.gov).

(2) Proposed Sale Notice (PSN): If BOEM decides to proceed with a competitive lease sale within the WEAs, BOEM will publish a PSN in the **Federal Register** with a comment period of not less than 30 days. The PSN will describe the areas BOEM intends to offer for leasing, the proposed conditions of a lease sale, the proposed auction format of the lease sale, and the lease instrument, including the proposed lease addenda. Additionally, the PSN will describe the criteria and process for evaluating bids in the lease sale.

(3) Final Sale Notice (FSN): After considering the comments on the PSN and completing its environmental analysis and consultations, if BOEM decides to proceed with a competitive lease sale, it will publish an FSN in the **Federal Register** at least 30 days before the date of the lease sale.

(4) Bid Submission and Evaluation: Following the publication of the FSN in the **Federal Register**, BOEM will offer the lease area(s) through a competitive sale process using procedures specified in the FSN. BOEM will review the sale, including bids and bid deposits, for technical and legal adequacy. BOEM will ensure that bidders have complied with all applicable regulations. BOEM reserves the right to reject all bids and to withdraw an offer to lease an area, even after bids have been submitted.

(5) Issuance of a Lease: Following identification of the winning bidder on a lease area, BOEM will notify that bidder and provide the lease documents for signature.

5. Development of the Call Area

BOEM engaged in discussions throughout early 2024 with several Federal agencies (*i.e.*, NOAA, USFWS, DOD, NASA, and USCG) and State governments (*i.e.*, New Jersey, Delaware, Maryland, Virginia, and North Carolina) before deciding upon the Call Area boundaries. Multiple Central Atlantic States expressed interest to BOEM in analyzing the compatibility of areas outside of the boundaries of the original Central Atlantic 1 Call Area for potential offshore wind leasing. BOEM also received feedback during the Central Atlantic 1 planning process from stakeholders and ocean users requesting that areas not be removed early in the planning process so additional input could be provided to BOEM prior to large area removals. Furthermore, given the breadth of relevant spatial data representing marine natural resources and ocean uses available in the Central Atlantic region, it was determined that a broadened Central Atlantic 2 Call Area would permit robust application of the suitability model to identify the least conflicted areas in the region. Therefore, BOEM's strategy for the Central Atlantic 2 Call Area is to start with an expanded geographic area and limit the removal of areas with potential conflicts until after public comment and engagement on the Call Area has occurred.

BOEM defined the northern boundary of the Call Area as the area abutting the southernmost extent of the Call Area described in the "Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight—Call for Information and Nominations" (BOEM-2018-0004), published in the **Federal Register**.⁷ Given the interest expressed from the State of North Carolina in analyzing the potential compatibility of the full OCS offshore of North Carolina, BOEM defined the southern boundary of the Call Area by extending the state line between North and South Carolina eastward into the offshore OCS. The eastern boundary was defined by the 60-meter bathymetric contour given depth limitations associated with the installation of typical fixed monopile foundations for offshore wind turbines.⁸ The western boundary was defined as the line located three nm from the coastline, where the OCS begins and all submerged lands lying seaward are under federal jurisdiction.

BOEM removed only a limited number of areas from the Call Area, including areas in which offshore wind

energy development cannot occur as a result of law, jurisdiction, or technical considerations. These include:

- Units of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument (§ 585.204);
- Existing Traffic Separation Schemes (TSS), fairways, or other internationally recognized navigation measures;
- Existing BOEM lease areas; and
- Unsolicited lease request areas that are the subject of a separate request for competitive interest.

BOEM recognizes that the Call Area includes areas that conflict with existing ocean uses (*e.g.*, fishing, shipping) and sensitive habitats that are important to the conservation and recovery of protected species, including specific areas about which BOEM has previously received feedback from the Central Atlantic Task Force and the public during the Central Atlantic 1 process. BOEM intends to integrate both: (a) previous feedback and (b) additional information requested on the areas in this notice, within the suitability model to assist in identifying areas appropriate for WEAs through the next phase of the planning process. To synthesize and communicate feedback BOEM received during the Central Atlantic 1 process and that BOEM is further considering as part of the Central Atlantic 2 process, BOEM developed: (1) a series of sector-specific maps identifying specific areas of known concern within the Central Atlantic 2 Call Area, and (2) a Central Atlantic Data Inventory that includes specific spatial data that represent natural resources and ocean uses in the Central Atlantic region that BOEM is considering for inclusion in the suitability model. These resources can be accessed at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. BOEM welcomes comments and further feedback on either of these resources, including the specific questions included in section 8, "Requested Information from Interested or Affected Parties."

6. Description of Call Area

The Call Area consists of 13,476,805 acres located off the coasts of New Jersey, Delaware, Maryland, Virginia, and North Carolina (see Figure 1). The map depicting the Call Area (Figure 1), a spreadsheet listing its specific OCS blocks, and an Esri shapefile are available for download on the BOEM website at <https://www.boem.gov/>

⁷ 83 FR 15602 (April 11, 2018).

⁸ Musial, W., Spitsen, P., Duffy, P., Beiter, P., Shields, M., Hernandez, D. M., Hammond, R., Marquis, M., King, J., & Sathish, S. (2023). Offshore

Wind Market Report: 2023 Edition. <https://doi.org/10.2172/2001112>.

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central-atlantic.

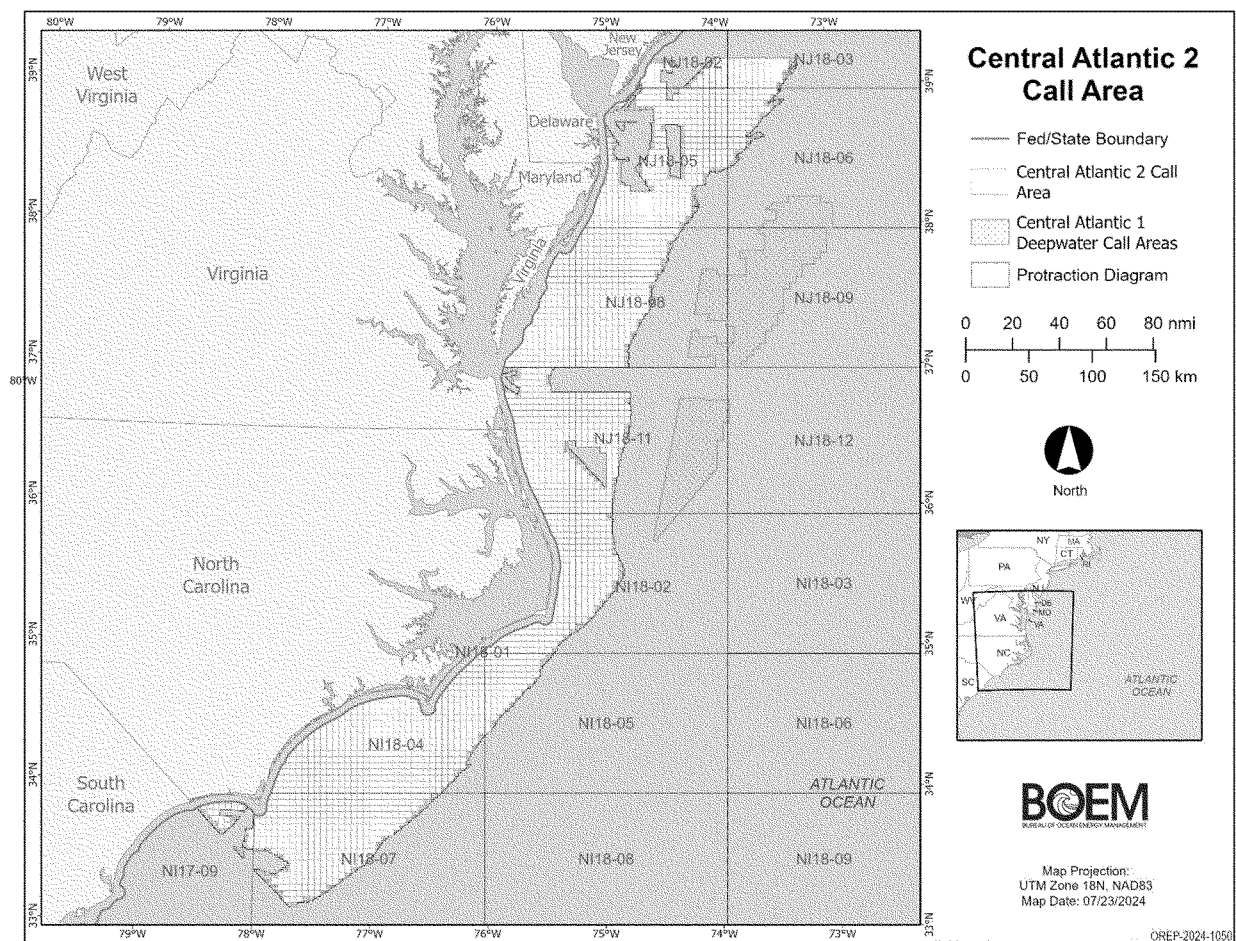


Figure 2. Central Atlantic 2 Call for Information and Nominations Area

7. Central Atlantic 2 Next Steps

The Call Area identifies broad portions of the OCS offshore the U.S. central Atlantic coast for further analysis. That analysis includes commercial nominations and public comments submitted in response to this Call so that potential use conflicts can be analyzed during the next step in the leasing process: the designation of specific wind energy areas (Area Identification). BOEM's analysis during Area Identification will evaluate the appropriateness of the Call Area for offshore wind energy development, balanced against potential ocean user conflicts. BOEM will consider information from environmental reviews, consultations, public comments, and continued coordination with the Central Atlantic Intergovernmental Renewable Energy Task Force, which includes relevant Federal, Tribal, State, and local

governments. BOEM anticipates designating specific WEAs within the Call Area and developing lease terms and conditions to mitigate any possible adverse impacts from leasing, site assessment, construction, and operational activities.

a. BOEM/National Centers for Coastal Ocean Science (NCCOS) Partnership

In September 2022, BOEM announced enhancements to its Area Identification process.⁹ One of these enhancements was a partnership with NCCOS to employ a spatial model that analyzes entire marine ecosystems to identify the least conflicted areas for wind energy sites. NCCOS and BOEM are leveraging a team of expert spatial planners, marine and fisheries scientists, project coordinators, environmental policy analysts, and other subject matter

⁹ BOEM Enhances its Processes to Identify Future Offshore Wind Energy Areas. (September 16, 2022). Bureau of Ocean Energy Management. <https://www.boem.gov/newsroom/notes-stakeholders/boem-enhances-its-processes-identify-future-offshore-wind-energy-areas>.

experts to develop the Central Atlantic Offshore Wind Suitability Model (suitability model). The suitability model will build upon the model that was developed to inform the most recent round of leasing in the Central Atlantic region, including a geographic expansion of the modeling domain to reflect the broadened Call Area and an update to underlying spatial data to reflect developments in best available spatial data and feedback provided via the Central Atlantic Task Force and public comments during Central Atlantic 1. To review the final report that describes the suitability model developed for Central Atlantic 1, please visit: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic-appendix-b-wea-final-report-nccos>.

BOEM and NCCOS intend to use the suitability modeling methods that were previously applied to offshore wind energy siting efforts in the Gulf of Mexico, Gulf of Maine, and Central Atlantic regions to inform development of Central Atlantic 2 draft WEAs.

NCCOS's spatial modeling approach provides a powerful tool for identifying areas that are most suitable for offshore wind energy development. Additionally, BOEM intends for this partnership and modeling approach to enhance transparency, improve engagement, and provide a consistent, reproducible methodology for understanding and deconflicting ocean space.

b. Memorandum of Understanding (MOU) Between BOEM and the State of Maryland

On June 7, the Department announced¹⁰ an MOU between BOEM and the State of Maryland to support the coordinated development of wind energy generation offshore Maryland. Under the MOU, BOEM and the State of Maryland will continue ongoing efforts to explore and identify potential areas for offshore wind leasing, including through the Central Atlantic 2 planning and leasing process. BOEM will also continue to convene the Central Atlantic Task Force with the State and other government stakeholders to enhance collaboration and address challenges associated with the siting of offshore wind leasing areas. These efforts will support and augment existing and planned coordination for developing offshore wind energy in the Central Atlantic region.

c. Coordination With DOD

The DOD conducts offshore testing, training, and operations within portions of the Call Area. BOEM intends to refine the Call Area during the Area Identification process based on DOD's assessment of compatibility between commercial offshore wind energy development and DOD activities. BOEM is working with the DOD and will continue collaborating closely with DOD to update the Central Atlantic's offshore wind energy compatibility assessment. That assessment may identify wind energy exclusion areas and/or areas that may require site-specific conditions and stipulations to ensure offshore wind energy facilities are compatible with DOD activities. These stipulations may include, among others: hold and save harmless agreements; mandatory coordination with DOD on specified activities; restrictions on electromagnetic emissions; and evacuation procedures from the lease area for safety reasons

when notified by the DOD. BOEM may remove from leasing consideration any OCS blocks identified as incompatible with DOD's activities in the updated assessment.

d. Coordination With USCG

On January 19, 2024, USCG published a notice of proposed rulemaking to establish shipping safety fairways ("fairways") along the Atlantic Coast of the United States previously identified in the Atlantic Coast Port Access Route Study (ACPARS) (USCG–2019–0279–0032) in the **Federal Register**.¹¹ The comment period closed on May 17, 2024. BOEM is aware of potential conflicts between the Call Area and the proposed fairways published in the proposed rulemaking. BOEM is working closely with USCG to ensure WEAs and fairways identified in the final rule are deconflicted during Area Identification and subsequent phases of the leasing process.

e. Coordination With NASA

NASA conducts a wide range of launch and flight operations from the Wallops Flight Facility (WFF) located on Wallops Island, Virginia. Operations extend over a wide-range of azimuths from WFF for launch vehicles that fly from low elevations just above the sea surface to suborbital missions and launches up to low-Earth orbit. NASA has previously communicated to BOEM a composite hazard area for most missions launched from WFF. BOEM is aware of potential conflicts between the Call Area and the WFF hazard area and is working closely with NASA to deconflict possible WEAs relative to the hazard area.

f. Coordination With NPS

NPS manages a number of units of the National Park System within close proximity to the Call Area, including Great Egg Harbor Scenic and Recreational River, Assateague Island National Seashore, Colonial National Historical Park, Wright Brothers National Memorial, Fort Raleigh National Historical Site, Cape Hatteras National Seashore, and Cape Lookout National Seashore. NPS also has program responsibilities for National Historic Landmarks (NHLs) and National Natural Landmarks (NNLs) adjacent to the Call Area. NPS has previously provided information to BOEM regarding NPS units, NHLs, and NNLs as part of the Central Atlantic 1 planning process, and BOEM will further coordinate with NPS to

deconflict possible WEAs relative to these NPS assets.

8. Requested Information From Interested or Affected Parties

BOEM requests comments regarding the following features, activities, mitigations, or concerns within or around the Call Area, as well as the Central Atlantic 1 deepwater Call Area areas (*i.e.*, areas E and F; see 'c' below). Commenters should be as specific and detailed as possible to help BOEM understand and address the comments. Where applicable, spatial information should be submitted in a format compatible with Esri ArcGIS (Esri shapefile or Esri file geodatabase) in the NAD 83 geographic coordinate system.

a. BOEM and NCCOS Suitability Modeling

i. In partnership with NCCOS (described in section 7.a), BOEM published a list of the datasets it plans to use to inform the WEA suitability model. The datasets are available at <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. BOEM requests comments on the identified datasets and information responsive to the following questions: Are these data the best available? Do the data reflect the most relevant and important time series and ranges? Are there any known gaps or limitations in the data?

ii. Transmission: BOEM requests recommendations on relevant spatial data for areas between the Call Area and the coastline to inform suitability modeling of potential transmission cable corridors. This work would build upon the data and approach used in the WEA site suitability model. Working with our partners in Tribal, State, and local governments will be essential for procuring available data and identifying data gaps.

iii. Wind Resource and Developability: BOEM is aware of multiple recent spatial data developments that are under consideration for inclusion within the suitability model to inform wind resource assessment and potential developability of locations within the Call Area. Specifically, BOEM is aware of: (1) a 2024 update to the National Renewable Energy Laboratory's (NREL) Levelized Cost of Energy dataset for offshore wind; (2) a 2023 update to NREL's Atlantic wind speed data; and (3) a Joint Industry Project funded by DOE, and led by NREL and Cornell University, with additional funding and participation from offshore wind developers and BOEM to assess the

¹⁰ Biden-Harris Administration Leaders Announce Steps to Advance Offshore Wind Progress in Maryland. (June 7, 2024). Department of the Interior. <https://www.doi.gov/pressreleases/biden-harris-administration-leaders-announce-steps-advance-offshore-wind-progress>.

¹¹ 89 FR 3587 (January 19, 2024).

wake effect between adjacent offshore wind farms.

b. Call Area: Areas and Spatial Data Requiring Further Analysis

Through the Central Atlantic 1 planning process BOEM received feedback from the Central Atlantic Task Force and the public through meetings and comment periods. The numbered non-exhaustive list below reflects areas and spatial data that BOEM heard about most frequently through feedback. Note that a description of areas and spatial data reflective of known DOD, USCG, NASA, and NPS concerns are described in sections 7.c–f.

BOEM currently plans to consider the below described areas and spatial data in the WEA suitability model (described in section 7.a), which could result in a finding that they have low or high suitability for offshore wind. However, BOEM asks for additional information on the specific areas and spatial data listed below to inform BOEM about whether alternative action may be necessary (e.g., removing or constraining certain areas or components of spatial data prior to running the suitability model). Specifically, BOEM seeks data and science-based justifications for how boundaries and any buffers or setbacks should be determined for these areas and spatial data, as well as information regarding whether any effects from offshore wind could be mitigable.

i. Recreational and Commercial Fisheries

Areas: Multiple specific areas of recreational and commercial fisheries concern have been communicated to BOEM, including the: Scallop Rotational Management Areas; Scup Southern Gear Restricted Areas; New Jersey Prime Fishing Areas; Maryland Recreational Fishing Areas; South Cape Lookout Spawning Special Management Zone; and the Snowy Grouper Wreck Marine Protected Area. BOEM is also aware of specific areas requested for avoidance within the Central Atlantic 1 Call Area by the Blue Water Fishermen's Association and the Virginia Marine Resources Commission.

Spatial Data: Multiple comments recommended the use of Vessel Monitoring System (VMS) data to reflect commercial fisheries efforts (e.g., all fisheries, ocean quahog, scallop, squid), noting the limitations of these data for the areas offshore North Carolina. Comments also recommended the use of Vessel Trip Report (VTR), logbook, and port-specific landings data. Fisheries independent survey data, such as the various long-term surf clam and scallop

surveys, were recommended to represent potential areas of importance to those fisheries. Large Pelagic Survey data were recommended to represent recreational fishing efforts for highly migratory species, alongside other data reflective of areas of importance to sportfishing tournaments in the region.

While the above list is not exhaustive, BOEM anticipates coordinating closely with NOAA Fisheries Greater Atlantic Regional Field Office (GARFO) and Southeast Regional Office (SERO) to determine the best available spatial data to represent commercial and recreational fisheries in the region.

ii. Marine Habitats

Multiple comments recommended avoidance of the Carl N. Shuster Horseshoe Crab Reserve, artificial reefs, hardbottom and live bottom habitat areas, deep-sea coral areas, and submarine canyons (e.g., "The Point").

While the above list is not exhaustive, BOEM anticipates coordinating closely with NOAA Fisheries GARFO and SERO to determine the best available spatial data to represent marine habitats in the region. This coordination may include development of a "combined habitat data layer" that provides a composite analysis of marine habitat areas of concern, similar to the approach utilized within the suitability model developed for Central Atlantic 1. For more information, please visit: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic-appendix-b-wea-final-report-nccos>.

iii. Protected Species

Multiple comments recommended avoidance of areas important to protected avian and marine species, such as the black-capped petrel, loggerhead sea turtles, and humpback whales. While the above list is not exhaustive, BOEM anticipates coordinating closely with the USFWS and NOAA Fisheries GARFO and SERO to determine the best available spatial data to represent protected species in the region. This may include the development of one or more "combined protected species data layers" that provides a composite analysis of protected species areas of concern, similar to the approach utilized within the suitability model developed for Central Atlantic 1. For more information, please visit: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic-appendix-b-wea-final-report-nccos>.

iv. Industry and Navigation

Multiple comments recommended avoidance of areas associated with

munitions and explosives of concern (i.e., unexploded ordnance areas), ocean disposal sites, subsea cables (i.e., MAREA, BRUSA, DUNANT, GlobeNet, and Tat-14), wrecks and obstructions, and anchorage areas. BOEM will coordinate closely with the USCG and NASA on potential conflicts between the Call Area and: (a) the proposed shipping fairways along the Atlantic Coast of the United States described in the notice of proposed rulemaking (USCG–2019–0279–0032) in the **Federal Register**,¹² and (b) the WFF composite hazard area.

c. BOEM deferred a decision on the identification of additional WEAs in the Central Atlantic 1 deepwater Call Area areas (i.e., areas E and F; Figure 2) until BOEM could complete further study (for more information on these areas, please visit: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>). Multiple comments received through the Central Atlantic 1 planning process expressed concerns regarding natural resource conflicts within these areas, including the presence of the Frank R. Lautenberg Deep-Sea Coral Protection Area and areas of high density of black-capped petrel seabirds. BOEM seeks information regarding the technoeconomic feasibility of offshore wind energy development within the Central Atlantic 1 deepwater Call Areas, along with other information that may help BOEM determine the appropriateness of these areas for offshore wind leasing.

d. Information regarding the identification of historic properties or potential effects to historic properties from leasing, site assessment activities (including the construction of meteorological towers or the installation of meteorological buoys), or commercial wind energy development in the Call Area. This includes potential offshore archaeological sites, cultural resources, or other historic properties within the areas described in this notice and onshore historic properties that could potentially be affected by renewable energy activities within the Call Area. This information will inform BOEM's review of future undertakings conducted pursuant to section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

e. Information relating to visual and scenic resources, including seascape, landscape, and ocean character aesthetics; visually sensitive areas along the coastline that are sensitive to changes in ocean views (e.g., scenic seaside trails, National Park System

¹² 89 FR 3587 (January 19, 2024).

units, National Wildlife Refuges, state parks, historic districts, conservation areas, and other special designations with scenic value); suggestions for potential key observation points for evaluating potential visual impacts (*i.e.*, places that people visit, recreate, work, and live where ocean views contribute to the quality of experience); general or specific public concerns over potential visual impacts by wind energy development; and potential strategies to help minimize or mitigate any visual effects. BOEM welcomes input on the degree of acceptable or unacceptable levels of offshore wind energy visibility as would be seen from the coastline, and thresholds of diminished or increased visibility as influenced by distances between onshore viewers and wind energy facilities. BOEM welcomes recommendations on minimum distances between the coastline and lease areas to minimize concerns over potential visual impacts.

f. Information regarding the potential for interference with radar systems covering the Call Area, including, but not limited to, the use of surface and airborne radar systems for offshore search and rescue operations and environmental monitoring.

g. Information regarding ongoing and future exploration for offshore sand resources, including nearshore resources and placement areas that may be impacted by new lease areas or possible electrical cable transmission routes. This includes pertinent information regarding future sand resource needs for the region. This information will be used in coordination with the USACE, BOEM's Marine Minerals Program, and other stakeholders to analyze multi-use conflicts.

h. Information on the constraints and advantages of possible electrical cable transmission routes, including onshore landing and interconnection points for cables connecting offshore wind energy facilities to the onshore electrical grid, and information regarding future demand for electricity in the region.

i. BOEM is continuing to take a planned approach to transmission, including potentially requiring the use of shared infrastructure for interconnection, where appropriate. BOEM requests expressions of general interest by developers in the potential development and use of shared transmission infrastructure. This could include agreements among offshore wind lessees for shared systems or the independent development of transmission systems, including backbone or networked systems. For independent systems, BOEM may need

to issue a Right of Way Grant or Right of Use Easement, which would involve a separate process from the competitive lease sale that may result from Central Atlantic 2. Feedback may also include comments from potential lessees on ways to better incentivize the use of shared infrastructure for transmission. BOEM also recognizes that the region identified could interconnect in both the PJM area or independent states and, therefore, is interested in receiving feedback on obstacles and opportunities for interregional systems.

j. Information regarding the size and number of WEAs, taking into consideration the offshore wind energy goals of states surrounding the Call Area. BOEM requests further information on what additional factors it should consider in determining the size and number of WEAs.

k. Information regarding potential auction formats that BOEM may consider as part of the leasing process.

l. Information related to Tribal Nations in the Central Atlantic region and interactions with potential offshore wind energy facilities, such as potential impacts to Tribal cultural practices; lands; treaty rights; resources; ancestral lands; sacred sites, including sites that are submerged; access to traditional areas of cultural or religious importance on federally managed lands and waters; and the ability of a Tribe to govern or provide services to its members. BOEM will protect confidential information shared by Tribes in response to this Call to the extent authorized by federal law. Treatment of confidential information is addressed in section 10 of this notice entitled, "Protection of Privileged, Personal, or Confidential Information."

m. Socioeconomic information for communities potentially affected by wind energy leasing in the Call Area, including community profiles, vulnerability and resiliency data, and information on environmental justice communities. BOEM also solicits comments on how to best meaningfully engage with these communities.

n. Information on coastal or onshore activities needed to support offshore wind energy development, such as port and transmission infrastructure, and associated potential impacts to recreation, scenic, cultural, historical, and natural resources relating to those activities.

o. Any other relevant information that you think BOEM should consider during its planning and decision-making process for the purpose of identifying areas to lease within the Call Area.

9. Required Nomination Information

BOEM previously received information that its former practice of publishing the areas nominated by each qualified company in response to a Call may disincentivize entities from submitting nominations. Nominations and the accompanying rationale are extremely useful to help BOEM understand and model the commercial viability of portions of the OCS. Therefore, BOEM will not publish individual maps of each qualified company's nominations received in response to this Call. BOEM will publish a heatmap that shows an aggregated view of all the nominations and a list of the qualified companies that submitted nominations. Where applicable, qualified companies should submit spatial information in a format compatible with ESRI ArcGIS (ESRI shapefile or ESRI file geodatabase) in the NAD 83 geographic coordinate system.

BOEM deferred a decision on the identification of additional WEAs in the Central Atlantic 1 deepwater Call Area areas (*i.e.*, areas E and F; Figure 2) until BOEM could complete further study. As part of Central Atlantic 1 published in mid-2022, BOEM received nominations from companies within these Call Area areas (for more information, please visit: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>). BOEM is accepting nominations within the deepwater Call Area areas, and depending upon the level of industry interest indicated by potential nominations and the consideration of other information received related to section 8.c above, BOEM may consider further evaluation of these areas as part of the Central Atlantic 2 planning and leasing process.

If you wish to nominate one or more areas for a commercial wind energy lease within the Call Area or the Central Atlantic 1 deepwater Call Area areas E and F, you must provide the following information for each nomination:

(a) The BOEM protraction name, number, and the specific whole or partial OCS blocks within the Call Area that you are interested in leasing. If your nomination includes one or more partial blocks, please describe those partial blocks in terms of sixteenths (*i.e.*, sub-block) of an OCS block. Each area you nominate should be sized appropriately to accommodate the development of a reasonable wind energy facility (*e.g.*, a facility with the generation capacity of up to 1,500 megawatts). For context, BOEM would consider the nomination of an area containing 150,000 acres appropriate to support a generation

capacity of up to 2,428 megawatts (assuming a 4-MW/km² wind turbine density). Nominations that considerably exceed the acreage needed to support a generation capacity of up to 2,428 megawatts, such as a nomination for the entire Call Area, may be deemed unreasonable and not accepted by BOEM.

(b) A rationale describing why you selected the nominated areas. The more detailed the rationale provided, the more informative it will be to BOEM's process. BOEM is particularly interested in how factors like wind speed, water depth, seafloor slope and bottom type, and interconnection points factor into the nomination process.

(c) A description of your objectives and the facilities that you would use to achieve those objectives.

(d) A preliminary schedule of proposed activities, including those leading to commercial operations.

(e) Available and pertinent data and information concerning renewable energy resources and environmental conditions in each area that you wish to lease, including energy and resource data, and other information used to evaluate the area.

(f) Documentation demonstrating that you are legally, technically, and financially qualified to hold an OCS wind energy lease, as set forth in 30 CFR 585.107–585.108. Qualification materials should be developed in accordance with the guidelines available at <https://www.boem.gov/Renewable-Energy-Qualification-Guidelines>. For examples of documentation appropriate for demonstrating your legal qualifications and related guidance, contact Gina Best, BOEM Office of Renewable Energy Programs, at Gina.Best@boem.gov or 703-787-1341.

10. Protection of Privileged, Personal, or Confidential Information

a. Freedom of Information Act

BOEM will protect privileged or confidential information you submit when required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information “Contains Confidential Information” and consider

submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such privileged or confidential information. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

b. Personally Identifiable Information

BOEM encourages you not to submit anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any personally identifiable information (PII) included in your comment, may be made publicly available. All submissions from identified individuals, businesses, and organizations will be available for public viewing on [regulations.gov](https://www.regulations.gov). Note that BOEM will make available for public inspection all comments, in their entirety, submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Even if BOEM withholds your information in the context of this Call, your submission is subject to FOIA and, if your submission is requested under the FOIA, your information will be withheld only if a determination is made that one of the FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

c. Section 304 of the NHPA (54 U.S.C. 307103(a))

After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of the NHPA as confidential.

11. BOEM's Environmental Review Process

Before deciding whether leases may be issued, BOEM will prepare an

environmental assessment (EA) under NEPA (including public comment periods to determine the scope of the EA and to review and comment on the draft EA). The EA will analyze anticipated impacts from leasing within the WEAs and site characterization and assessment activities expected to occur after a lease is issued. Site characterization activities include geophysical, geotechnical, archaeological, and biological surveys, and site assessment activities including the installation and operation of meteorological buoys. BOEM will also conduct appropriate consultations with Federal agencies and Tribal, State, and local governments during preparation of the EA. These consultations include, but are not limited to, those required by the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, section 106 of the NHPA, and Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

Before BOEM allows any construction of a wind energy project in the Call Area, BOEM must approve a construction and operations plan (COP) submitted by a Lessee. Prior to the approval of a COP, BOEM will need to consider the potential environmental effects of the construction and operation of any wind energy facility under a separate, project-specific NEPA analysis. This analysis will include additional opportunities for public involvement and may result in the publication of an environmental impact statement.

Walter Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2024-18841 Filed 8-21-24; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337-TA-1413]

Certain Wireless Front-End Modules and Devices Containing the Same; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 17, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Skyworks Solutions, Inc. of Irvine, California; Skyworks Solutions Canada,

Inc. of Canada; and Skyworks Global Pte. Ltd. of Singapore. A letter supplementing the complaint was filed on August 5, 2024. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless front-end modules and devices containing the same by reason of the infringement of certain claims of U.S. Patent No. 8,717,101 (“the ‘101 patent”); U.S. Patent No. 9,917,563 (“the ‘563 patent”); U.S. Patent No. 7,409,200 (“the ‘200 patent”); U.S. Patent No. 9,450,579 (“the ‘579 patent”); and U.S. Patent No. 9,148,194 (“the ‘194 patent”). The complaint, as supplemented, further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 16, 2024, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products

identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, 10, 11, 17, 18, and 20–22 of the ‘101 patent; claims 14, 15, 17, and 20 of the ‘563 patent; claims 1, 2, 6, 10–12, 15, 18–20, and 23–25 of the ‘200 patent; claims 1 and 7 of the ‘579 patent; and claim 4 of the ‘194 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “wireless front-end modules and wireless routers”;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:
Skyworks Solutions, Inc., 5260 California Avenue, Irvine, CA 92617
Skyworks Solutions Canada, Inc., 1135 Innovation Drive, Ottawa, Ontario K2K 3G7, Canada
Skyworks Global Pte. Ltd., 3 Bedok South Rd., Singapore 469269

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:
Kangxi Communication Technologies (Shanghai) Co., Ltd., 5th Floor, Building 10, No. 399 Keyuan Road, Pudong New Area, Shanghai, China
Grand Chip Labs, Inc., 14151 Newport Ave., Suite 204, Tustin, CA 92780
D-Link Corporation, 4F 289 Sinhu 3rd Road, Neihu District, Taipei, 114 Taiwan
D-Link Systems Inc., 14420 Myford Road, Suite 100, Irvine, CA 92606
Ruijie Networks Co., Ltd., Building 19, Juyuanzhou Industrial Park, No. 618, Jinshan Road, Cangshan District, Fuzhou, Fujian, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint, as supplemented, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e)

and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2024).

Issued: August 16, 2024.

Susan Orndoff,
Supervisory Attorney.

[FR Doc. 2024–18817 Filed 8–21–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1399]

Certain Fiber-Optic Connectors, Adapters, Jump Cables, Patch Cords, Products Containing the Same, and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Leave To Amend the Complaint and Notice of Investigation

AGENCY: 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. 27) of the presiding administrative law judge (“ALJ”) granting leave to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT:

Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 26, 2024, the Commission instituted this investigation based on a complaint, as supplemented, filed on behalf of US Conec, Ltd., of Hickory, North Carolina ("US Conec"). 89 FR 32459–60 (Apr. 26, 2024). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fiber-optic connectors, adapters, jump cables, patch cords, products containing the same, and components thereof that infringe certain claims of U.S. Patent Nos. 11,733,466; 11,808,994; 11,906,794; 11,880,075; 11,385,415 and 10,495,823. *Id.* at 32459. The complaint also alleged that a domestic industry exists. *Id.* The Commission's notice of investigation names as respondents Senko Advance Co., Ltd. of Yokkaichi City, Japan and Senko Advanced Components, Inc. of Hudson, Massachusetts ("the Senko Respondents"); Eaton Corp. of Dublin, Ireland; Tripp Lite Holdings, Inc. of Woodridge, Illinois; FS.com Inc. of New Castle, Delaware; Infinite Electronics, Inc. of Irvine, California; L-com, Inc. of North Andover, Massachusetts; Sumitomo Electric Industries, Ltd. of Osaka, Japan; Sumitomo Electric Lightwave Corp. of Raleigh, North Carolina; Sumitomo Electric U.S.A., Inc. of Torrance, California; EZconn Corp. of New Taipei City, Taiwan; Flexoptix GmbH of Darmstadt, Germany; Shenzhen UnitekFiber Solution Ltd. of Shenzhen, China; Hubbell Inc. of Shelton, Connecticut; Hubbell Premise Wiring, Inc. of Shelton, Connecticut; Shenzhen IH Optics Co., Ltd. of Shenzhen, China; Rayoptic Communication Co., Ltd., of Shenzhen, China; and HuNan Surfiber Technology Co., Ltd. of Changsha, China. *Id.* at

32460. The Office of Unfair Import Investigations ("OUII") is participating in this investigation. *Id.*

On July 9, 2024, US Conec filed a motion for leave to amend the complaint and notice of investigation to: (1) add Protai Photonic Co., Ltd., Jarllytec Co., Ltd., and Wave2Wave Solutions Corp. d/b/a FiberSmart as respondents; (2) correct the name of respondent L-com, Inc. to L-com, LLC; (3) adopt a previous supplement to the original complaint; and (4) correct a typographic error in paragraph 54 of the complaint. On July 18, 2024, OUII filed a response in support of the motion. On July 19, 2024, the Senko Respondents opposed the proposed addition of the three respondents because the additions were not sufficiently supported by evidence. No other party responded to the motion. On July 24, 2024, US Conec filed a reply in support of its motion.

On July 31, 2024, the ALJ issued the subject ID granting the motion and granted leave to US Conec to amend its complaint as requested pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)). The ID finds that US Conec showed that the proposed additional respondents were involved in activities concerning the same accused products already at issue in the investigation, that good cause supports the amendments, and that the amendments would not prejudice the public interest or the rights of the parties. No petitions for review of the subject ID were received.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on August 16, 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 19, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–18849 Filed 8–21–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cochlear Implant Systems and Components Thereof, DN 3768*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Advanced Bionics AG and Advanced Bionics LLC on August 16, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cochlear implant systems and components thereof. The complaint names as respondents: MED–EL Corporation, USA of Durham, NC; and MED–EL Elektromedizinische Geräte GmbH of Austria. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the

complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3768") in a prominent place on the cover page and/or the first page. (See

Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel², solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 19, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-18861 Filed 8-21-24; 8:45 am]

BILLING CODE 7020-02-P

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

DEPARTMENT OF JUSTICE

[OMB Number 1110-0048]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Cargo Theft Incident Report

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 21, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, elabraham@fbi.gov, 304-625-4830.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: This survey is needed to collect reports of cargo theft offenses reported by federal, state, local, tribal, university/college, and territorial LEAs. It should be noted cargo theft offenses are being collected under the National Incident-Based Reporting System (NIBRS) as of January 1, 2021. However, some agencies did not complete the transition to NIBRS by the given date. Therefore, the FBI's Uniform Crime Reporting (UCR) Program continues to collect cargo theft information under the Summary Reporting System (SRS). This practice will only occur for a short period of time after which the FBI's UCR Program will no longer accept new cargo theft data from those agencies not yet participating in NIBRS (*i.e.*, SRS agencies). When the extension officially expires, the FBI's UCR Program will

only accept updates to previously reported cargo theft incidents submitted by SRS agencies via the Cargo Theft Incident Report. The updated information will be added to the master file for historical purposes.

Overview of This Information Collection

1. Type of Information Collection: Extension of a previously approved collection.
2. The Title of the Form/Collection: Cargo Theft Incident Report.
3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: There is no form number for this collection. The applicable component within DOJ is the CJIS Division, FBI.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public is primarily law enforcement agencies LEAs. The obligation to respond is voluntary.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated number of respondents is 22,433. The time per response is 5 minutes. CIV estimates that 114 respondents will take three minutes to complete the form.

6. An estimate of the total annual burden (in hours) associated with the collection: 22,433 responses $\times$ 5 minutes = 112,165 minutes/60 = 1,869.42 hours.

7. An estimate of the total annual cost burden associated with the collection, if applicable: \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
Ex: Survey (individuals or households)	22,433	1/annually	22,433	5	1,870
Unduplicated Totals	22,433	.....	22,433	.....	1,870

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: August 19, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-18845 Filed 8-21-24; 8:45 am]

BILLING CODE 4410-02-P

(PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 23, 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: Per the YouthBuild Transfer Act as well as Workforce Investment Act and its replacement Workforce Innovation and Opportunity Act and regulations 20 CFR part 672, YouthBuild grantees collect and report selected standardized information pertaining to customers in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. ETA provides all grantees with a YouthBuild management information system to use for collecting participant data and for preparing and

submitting the required quarterly reports. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 20, 2024 (89 FR 19883).

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

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; YouthBuild Work Site Description and Housing Census

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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

display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: YouthBuild Work Site Description and Housing Census.

OMB Control Number: 1205-0464.

Affected Public: Private Sector: Not-for-profit institutions.

Total Estimated Number of Respondents: 650.

Total Estimated Number of Responses: 650.

Total Estimated Annual Time Burden: 197 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. 2024-18768 Filed 8-21-24; 8:45 am]

BILLING CODE 4510-FN-P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 24-CRB-0008-AU (Salem Media Group)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt from SoundExchange, Inc., of notice of intent to audit the 2021, 2021, and 2023 statements of account submitted by commercial webcaster licensee Salem Media Group concerning royalty payments it made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB at <https://app.crb.gov> and perform a case search for docket number 24-CRB-0008-AU (Salem Media Group).

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707-7658, crb@loc.gov.

SUPPLEMENTARY INFORMATION: The Copyright Act grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to

limitations. Specifically, the right is limited by the statutory license in section 114 of the Copyright Act, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 of the Copyright Act allows a service to make necessary ephemeral reproductions to facilitate digital transmission of the sound recordings. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges (Judges). The rates and terms for the section 112 and 114 licenses are codified in 37 CFR parts 380 and 382-84.

As one of the terms for these licenses, the Judges designated SoundExchange, Inc., (SoundExchange) as the Collective, *i.e.*, the organization charged with collecting the royalty payments and statements of account submitted by licensees, including those that operate commercial webcaster services, preexisting satellite digital audio radio services, new subscription services, and those that make ephemeral copies for transmission to business establishments. The Collective is also charged with distributing royalties to copyright owners and performers entitled to receive them under the section 112 and 114 licenses. See 37 CFR 380.4(d)(1), 382.5(d)(1), 383.4(a), and 384.4(b)(1).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. See 37 CFR 380.6(b), 382.7(b), 383.4(a), and 384.6(b).

On August 8, 2024, SoundExchange filed with the Judges a notice of intent to audit Salem Media Group for the years 2021, 2022, and 2023. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. See 37 CFR 380.6(c) 382.7(c), 383.4(a), and 384.6(c). This notice fulfills that obligation with respect to SoundExchange's August 8, 2024 notice of intent to audit Salem Media Group for the years 2021, 2022, and 2023.

Dated: August 16, 2024.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2024-18775 Filed 8-21-24; 8:45 am]

BILLING CODE 1410-72-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; travisd@arts.gov, or call 202-682-5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

Dance (review of applications): This meeting will be closed.

Date and time: September 12, 2024; 2:00 p.m. to 4:00 p.m.

Dated: August 19, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024-18842 Filed 8-21-24; 8:45 am]

BILLING CODE 7537-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–511 and CP2024–519; MC2024–512 and CP2024–520; MC2024–513 and CP2024–521; MC2024–514 and CP2024–522; MC2024–515 and CP2024–523; MC2024–516 and CP2024–524; MC2024–517 and CP2024–525]

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 26, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via

the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 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):* MC2024–511 and CP2024–519; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 223 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 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 26, 2024.

2. *Docket No(s):* MC2024–512 and CP2024–520; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 224 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 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 26, 2024.

3. *Docket No(s):* MC2024–513 and CP2024–521; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 225 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 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 26, 2024.

4. *Docket No(s):* MC2024–514 and CP2024–522; *Filing Title:* USPS Request

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 226 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* August 26, 2024.

5. *Docket No(s):* MC2024–515 and CP2024–523; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 301 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* August 26, 2024.

6. *Docket No(s):* MC2024–516 and CP2024–524; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 302 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 26, 2024.

7. *Docket No(s):* MC2024–517 and CP2024–525; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 303 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 16, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 26, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–18876 Filed 8–21–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2024–515; Order No. 7386]

Inbound EMS 2

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent Postal Service filing of its intention to change prices not of general applicability to be effective January 1, 2025. This document informs the public of the

filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 23, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Contents of Filing
- III. Commission Action
- IV. Ordering Paragraphs

I. Introduction

On August 15, 2024, the Postal Service filed notice pursuant to 39 CFR 3035.105, announcing its intention to change prices not of general applicability for Inbound Express Mail Service (EMS) 2 effective January 1, 2025.¹

II. Contents of Filing

To support its proposed Inbound EMS 2 prices, the Postal Service filed a redacted version of the proposed new rates, a copy of the certification required under 39 CFR 3035.105(c)(2), a redacted copy of Governors' Decision No. 19-1, a redacted copy of the most recent annual EMS Pay-for-Performance (PfP) Plan for Calendar Year (CY) 2023, a redacted copy of the most recent available EMS Cooperative PfP report card ("Summary Report") for CY 2023, and a redacted explanation of the calculation for any lost revenues for CY 2023.² The Postal Service states that the financial workpapers that accompany the Notice include underlying workpapers used to calculate any PfP penalties and lost revenue from CY 2023, that all PfP penalties and lost revenue are applied in the financial workpapers and deducted accordingly, and that the workpapers also include a spreadsheet listing the countries expected to participate in PfP in CY 2025, as directed by Order No. 5966.³

¹ Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, and Application for Non-Public Treatment, August 15, 2024, at 1 (Notice).

² Notice at 2-3; *see id.* Attachments 2-7.

³ Notice at 3; *see* Docket No. CP2021-128, Order Approving Changes in Prices Not of General

Additionally, the Postal Service filed unredacted copies of Governors' Decision No. 19-1, its proposed prices, service performance data and plan, calculation of any lost revenue, the list of expected PfP countries in CY 2025, and related financial information under seal. Notice at 2. The Postal Service also filed an application for non-public treatment of materials under seal. *Id.* Attachment 1.

III. Commission Action

The Commission establishes Docket No. CP2024-515 for consideration of matters raised by the Notice and pursuant to 39 U.S.C. 505 appoints Samuel Robinson to serve as Public Representative in this docket.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, and 3642 and 39 CFR part 3035. Comments are due no later than August 23, 2024. The public portions of the filing can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's filing can be accessed through compliance with the requirements of 39 CFR part 3011.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2024-515 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Samuel Robinson is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 23, 2024.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,
Secretary.

[FR Doc. 2024-18816 Filed 8-21-24; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Applicability for Inbound EMS 2, August 20, 2021, at 5-6 (Order No. 5966).

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 22, 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 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 218 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-506, CP2024-513.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-18803 Filed 8-21-24; 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 22, 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 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 215 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-502, CP2024-509.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-18800 Filed 8-21-24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 303 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–517, CP2024–525.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18815 Filed 8–21–24; 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 22, 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 15, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 222 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–510, CP2024–518.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18807 Filed 8–21–24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 301 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–515, CP2024–523.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18813 Filed 8–21–24; 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 22, 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 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 219 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–507, CP2024–514.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18804 Filed 8–21–24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 226 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–514, CP2024–522.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18811 Filed 8–21–24; 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 22, 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 15, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 220 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-508, CP2024-516.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18805 Filed 8-21-24; 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 22, 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 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 216 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-503, CP2024-510.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18801 Filed 8-21-24; 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 22, 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 15, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 221 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-509, CP2024-517.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18806 Filed 8-21-24; 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 22, 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 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 300 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024-504, CP2024-511.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18812 Filed 8-21-24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 224 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-512, CP2024-520.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-18809 Filed 8-21-24; 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 22, 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 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 214 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–501, CP2024–508.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18799 Filed 8–21–24; 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 22, 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 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 217 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–505, CP2024–512.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18802 Filed 8–21–24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 223 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–511, CP2024–519.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18808 Filed 8–21–24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 225 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–513, CP2024–521.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18810 Filed 8–21–24; 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 22, 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 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 302 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–516, CP2024–524.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–18814 Filed 8–21–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100748; File No. SR–NYSEARCA–2024–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3.7

August 16, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that on August 12, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3.7 (Dues, Fees and Charges) to permit direct debiting of undisputed or final fees or other sums due the Exchange by ETP Holders with one or more Equities Trading Permits ("Trading Permit") and each applicant for a Trading Permit. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 3.7 (Dues, Fees and Charges) to permit direct debiting of undisputed or final fees or other sums due the Exchange by ETP Holders with one or more Trading Permits and each applicant for a Trading Permit.

Rule 3.7 currently provides that ETP Holders, OTP Holders and OTP Firms of the Exchange, whether or not in good standing, shall pay to the Exchange such dues, fees and charges as the Board of Directors shall prescribe.

The Exchange proposes to require that ETP Holders that hold a Trading Permit, and each applicant for a Trading Permit, provide one or more clearing account numbers that correspond to an account(s) at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to collect through direct debit any undisputed or final fees and/or other sums due to the Exchange. The Exchange would, however, permit an ETP Holder or applicant for a Trading Permit to opt-out of the requirement to provide NSCC clearing account numbers and establish alternative payment

arrangements. In addition, consistent with current Rule 3.8 (Failure to Pay Exchange Fees), the proposed change would not apply to disciplinary fines or monetary sanctions governed by Rule 10.8320. The proposed rule would also not apply to regulatory fees related to the Central Registration Depository ("CRD system"), which are collected by the Financial Industry Regulatory Authority, Inc. ("FINRA").⁴ The proposed change is based on the rules of the Exchange's affiliates NYSE American LLC ("NYSE American") and NYSE Chicago, Inc. ("NYSE Chicago") as well as other exchanges.⁵

Under the proposal, the Exchange would send a monthly invoice to each ETP Holder, generally on the 5th business day of each month as is currently the practice, for the debit amount due to the Exchange for the prior month. The Exchange would also send files to NSCC each month on or about the 11th business day of the month in order to initiate the debit of the amount due to the Exchange as provided for in the prior month's invoice.⁶ The Exchange anticipates that

⁴ The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers. Certain of the regulatory fees provided in the NYSE Arca Equities Schedule of Fees and Charges ("Schedule of Fees and Charges") are collected and retained by FINRA via the CRD system for the registration of ETP Holders and employees of ETP Holders that are not FINRA members. These fees would be excluded from direct debiting.

⁵ See NYSE American Rule 41 (Collection of and Failure to Pay Exchange Fees); NYSE Chicago Article 7, Rule 11 (Fixing and Paying Fees and Charges). See also, e.g., MEMX LLC ("MEMX") Rule 15.3(a) (Collection of Exchange Fees and Other Claims and Billing Policy) requires each MEMX member and all applicants for registration as members are required to provide one or more clearing account numbers that correspond to an account(s) at the NSCC for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due to the Exchange. As noted, the proposed rule would not apply to disciplinary fines or monetary sanctions, and the proposal does not propose to change this. The MEMX rule also requires members to submit billing disputes within a certain time period. The Exchange's current billing disputes policy is set forth in item I under "Billing Disputes" in the Schedule of Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf, and provides that all fee disputes must be submitted no later than sixty days after receipt of a billing invoice. The proposal does not modify or rescind the Exchange's billing disputes policy, and that policy would continue to apply to all billing disputes.

⁶ As discussed below, if an ETP Holder disputes an invoice, the Exchange would not include the disputed amount in the automatic debit if the ETP

Holder has disputed the amount in writing to the Exchange by the 15th of the month, or the following business day if the 15th is not a business day, and the disputed amount is at least \$10,000 or greater. As a practical matter, the Exchange would not send a file to the NSCC until the proposed time in Rule 3.7 for an ETP Holder to dispute an invoice subject to automatic debit has passed.

NSCC will process the debits on the day it receives the file or the following business day. Because ETP Holders would be provided with an invoice approximately 1 week before the debit date, ETP Holders will have adequate time to contact the Exchange with any questions concerning the invoice. If an ETP Holder disagrees with the invoice in whole or in part, the Exchange would not commence the debit for the disputed amount until the dispute is resolved. Specifically, the Exchange would not include the disputed amount (or the entire invoice if it is not feasible to identify the disputed amounts) in the NSCC debit amount where the ETP Holder provides written notification of the dispute to the Exchange by the later of the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater.

Following receipt of the file from the Exchange, NSCC would proceed to debit the amounts indicated from the account of the ETP Holder that clears the applicable transactions ("Clearing ETP Holder," i.e., either an ETP Holder that is self-clearing or another ETP Holder that provides clearing services on behalf of the ETP Holder) and disburse such amounts to the Exchange. Where an ETP Holder clears through another a ETP Holder, the Exchange understands that the estimated transaction fees owed to the Exchange are typically debited by the Clearing ETP Holder on a daily basis using daily transaction detail reports provided by the Exchange to the Clearing ETP Holder in order to ensure adequate funds have been escrowed. The Exchange notes that it is proposing to permit an ETP Holder to designate one or more clearing account numbers that correspond to an account(s) at NSCC to permit ETP Holders that clear through multiple different clearing accounts to set up the billing process with the Exchange in a manner that is most efficient for internal reconciliation and billing purposes of the ETP Holder.

The Exchange believes that the proposed debiting process would provide an efficient method of collecting undisputed or final fees and/or sums due to the Exchange consistent with the practice on other exchanges.⁷

⁷ See note 5, *supra*. In addition to MEMX, IEX, Nasdaq, Nasdaq BX, and Nasdaq Phlx all provide for collection of fees and fines through direct debits. See IEX Rule 15.120; Nasdaq Rule Equity 7, Section

Moreover, the Exchange believes that it is reasonable to permit an ETP Holder and applicants for a Trading Permit to opt-out of the requirement to provide an NSCC account number to permit direct debiting and instead establish alternative payment arrangements. Finally, the Exchange believes that it is also reasonable to provide for a \$10,000 limitation on pre-debit billing disputes since it would be inefficient to delay a direct debit for a de minimis amount. An ETP Holder would still be able to dispute billing amounts that are less than \$10,000 pursuant to the billing policy set forth in the Schedule of Fees and Charges.⁸

To effectuate this change, the Exchange would add the following text to Rule 3.7 (italicized) as new subsection (b):

Each ETP Holder that has one or more Equities Trading Permits, and each applicant for a Equities Trading Permit, shall be required to provide one or more clearing account numbers that correspond to an account(s) at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to collect through direct debit any undisputed or final fees and/or other sums due to the Exchange; provided, however, that an ETP Holder or applicant may request to opt-out of the requirement to provide an NSCC clearing account number and establish alternative payment arrangements. If an ETP Holder disputes an invoice, the Exchange will not include the disputed amount in the debit if the ETP Holder has disputed the amount in writing to the Exchange by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater. The Exchange will not debit fees related to the CRD system set forth in the NYSE Arca Equities Schedule of Fees and Charges, which are collected and retained by FINRA.

The current first sentence of Rule 3.7 would remain unchanged and become new subsection (a).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed direct debit process would provide ETP Holders with an efficient process to pay undisputed or final fees and/or sums due to the Exchange.

The Exchange believes that the proposal to debit NSCC accounts directly is reasonable because it would ease the administrative burden on ETP Holders of paying monthly invoices and avoiding overdue balances, and would provide efficient collection from all ETP Holders who owe monies to the Exchange. Moreover, the Exchange believes that the minimum time frame provided to ETP Holders to dispute invoices is reasonable and adequate to enable ETP Holders to identify potentially erroneous charges. In addition, the Exchange believes that the \$10,000 limitation on pre-debit billing disputes is reasonable because it would be inefficient to delay a direct debit for a de minimis amount. The same \$10,000 limitation is in place on exchanges that have adopted direct debit rules.¹¹ ETP Holders will still be able to dispute billing amounts that are less than \$10,000 pursuant to the Exchange's Schedule of Fees and Charges. Finally, the Exchange believes that it is reasonable to permit ETP Holders or applicants to request to opt-out of the requirement to provide NSCC account information and instead establish alternative payment arrangements with the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply uniformly to all ETP Holders that have one or more Trading Permits and to all applicants for Trading Permits, and will not disproportionately burden or otherwise impact any single ETP Holder.

The Exchange does not believe that the proposal will create an intermarket burden on competition since the Exchange will only debit fees (other than de minimis fees below \$10,000) that are undisputed by the ETP Holder and ETP Holders will have a reasonable

opportunity to dispute the fees both before and after the direct debit process. In addition, ETP Holders will have a reasonable opportunity to opt-out of the requirement to provide clearing account information and instead adopt alternative payment arrangements.

The Exchange also does not believe that the proposal will create an intramarket burden on competition, since the proposed direct debit process will be applied equally to all ETP Holders. Moreover, other exchanges utilize a similar process which the Exchange believes is generally familiar to ETP Holders. Consequently, the Exchange does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission in connection with direct debit and billing policies of other exchanges. Further, this proposal is expected to provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange. In addition, the debiting process would mitigate against ETP Holder accounts becoming overdue.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not

70; Nasdaq BX Rule Equity 7, Section 111; and Nasdaq Phlx Rule Equity 7, Section 2.

⁸ See note 5, *supra*.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See notes 7 & 8, *supra*.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ *Id.* In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2024-65. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-65 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-18795 Filed 8-21-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100742; File No. SR-CboeBYX-2023-020]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Introduce an Enhanced RPI Order and Expand Its Retail Price Improvement Program To Include Securities Priced Below \$1.00

August 16, 2024.

On December 27, 2023, 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 modify Rule 11.24 to introduce an Enhanced RPI Order and expand its Retail Price Improvement program to include securities priced below \$1.00. The proposed rule change was published for comment in the **Federal Register** on January 17, 2024.³

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

¹⁷ 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99311 (Jan. 10, 2024), 89 FR 2993 ("Notice"). The

On February 27, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On March 6, 2024, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ On April 16, 2024, the Commission issued notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ On July 9, 2024, the Commission extended the time period for approving or disapproving the proposed rule change to September 13, 2024.⁹ On July 29, 2024, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.¹⁰ On August 15, 2024, the Exchange withdrew the proposed rule change (SR-CboeBYX-2023-020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,

Deputy Secretary.

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BILLING CODE 8011-01-P

Commission has not received any comments on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99610, 89 FR 15621 (Mar. 4, 2024). The Commission designated April 16, 2024 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboebyx-2023-020/sr-cboebyx2023020-442119-1127142.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 99965, 89 FR 29389 (Apr. 22, 2024).

⁹ See Securities Exchange Act Release No. 100467, 89 FR 57441 (Jul. 15, 2024).

¹⁰ The full text of Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboebyx-2023-020/sr-cboebyx2023020-494523-1434306.pdf>.

¹¹ 17 CFR 200.30-3(a)(12).

of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100746; File No. SR–SAPPHIRE–2024–11]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for QCC Orders and cQCC Orders

August 16, 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 amend the MIAX Sapphire Fee Schedule (the “Fee Schedule”) to adopt fees for Qualified Contingent Cross (“QCC”) Orders³ and complex Qualified Contingent Cross (“cQCC”) Orders.⁴ MIAX Sapphire will commence operations as a national securities exchange registered under Section 6 of the Act⁵ on August 12, 2024.⁶

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

The Exchange proposes to adopt Section 1(a)ii) of the Fee Schedule as “QCC Fees” to adopt certain fees and rebates applicable to QCC Orders. Additionally, the Exchange proposes to adopt Section 1(a)iii) of the Fee Schedule as “cQCC Fees” to adopt certain fees and rebates applicable to cQCC Orders. Finally, the Exchange proposes to adopt Section 1(a)i) to the Fee Schedule which the Exchange is proposing to reserve to be amended by a later proposal. The Exchange notes that these fees are identical to fees charged on the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX Options”).⁷

Background

A QCC Order is comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order or orders totaling an equal number of contracts.⁸ A “qualified contingent trade” is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) at least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has

been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.⁹

Proposal To Adopt QCC Order Fees and Rebates

The Exchange proposes to adopt Section 1(a)ii) of the Fee Schedule as “QCC Fees” to adopt certain fees and rebates applicable to QCC Orders. The Exchange proposes to assess initiator fees as follows: \$0.00 per contract for the Priority Customer¹⁰ origin; \$0.12 for Public Customer¹¹ that is Not a Priority Customer; and \$0.20 per contract for all other market participant origins (*i.e.*, Sapphire Market Makers,¹² non-Sapphire Market Makers, non-Member Broker-Dealers, and Firm).¹³

The Exchange proposes to assess contra-side fees for all market participant origins, except the Priority Customer origin, as follows: \$0.12 per contract side for the Public Customer that is not a Priority Customer origin; and \$0.20 per contract side for Professional origins.

The Exchange proposes to establish that rebates are paid to the Electronic

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretation and Policy .01 of MIAX Sapphire Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Exchange Rule 516(j).

⁴ A Complex Qualified Contingent Cross of “cQCC” Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretation and Policy .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. *See* Exchange Rule 518(b)(4).

⁵ 15 U.S.C. 78f.

⁶ *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).

⁷ *See* MIAX Options Exchange Fee Schedule, Section 1(a)vii) “QCC Fees” and Section 1(a)viii) “cQCC Fees” available at <https://www.miaxglobal.com/markets/us-options/miax-options/fees>.

⁸ *See* Exchange Rule 516(j).

⁹ *See* Interpretation and Policy .01 of Exchange Rule 516.

¹⁰ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

¹¹ The term “Public Customer” means a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

¹² The term “Market Makers” means a Member registered with the Exchange for the purposes of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of MIAX Sapphire Rules. *See* Exchange Rule 100.

¹³ For the purposes of this filing, the origins comprising Sapphire Market Makers, non-Sapphire Market Makers, non-Member broker-dealers and firms will be referred to as “Professional.”

Exchange Member (“EEM”)¹⁴ that entered the QCC Order, depending upon the origin type and the origin type on the contra-side. Specifically, the Exchange proposes to provide the following rebates for an EEM when the contra-side is a Priority Customer: \$0.00 per contract for the Priority Customer origin; \$0.07 per contract for the Public Customer that is not a Priority Customer origin; and \$0.17 per contract for Professional origins.

The Exchange proposes to provide the following rebates for an EEM when the contra-side is a Public Customer that is not a Priority Customer: \$0.07 per contract for the Priority Customer origin; \$0.17 per contract for the Public Customer that is not a Priority Customer origin; and \$0.25 per contract for Professional origins.

The Exchange proposes to provide the following rebates for an EEM when the contra-side is all other origins (*i.e.*, neither a Priority Customer nor a Public Customer): \$0.17 per contract for the Priority Customer origin; \$0.25 per contract for the Public Customer that is not a Priority Customer origin; and \$0.30 per contract for Professional origins.

The Exchange also proposes to adopt a note below the table of fees and rebates for QCC Orders that will specify that per contract rebates will be paid to the EEM that enters the QCC Order into the MIAx Sapphire System.¹⁵ Additionally, the Exchange proposes to include a definition of a QCC order in the note which will provide that, a QCC transaction is comprised of an ‘initiating order’ to buy (sell) at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order to sell (buy) an equal number of contracts. The Exchange notes that with regard to order entry, the first order submitted into the System is marked as the initiating side and the second order is marked as the contra-side.

Proposal To Adopt cQCC Order Fees and Rebates

The Exchange proposes to adopt section 1(a)(iii) to the Fee Schedule as “cQCC Fees” to adopt fees and rebates applicable to cQCC Orders, which are

assessed per contract per leg. A cQCC Order is comprised of an originating complex order¹⁶ to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade¹⁷ coupled with a contra-side complex order or orders totaling an equal number of contracts.¹⁸

The Exchange proposes to adopt initiator fees for all market participants, except the Priority Customer origin, as follows: \$0.12 per contract side for the Public Customer that is not a Priority Customer origin; and \$0.20 per contract side for Professional origins. The Exchange does not propose to charge an initiator fee for the Priority Customer origin.

The Exchange proposes to assess contra-side fees for all market participants, except the Priority Customer origin, as follows: \$0.12 per contract side for the Public Customer that is not a Priority Customer origin; and \$0.20 per contract side for Professional origins.

The Exchange proposes to provide the following rebates for an EEM when the contra-side is a Priority Customer: \$0.00 per contract for the Priority Customer origin; \$0.07 per contract for the Public Customer that is not a Priority Customer origin; and \$0.17 per contract for Professional origins. The Exchange also proposes to provide the following rebates for an EEM when the contra-side is a Public Customer that is not Priority Customer: \$0.07 per contract for the Priority Customer origin; \$0.17 per contract for the Public Customer that is not a Priority Customer origin; and \$0.25 per contract for Professional origins. Finally, the Exchange proposes to provide the following rebates for an EEM when the contra-side is all other origins (*i.e.*, neither a Priority Customer nor a Public Customer that is not a Priority Customer): \$0.17 per contract for the Priority Customer origin; \$0.25 per contract for the Public Customer that is not a Priority Customer origin; and \$0.30 per contract for Professional origins.

The Exchange also proposes to adopt a note below the table of fees and

rebates for cQCC Orders. The Exchange proposes to specify that per contract rebates will be paid to the EEM that enters the cQCC Order into the MIAx Sapphire System. Additionally, the note will provide that, all fees and rebates are per contract leg. Finally, the note will provide the definition of a cQCC transaction as one that is comprised of an ‘initiating complex order’ to buy (sell) where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts. The Exchange also proposes to add the following reference sentence at the end of the notes section following the table of fees and rebates for cQCC Orders: “The stock handling fee for the stock leg of cQCC transactions is described in Section 1(a)(v) of the Fee Schedule.” This will provide clarity to the Exchange’s Fee Schedule and help signal to market participants that the stock handling fees for the stock leg of cQCC transactions is located in a separate section of the Fee Schedule. Finally, the Exchange also notes that competing exchanges provide similar rebate and fee structures and amounts for QCC and cQCC Orders.¹⁹

¹⁹ See *e.g.*, BOX Exchange LLC (“BOX”) Fee Schedule (dated January 2, 2024), Section IV.D., Qualified Contingent Cross (“QCC”) Transactions, available at <https://boxoptions.com/resources/fee-schedule/>. BOX does not assess any fee for QCC orders from public customers and professional customers and assesses broker-dealers and market makers a \$0.20 fee per contract for their agency (originating) and contra-side QCC orders. BOX provides tiered rebates depending on the parties to each QCC transaction. For example, when only one side of a QCC transaction is a broker-dealer or market maker, BOX provides rebates ranging from \$0.14 per contract to \$0.17 per contract. When both parties to a QCC transaction are a broker-dealer or market maker (*i.e.*, professionals), BOX provides higher rebates ranging from \$0.22 per contract to \$0.27 per contract, similar to the Exchange’s proposed rebate structure. See also NYSE American LLC (“NYSE American”) Options Exchange Fee Schedule (effective as of July 1, 2024), Section I.F., Qualified Contingent Cross (“QCC”) Fees & Credits, available online at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. NYSE American does not assess any fee for QCC orders from customers or professional customers and assesses market makers, firms and broker-dealers a \$0.20 fee per contract side for their QCC orders. NYSE American provides rebates depending on the parties to each QCC transaction. For example, when a Floor Broker executes a customer or professional customer QCC order when the contra-side is a market maker, firm or broker-dealer, NYSE American provides a lower rebate of \$0.12 per contract. When a Floor Broker executes a market maker, firm or broker-dealer QCC order when the contra-side is another market maker, firm or broker-dealer, NYSE American provides a higher rebate of \$0.18 per contract. See also MIAx Options Exchange Fee Schedule, Section (1)(a)(vii) and (viii) available online at <https://www.miaxglobal.com/markets/us-options/miax-options/fees>.

¹⁴ The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

¹⁵ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹⁶ In sum, a “complex order” is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a conforming or non-conforming ratio for the purposes of executing a particular investment strategy. See Exchange Rule 518(a). A complex order can also be a “stock-option order” with a conforming or non-conforming ratio as defined in Exchange Rule 518(a).

¹⁷ See *supra* note 4.

¹⁸ Trading of cQCC Orders is governed by Exchange Rule 515(g)(4).

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act²¹ 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 Act²² 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 fees and rebates for QCC and cQCC Orders is reasonable because the Exchange believes the proposal will increase competition and potentially attract additional QCC and cQCC Order flow from various origins to the Exchange, which will grow the Exchange's market share in this segment. The Exchange also believes it is reasonable and not unfairly discriminatory to provide higher rebates for QCC and cQCC Orders for EEMs that trade against origins other than Priority Customer or Public Customer because Priority Customer and Public Customer QCC and cQCC Orders are already incentivized with reduced fees for the initiator and contra-side of such orders. The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer QCC and cQCC Order than to Professional QCC and cQCC Orders because a Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²³ This limitation does not apply to Professionals, who will generally submit a higher number of orders than Priority Customers. Further, the Exchange believes that it is equitable and not unfairly discriminatory that Priority Customer and Public Customer origins be treated differently than Professional

origins, who are assessed higher fees for QCC and cQCC Orders. The exchanges, in general, have historically aimed to improve markets for investors and develop various features within their market structure for customer benefit. Priority Customer and Public Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange also believes its proposed fee and rebate structure is reasonable, equitably allocated and not unfairly discriminatory because competing exchanges provide similar rebate and fee structures and amounts for QCC and cQCC Orders on those exchanges.²⁴

Further, the Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory since the Exchange has different net transaction revenues based on different combinations of origins and contra-side orders. For example, when a Priority Customer is both the initiator and contra-side, no rebates are paid (for both QCC and cQCC transactions). This combination is in the MIAX Options Fee Schedule and in competitors' fee schedules as well.²⁵ The Exchange notes that Priority Customers are generally assessed a \$0.00 transaction fee. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to provide the proposed higher EEM rebates for QCC and cQCC Orders for Public Customer and Professional origins when they trade against an origin other than Priority Customer, in order to increase competition and potentially attract different combinations of additional QCC and cQCC Order flow to the Exchange. The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to continue to provide higher rebates for EEMs for QCC and cQCC Orders for Professionals when they trade against origins other than Priority Customers or Public Customers because Priority Customers and Public Customers are already incentivized by reduced fees for submitting QCC and cQCC Orders, as compared to Professionals that submit QCC and cQCC Orders.

The Exchange also believes its proposal is consistent with Section 6(b)(5) of the Act²⁶ and is designed to

prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, setting, processing information with respect to, and facilitating transaction in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest; and is not designed to permit unfair discrimination. This is because the Exchange believes the proposed changes will incentivize QCC and cQCC Order flow and an increase in such order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent QCC and cQCC Order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger-sized quotations in the effort to trade with such order flow.

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.

Intra-Market Competition

The Exchange believes that the proposed changes do not impose an undue burden on intra-market competition because the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed changes will encourage market participants to send their QCC and cQCC Orders to the Exchange for execution in order to obtain greater rebates and lower their costs. The Exchange believes the proposed fees and rebates for QCC and cQCC Orders will not impose an undue burden on intra-market competition because the proposed changes will increase competition and potentially attract different combinations of additional QCC and cQCC order flow to the Exchange, which will grow the Exchange's market share in this segment. The Exchange's proposal to provide higher rebates for QCC and cQCC Orders for EEMs that trade against origins other than Priority Customer or Public Customer does not impose an undue burden on intra-market competition because Priority Customer

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4).

²² 15 U.S.C. 78f(b)(5).

²³ See *supra* note 8.

²⁴ See *supra* note 5 and 17.

²⁵ See *id.*

²⁶ 15 U.S.C. 78f(b)(1) and (b)(5).

and Public Customer QCC and cQCC Orders are already incentivized with reduced fees for such orders. The Exchange's proposed fee and rebate structure is similar to that of competing exchanges that offer QCC and cQCC transaction fees and rebates.²⁷

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 17 registered options exchanges competing for order flow. For the month of July 2024, based on publicly-available information, and excluding index-based options, no single exchange exceeded approximately 13–14% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options.²⁸ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. In such an environment, the Exchange must propose transaction fees and rebates to be competitive with other exchanges and to attract order flow. The Exchange believes that the Exchange's proposal reflects this competitive environment as the proposal encourages market participants to provide QCC and cQCC liquidity and to send order flow to the Exchange. To the extent this is achieved, all the Exchange's market participants should benefit from the improved market quality.

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,²⁹ and Rule 19b–4(f)(2)³⁰ 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–2024–11 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–2024–11. 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–2024–11 and should be

submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100752; File No. SR–SAPPHIRE–2024–20]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 16, 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 8, 2024, MIAX Sapphire, LLC (“MIAX Sapphire” 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 Sapphire Options Exchange Fee Schedule³ (the “Fee Schedule”) to establish: (1) one-time membership application fees for new MIAX Sapphire Members⁴; (2) monthly Trading Permit⁵

³¹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange previously submitted a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)) and Rule 19b–4(f)(2) (17 CFR 240.19b–4(f)(2)) thereunder to establish, among other things, the initial structure of the Fee Schedule, including a section for Definitions of terms used throughout the Fee Schedule, which the Exchange cites to in this filing for certain capitalized terms. See SR–SAPPHIRE–2024–13 (not yet noticed by the Commission at the time of this filing).

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange 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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

²⁷ See *supra* note 15.

²⁸ See the “Market Share” section of the Exchange's website, available at <https://www.miaxglobal.com/>.

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b–4(f)(2).

fees for Members; (3) per-instance Application Programming Interface (“API”) testing and certification fees for Members and non-Members; and (4) per-instance network connectivity testing and certification fees for Members and non-Members.

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-options/rule-filings>, at MIAX Sapphire’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 Fee Schedule to establish: (1) one-time membership application fees for new Members; (2) monthly Trading Permit fees for Members; (3) per-instance API testing and certification fees for Members and non-Members; and (4) per-instance network connectivity testing and certification fees for Members and non-Members. The Exchange proposes to waive all of the above-mentioned fees during the Initial Waiver Period,⁶ which will be stated in the respective sections for each proposed fee in the Fee Schedule.

On July 15, 2024, the Commission approved the Exchange’s Form 1 application and corresponding rules for registration as a national securities

exchange under Section 6 of the Act.⁷ MIAX Sapphire then issued an alert that it intended to commence electronic trading in equity options on August 12, 2024.⁸ The Exchange issued an alert publicly announcing the proposed fees on July 23, 2024.⁹

Membership Fees

One-Time Membership Application Fee

The Exchange proposes to establish Section 3) of the Fee Schedule, Membership Fees, pursuant to which the Exchange will have separate subheadings for different types of membership fees. First, the Exchange proposes to establish Section 3)a), Application for MIAX Sapphire Membership (One-Time Fee), in order to assess a one-time membership application fee based upon the applicant’s status as either an Electronic Exchange Member (“EEM”)¹⁰ or Market Maker.¹¹ The Exchange proposes that applicants for MIAX Sapphire membership as an EEM will be assessed a one-time application fee of \$500 and applicants for MIAX Sapphire membership as a Market Maker will be assessed a one-time application fee of \$1,000.

The Exchange proposes to state in the Fee Schedule that MIAX Sapphire will assess the one-time membership application fee to prospective Members on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX Sapphire membership is finally denied. The difference in the proposed

one-time membership application fee to be charged to EEMs and Market Makers is because of the anticipated additional review and resources involved in processing a Market Maker’s application, as Market Makers will have greater and more complex obligations with respect to doing business on the Exchange.¹²

The Exchange proposes to waive the one-time membership application fee for EEMs and Market Makers during the Initial Waiver Period.¹³ The Exchange believes that this will provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, which should result in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. Waiving certain fees is how exchanges have historically attracted membership and competed for order flow soon after launching operations.¹⁴ Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period. MIAX Sapphire’s proposed one-time membership application fees for EEMs and Market Makers are lower than, or similar to, the one-time application fees in place at the

⁷ See Securities Exchange Act Release No. 100539 (July 15, 2024) (File No. 10–240) (In the Matter of the Application of MIAX Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁸ See Press Release, Miami International Holdings Announces SEC Approval of MIAX Sapphire Exchange (July 17, 2024), available at https://www.miaxglobal.com/sites/default/files/press-release-files/MIAX_Press_Release_07172024.pdf.

⁹ See Fee Change Alert, MIAX Sapphire Options Exchange—Summary of Proposed Non-Transaction Fees (July 23, 2024), available at <https://www.miaxglobal.com/alert/2024/07/23/miax-sapphire-options-exchange-summary-proposed-non-transaction-fees?nav=all>.

¹⁰ The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

¹¹ The term “Market Maker” or “MM” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange’s Rules. See Exchange Rule 100. The Exchange offers one type of Market Maker membership. See, generally, Chapter VI of the Exchange’s Rules.

¹² See generally, Chapter VI of the Exchange’s Rules.

¹³ See *supra* note 6. Upon the expiration of the defined term of the Initial Waiver Period, which depends upon the month in which the Exchange commences operations, the Exchange will submit separate rule filings to remove the waiver language from the Fee Schedule for each applicable fee that was waived during the Initial Waiver Period.

¹⁴ See, e.g., Securities Exchange Act Release Nos. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (waiving one-time membership application fees, trading permit fees, and testing and certification fees, among others, for an initial waiver period in order to attract membership and order flow upon launching operations) and 97893 (July 13, 2023), 88 FR 46285 (July 19, 2023) (SR-MEMX-2023-13) (waiving membership fees for an initial waiver period of approximately six months upon launch of MEMX’s options exchange).

⁶ The term “Initial Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions Section of the Fee Schedule.

Exchange's affiliates¹⁵ and other competing equity options exchanges.¹⁶

Trading Permit Fees

Next, the Exchange proposes to establish Section 3(b), Monthly Trading Permit Fees, which confer the ability to transact on MIAX Sapphire. Trading Permits will be issued to EEMs and Market Makers. The Exchange proposes that Members receiving Trading Permits during a particular calendar month will be assessed monthly Trading Permit fees as set forth in the Fee Schedule.

The Exchange proposes to assess a monthly Trading Permit fee to EEMs (other than clearing firms) in any month the EEM is certified in the membership system and the EEM is credentialed to use one or more FIX Ports¹⁷ in the production environment. Further, the Exchange proposes that monthly Trading Permit fees will be assessed with respect to EEM Clearing Firms¹⁸ in any month the clearing firm is certified in the membership system to clear transactions on the Exchange. The Exchange proposes to assess EEMs a monthly Trading Permit fee of \$500. The Exchange notes that its affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge Trading Permit fees to their Members. The Exchange's proposed Trading Permit fee structure for EEMs is based on the flat rate structure currently

in place for MIAX and MIAX Emerald, and MIAX Sapphire's proposed Trading Permit fee for EEMs is lower than that of MIAX and MIAX Emerald.¹⁹

The Exchange proposes that monthly Trading Permit fees will be assessed with respect to Market Makers in any month the Market Maker is certified in the membership system, is credentialed to use one or more MEO²⁰ Ports in the production environment and is registered to quote in one or more classes. Notwithstanding the foregoing, the Exchange proposes that the calculation of the monthly Trading Permit fees for EEMs and Market Makers will be pro-rated based on the number of trading days during which the Trading Permit was in effect divided by the total number of trading days in that particular month multiplied by the monthly rate.

For the calculation of the monthly Market Maker Trading Permits fees, the Exchange proposes that the applicable fee rate will be the lesser of either the per class basis or percentage of total national average daily volume ("ADV") measurement. The amount of the monthly Market Maker Trading Permit fee will be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages set forth in the table in proposed Section 3(b) of the Fee Schedule. A Market Maker will be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.²¹ The Exchange proposes to assess Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Sapphire that the Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national ADV in classes listed on MIAX Sapphire in the prior calendar quarter. Newly listed option classes will be

excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange proposes to adopt the following monthly Trading Permit fees for Market Makers: (i) \$2,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) \$4,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) \$6,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) \$8,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Sapphire.²² The Exchange notes that the proposed monthly Market Maker Trading Permit fee structure is the same as the Trading Permit fee structures in place at MIAX, MIAX Pearl and MIAX Emerald, and MIAX Sapphire's proposed Trading Permit fees are lower than the comparable Trading Permit fees by class or national ADV in place at the Exchange's affiliates.²³ The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation in classes on that exchange (as described in the table below), and, as such, this concept is not new or novel.

The Exchange also proposes to adopt an alternative lower monthly Trading Permit fee for Market Makers who fall within the 3rd and 4th levels of the Market Maker Trading Permit fee table, which would apply to: (i) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (ii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Sapphire. In particular, the Exchange proposes to adopt footnote "a" following the Market Maker Trading

¹⁵ See Miami International Securities Exchange, LLC ("MIAX") Fee Schedule, Section 3(a) (assessing a one-time membership application fee of \$2,500 for an EEM and \$3,000 for a MIAX Market Maker); MIAX Emerald, LLC ("MIAX Emerald") Fee Schedule, Section 3(a) (assessing a one-time membership application fee of \$2,500 for an EEM and \$3,000 for a MIAX Emerald Market Maker); and MIAX PEARL, LLC ("MIAX Pearl") Fee Schedule, Section 3(a) (assessing a one-time membership application fee of \$500 for an EEM and \$1,500 for a MIAX Pearl Options Market Maker). All references to "MIAX Pearl" in this filing are to the options trading facility of MIAX Pearl.

¹⁶ See Cboe Exchange, Inc. ("Cboe") Options Fee Schedule, Trading Permit Holder Application Fees section, page 12 (assessing an application fee of \$3,000 for an individual trading permit holder and \$5,000 for an organization); BOX Exchange LLC ("BOX") Fee Schedule, Section I. Participant Fees, A. Initiation Fee (assessing new members a one-time fee of \$2,500); and Nasdaq ISE, LLC ("Nasdaq ISE"), Options Rules, Options 7. Pricing Schedule, Section 9. Legal and Regulatory A. Application (assessing an application fee of \$7,500 per firm for a primary market maker, \$5,500 per firm for a competitive market maker, and \$3,500 per firm for an electronic access member).

¹⁷ The term "FIX Port" means a FIX port that allows Members to send orders and other messages using the FIX protocol. See the Definitions section of the Fee Schedule. The term "FIX Interface" means the Financial Information Exchange interface used for submitting certain order types (as set forth in Rule 516) to the MIAX Sapphire System. See Exchange Rule 100.

¹⁸ The term "EEM Clearing Firm" means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. See the Definitions section of the Fee Schedule.

¹⁹ See MIAX Fee Schedule, Section 3(b) and MIAX Emerald Fee Schedule, Section 3(b).

²⁰ The term "MEO Interface" means a binary order interface used for submitting certain order types (as set forth in Rule 516 and Rule 518) to the MIAX Sapphire System. See the Definitions Section of the Fee Schedule and Exchange Rule 100. Market Makers may connect to the System via the MEO Interface using a proprietary binary protocol (*i.e.*, MEO Port) for the transmission of orders and other messages to and from the Exchange. See MIAX Sapphire Options Exchange User Manual, Section 5.01, Architecture, available at https://www.miaxglobal.com/sites/default/files/job-files/MIAX_Sapphire_User_Manual_v1.0.0_2024_06_18.pdf.

²¹ Market Makers self-select the series of options classes to make markets in each trading day. The Exchange does not appoint Market Makers to specific series of options classes. See Exchange Rule 602(a)–(b).

²² For example, if "Market Maker 1" elects to quote the top 40 option classes which consist of 58% of the total national ADV in the prior calendar quarter, the Exchange would assess \$4,000 to "Market Maker 1" for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Sapphire.'

²³ See MIAX Fee Schedule, Section 3(b) (assessing monthly market maker trading permit fees of \$7,000 up to \$22,000); MIAX Pearl Fee Schedule, Section 3(b) (assessing monthly market maker trading permit fees of \$3,000 up to \$9,000); and MIAX Emerald Fee Schedule, Section 3(b) (assessing monthly market maker trading permit fees of \$7,000 up to \$22,000).

Permit fee table for these monthly Trading Permit levels. Proposed footnote “a” will provide that if the Market Maker’s total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by the Options Clearing Corporation (“OCC”) in the Market Maker account type for MIAX Sapphire-listed option classes for that month, then the monthly Trading Permit fee will be \$5,000 instead of the fee otherwise applicable to such level (i.e., \$6,000 or \$8,000).

The purpose of the alternative lower fee designated in proposed footnote “a” is to provide a lower fixed cost to those Market Makers who are quoting the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes registered or national ADV,

but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange’s affiliates, MIAX, MIAX Pearl, and MIAX Emerald, also provide lower Trading Permit fees for Market Makers who quote the entire markets of those exchanges (or substantial amount

of those markets), as objectively measured by either number of classes assigned/registered or national ADV, but who do not otherwise execute a significant amount of volume on MIAX, MIAX Pearl, or MIAX Emerald.²⁴

As illustrated by the table below, the Exchange’s proposed Trading Permit fees are comparable to, or less than, the similar trading permit and monthly membership fees charged by competing options exchanges to their members. The Exchange believes other exchanges’ membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange’s proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly membership/trading permit fee
MIAX Sapphire (as proposed)	Market Maker Trading Permit fees: —Tier1: \$2,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV. —Tier 2: \$4,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV. —Tier 3: \$6,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV. —Tier 4: \$8,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Sapphire. —Alternative lower rate of \$5,000 for Tiers 3 and 4 if the Market Maker’s total monthly executed volume during the relevant month is less than 0.015% of the total monthly executed volume reported by OCC in the Market Maker account type for MIAX Sapphire-listed option classes.
BOX Options Exchange LLC (“BOX”) ^a .	Electronic Market Maker Trading Permit Fees: —Up to and including 10 classes: \$4,000. —Up to and including 40 classes: \$6,000. —Up to and including 100 classes: \$8,000. —Over 100 classes: \$10,000.
NYSE Arca, Inc. (“NYSE Arca”) ^b ...	Options Trading Permits (“OTP”) for Market Makers: —1st OTP: \$8,000 for up to 60 option issues plus the bottom 45% of option issues. —2nd OTP: additional \$6,000 for up to 150 option issues plus the bottom 45% of option issues. —3rd OTP: additional \$5,000 for up to 500 option issues plus the bottom 45% of option issues. —4th OTP: additional \$4,000 for up to 1,100 option issues plus the bottom 45% of option issues. —5th OTP: additional \$3,000 for all option issues. —6th—9th OTP: additional \$2,000 for all option issues. —10th or more OTPs: \$500 for all options issues.
NYSE American, LLC (“NYSE American”) ^c .	ATP Trading Permits for Market Makers: —1st ATP: \$8,000 for up to 60 option issues plus the bottom 45% of option issues. —2nd ATP: additional \$6,000 for up to 150 option issues plus the bottom 45% of option issues. —3rd ATP: additional \$5,000 for up to 500 option issues plus the bottom 45% of option issues. —4th ATP: additional \$4,000 for up to 1,100 option issues plus the bottom 45% of option issues. —5th ATP: additional \$3,000 for all option issues. —6th—9th ATP: additional \$2,000 for all option issues. —10th or more ATPs: additional \$500 for all option issues. Order Flow Provider ATP fee: \$1,000. Clearing Member ATP fee: \$1,000.
Nasdaq PHLX LLC (“Nasdaq PHLX”) ^d .	Streaming Quote Trader Permit Fees: —Tier 1 (up to 200 option classes): \$0.00. —Tier 2 (up to 400 option classes): \$2,200. —Tier 3 (up to 600 option classes): \$3,200. —Tier 4 (up to 800 option classes): \$4,200. —Tier 5 (up to 1,000 option classes): \$5,200. —Tier 6 (up to 1,200 option classes): \$6,200. —Tier 7 (all option classes): \$7,200. Remote Market Maker Organization Permit Fees: —Tier 1 (less than 100 option classes): \$5,000. —Tier 2 (more than 100 and less than 999 option classes): \$8,000.

²⁴ See MIAX Fee Schedule, Section 3)b), note “***”; MIAX Pearl Options Fee Schedule, Section 3)b), note “***”; and MIAX Emerald Fee Schedule, Section 3)b), note “■”.

Exchange	Monthly membership/trading permit fee
	—Tier 3 (1,000 or more option classes): \$11,000.

^a See BOX Fee Schedule, Section 1.C., Electronic Market Maker Trading Permit Fees.

^b See NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1. Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE Arca Options.

^c See NYSE American Options Fee Schedule, Section III.A., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23. Under this fee structure, it effectively costs a Market Maker \$26,000 per month to trade all options issues on NYSE American Options.

^d See Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, B–C, Streaming Quote Trader (“SQT”) and Remote Market Maker Organization Fees.

The Exchange proposes to waive all monthly Trading Permit fees for EEMs and Market Makers during the Initial Waiver Period. The Exchange believes that this will provide an incentive for market participants to become Members of the Exchange sooner, which should result in increased potential order flow and liquidity as MIAx Sapphire begins electronic trading. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

Testing and Certification Fees

Next, the Exchange proposes to establish Section (4), Testing and Certification Fees, applicable to Members and non-Members.

API Testing and Certification Fees—Members

The Exchange proposes to establish Section 4)a), Member Application Programming Interface (“API”) Testing and Certification Fee, pursuant to which the Exchange proposes to assess an API testing and certification fee to all Members. An API makes it possible for a Member’s software to communicate with MIAx Sapphire software applications, and is subject to Member testing with, and certification by, MIAx Sapphire. The Exchange proposes to offer four types of ports: (i) the FIX Port;²⁵ (ii) the MEO Port;²⁶ (iii) the FIX Drop Copy (“FXD”) Port;²⁷ and (iv) the Clearing Trade Drop (“CTD”) Port.²⁸

The Exchange proposes to assess API testing and certification fees for EEMs (other than clearing firms) (i) initially per API for FIX, FXD and CTD in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange proposes to assess API testing and certification fees for EEM Clearing Firms (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification. The Exchange proposes to assess API testing and certification fees for Market Makers (i) initially per API for CTD and MEO in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been registered to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification.

In particular, the Exchange proposes to assess EEMs a per-instance API testing and certification fee of \$1,000 and Market Makers a per-instance API testing and certification fee of \$2,500. The proposed fees represent anticipated costs to be incurred by the Exchange as it works with each Member for testing and certifying that the Member’s software systems communicate properly with MIAx Sapphire’s interfaces.

The proposed API testing and certification fees for Members are the same as the API testing and certification fees for Members of the Exchange’s affiliates, MIAx and MIAx Emerald,

clearing trade updates. The updates include the Member’s clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member’s connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. See the Definitions Section of the Fee Schedule.

including the Exchange’s proposed amounts for EEMs and Market Makers and the structure of the proposed fees.²⁹ In order to provide an incentive to prospective Members to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAx Sapphire as soon as possible, the Exchange proposes to waive the API testing and certification fees assessable to Members for all ports during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

API Testing and Certification Fees—Non-Members

The Exchange proposes to establish Section 4)b), Non-Member API Testing and Certification Fee, pursuant to which the Exchange proposes to assess an API testing and certification fee to all non-Members, including Third Party Vendors,³⁰ Service Bureaus,³¹ and Extranet Providers,³² whose software interfaces with MIAx Sapphire software. As with Members, an API makes it possible for the software of Third Party Vendors, Service Bureaus, Extranet Providers and other non-Members to communicate with MIAx Sapphire software applications, and is

²⁹ See MIAx Fee Schedule, Section 4)a) and MIAx Emerald Fee Schedule, Section 4)a).

³⁰ The term “Third Party Vendor” means a subscriber of MIAx Sapphire’s market and other data feeds, which they in turn use for redistribution purposes. See the Definitions Section of the Fee Schedule.

³¹ The term “Service Bureau” means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. See the Definitions Section of the Fee Schedule.

³² The term “Extranet Provider” means a technology provider that connects with MIAx Sapphire systems and in turn provides such connectivity to MIAx Sapphire participants that do not connect directly with MIAx Sapphire. See the Definitions Section of the Fee Schedule.

²⁵ See *supra* note 17.

²⁶ See *supra* note 20.

²⁷ The term “FXD” or “FIX Drop Copy Port” means a messaging interface that provides a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. See the Definitions Section of the Fee Schedule.

²⁸ A “CTD Port” or “Clearing Trade Drop Port” provides an Exchange Member with a real-time

subject to testing with, and certification by, MIAX Sapphire.

The Exchange proposes to assess API testing and certification fees for all non-Members: (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a non-Member initiates a change to its system that requires testing and certification. The Exchange proposes that API testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. In particular, the Exchange proposes to assess all non-Members a per-instance API testing and certification fee of \$1,200. The proposed fee represents anticipated costs to be incurred by the Exchange as it works with each non-Member for testing and certifying that the non-Member's software systems communicate properly with MIAX Sapphire's interfaces.

The proposed API testing and certification fee for non-Members is the same as the API testing and certification fee for non-Members of the Exchange's affiliates, MIAX and MIAX Emerald, including the proposed amount and the structure of the proposed fee.³³ In order to provide an incentive to prospective non-Members to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the API testing and certification fee assessable to non-Members for all ports during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fee by outlining the structure and amount in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fee upon expiration of the defined term of the Initial Waiver Period.

The Exchange believes it is necessary to charge an API testing and certification fee to Members and non-Members because of the anticipated time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction. The price differential in API testing and certification fees for EEMs and non-Members is because, in the experience of the Exchange's affiliates, EEM testing takes less time

than non-Member testing as EEMs have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Likewise, the price differential in API testing and certification fees for Market Makers compared to EEMs and non-Members is because, in the experience of the Exchange's affiliates, testing and certification of APIs for Market Makers requires more Exchange resources as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.³⁴

Network Connectivity Testing and Certification Fee—Members

The Exchange proposes to establish Section 4(c), Member Network Connectivity Testing and Certification Fee, pursuant to which MIAX Sapphire will assess a fee for Members to establish electronic connections with the Exchange. The Exchange proposes to assess Members a network connectivity testing and certification fee: (i) initially per connection in the month the Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection; and (ii) each time a Member initiates a change to its system that requires network connectivity testing and certification. The Exchange proposes that network connectivity testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange also proposes that Member network connectivity testing and certification fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery facility. The Exchange notes that Members utilizing a single, shared 1 Gigabit ("Gb") cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange proposes to assess Members a network connectivity testing and certification fee of \$1,000 per Member per 1Gb connection tested and \$4,000 per Member per 10Gb ultra-low latency ("ULL") connection tested.

The proposed fee amounts are the same as the fees currently assessed for the same services at the Exchanges' affiliates, MIAX, MIAX Pearl, and MIAX Emerald.³⁵ In order to provide an incentive to prospective Members to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the network connectivity testing and certification fees assessable to Members for all connections during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

Network Connectivity Testing and Certification Fee—Non-Members

The Exchange proposes to establish Section 4(d), Non-Member Network Connectivity Testing and Certification Fee, pursuant to which MIAX will assess a fee for non-Members to establish electronic connections with the Exchange. The Exchange proposes to assess non-Member network connectivity testing and certification fees: (i) initially per connection in the month the non-Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection; and (ii) each time a non-Member initiates a change to its system that requires network connectivity testing and certification. The Exchange proposes that network connectivity testing and certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange also proposes that non-Member network connectivity testing and certification fees will not be assessed for testing and certification of connectivity to the Exchange's disaster recovery facility. The Exchange notes that non-Members utilizing a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl,

³³ See MIAX Fee Schedule, Section 4(b) and MIAX Emerald Fee Schedule, Section 4(b).

³⁴ See *supra* note 12.

³⁵ See MIAX Fee Schedule, Section 4(c); MIAX Pearl Options Fee Schedule, Section 4(c); and MIAX Emerald Fee Schedule, Section 4(c).

and MIAX Emerald will only be assessed one network connectivity testing and certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange proposes to assess non-Members a network connectivity testing and certification fee of \$1,200 per non-Member per 1Gb connection tested and \$4,200 per non-Member per 10Gb ULL connection tested.

The proposed fee amounts are the same as the fees currently assessed for the same services at the Exchanges' affiliates, MIAX, MIAX Pearl, and MIAX Emerald.³⁶ In order to provide an incentive to prospective non-Members to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible, the Exchange proposes to waive the network connectivity testing and certification fees assessable to non-Members for all connections during the Initial Waiver Period. Even though the Exchange proposes to waive this particular fee during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fee by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

The Member and non-Member network connectivity testing and certification fees represent expected installation and support costs to be incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Sapphire. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.³⁷ The Exchange proposes to assess a higher network connectivity testing and certification fee to non-Members than to Members, similar to how MIAX, MIAX Pearl, and MIAX Emerald assess such fees to their Members and non-Members. The proposed higher fees charged to non-Members reflects the anticipated greater amount of time to be spent by MIAX Sapphire employees testing and certifying non-Members. In the experience of the Exchange's affiliates,

Member network connectivity testing and certification takes less time than non-Member network connectivity testing and certification because Members have more experience testing these systems with exchanges and generally have fewer questions and issues arise during the testing and certification process.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act³⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act³⁹ 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 Act in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Membership Application Fees (One-Time Fee)

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers are consistent with the provisions of Section 6 of the Act,⁴⁰ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁴¹ in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using its facilities and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as further discussed below.

The Exchange believes the proposed one-time membership application fees are reasonable, equitable and not unfairly discriminatory because they are one-time fees that are reasonably related to (and designed to recover) the Exchange's anticipated cost associated with reviewing and approving membership applications, which consists primarily of the time and resources of Exchange personnel to process the membership application and conduct the new Member on-boarding process. The Exchange's process for

reviewing and approving potential new Members will involve several steps and participation from personnel in multiple Exchange departments, as follows: (i) reviewing prospective Member information provided in various membership forms, including, when necessary, consulting with the Financial Industry Regulatory Authority ("FINRA") pursuant to the Exchange's regulatory services agreement;⁴² (ii) the on-boarding process, where Exchange personnel contacts the firm for an introductory meeting with the Exchange's Business Team to discuss goals, answer questions and schedule the technical on-boarding meeting; (iii) the technical on-boarding meeting, where the Exchange's on-boarding team and Trading Operations Team guides the firm through the on-boarding process with Exchange personnel available to discuss network connectivity, APIs, Exchange functionality and operational issues; and (iv) follow-ups with the Trading Operations Team to coordinate testing, as necessary, until the firm is active in the Exchange's live trading environment.⁴³

As a self-regulatory organization, MIAX Sapphire's Membership Team will review applicants to ensure that each applicant for membership meets the Exchange's qualification criteria prior to approval. The Membership Team, in conjunction with the regulatory department, reviews the registration and qualification of an applicant's associated persons, the applicant's financial health, the validity of its clearing relationship, and its disciplinary history. The Membership Team also provides ongoing support to Members with respect to membership changes, registration, and other questions that commonly arise from Members regarding such matters. The Exchange believes that it is consistent with the Act to charge the one-time membership application fees to EEMs and Market Makers as it is reasonable to cover anticipated costs of administering its membership program.

The Exchange believes that competitive forces constrain what the Exchange can charge as one-time membership application fees because if the Exchange proposes to charge a membership application fee that market

³⁶ See MIAX Fee Schedule, Section 4(d); MIAX Pearl Fee Schedule, Section 4(d); and MIAX Emerald Fee Schedule, Section 4(d).

³⁷ See *supra* notes 35 and 36.

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(4) and (5).

⁴⁰ 15 U.S.C. 78f.

⁴¹ 15 U.S.C. 78f(b)(4) and (5).

⁴² See Securities Exchange Act Release No. 98746 (October 13, 2023), 88 FR 72116 (October 19, 2023) (File No. 10-240), Exhibit L (describing the Exchange's proposed regulatory program, including regulatory services agreement with FINRA).

⁴³ See, generally, the Exchange's Membership and Technical Onboarding process and forms, available at <https://www.miaxglobal.com/markets/us-options/sapphire-options/membership>.

participants deem to be excessive, market participants would simply not become Members of the Exchange. The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers are reasonable because the proposed fees are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates⁴⁴ and other competing equity options exchanges.⁴⁵

The Exchange believes the difference in the proposed one-time membership application fee to be charged to EEMs and Market Makers is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act⁴⁶ because of the anticipated additional review and resources involved in processing a Market Maker's application as opposed to an EEM's application, as Market Makers will have greater and more complex obligations with respect to doing business on the Exchange.⁴⁷

The Exchange believes it is reasonable to waive the one-time membership application fees for EEMs and Market Makers for the Initial Waiver Period to provide an incentive for market participants to apply for Exchange membership in connection with the launch of MIAx Sapphire. The Exchange believes waiving the one-time membership application fee is reasonable, equitable and not unfairly discriminatory because the waiver will apply uniformly to all new Members of the Exchange.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to waive all one-time membership application fees during the Initial Waiver Period in order to provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, which should result in increased potential order flow and liquidity as MIAx Sapphire begins electronic trading.

At launch and for a limited time, the Exchange anticipates having a smaller number of market participants than the Exchange's affiliated markets, which are more established having launched years ago, as well as several competing options exchanges.⁴⁸ The Exchange also

notes that it will not seek to recoup any of the actual costs associated with reviewing membership applications that will take place from the launch of operations through the expiration of the Initial Waiver Period, which will be in excess of six months. By the completion of the Initial Waiver Period, the Exchange anticipates the majority of market participants will have already completed their membership applications and on-boarding as new Members of the Exchange, all of whom will not pay the one-time membership application fee.⁴⁹ This means that the Exchange will likely not collect the majority of membership application fees for its Members. The Exchange believes it will assume approximately 100% of the anticipated costs associated with processing membership applications for the majority of Member firms approved by the Exchange (similar to MIAx, MIAx Pearl, and MIAx Emerald).⁵⁰ Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to waive the one-time membership application fees during the Initial Waiver Period to attract market participants to the Exchange. The proposed one-time membership application fees are not designed to be a profit center for the Exchange; rather, the proposed fees are simply to recover some of the anticipated costs and employee time with reviewing new member

Directory (last visited July 15, 2024), available at https://www.miaxglobal.com/miax_pearl_options_exchange_members.pdf (providing a list of 41 MIAx Pearl members); NYSE American Options Membership Directory (last visited July 15, 2024), available at <https://www.nyse.com/markets/american-options/membership#directory> (providing a list of 74 NYSE American members); and Nasdaq ISE Membership (last visited July 15, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=Membership> (providing a list of 76 Nasdaq ISE members).

⁴⁹ As noted by the Exchange's affiliate when it filed to introduce a one-time membership application fee, MIAx Emerald had 35 members that became members during the period of time that the one-time membership application fee was waived, which are fees MIAx Emerald will not be able to recoup. See Securities Exchange Act Release No. 91030 (February 1, 2021), 86 FR 8465 (February 5, 2021) (SR-EMERALD-2021-01) ("[MIAx Emerald] currently has 35 Members, all of whom did not pay the one-time membership application fee, as it was waived for the Waiver Period when these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAx and MIAx PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAx and MIAx PEARL one-time membership application fees. Accordingly, the Exchange (and MIAx and MIAx PEARL) have assumed approximately 100% of the costs associated with processing membership applications for the majority of Member firms approved by the Exchange, MIAx, and MIAx PEARL.") (footnote omitted).

⁵⁰ See *id.*

applications for EEMs and Market Makers once the Exchange has already on-boarded the majority of its anticipated Members.

Although the Exchange proposes to waive the one-time membership application fees for the Initial Waiver Period, the Exchange proposes to include the proposed fee structure and amounts in the Fee Schedule in order to communicate its intent to charge the one-time membership application fee to EEMs and Market Makers upon the expiration of the defined term of the Initial Waiver Period. As a new exchange entrant, the Exchange chooses not to charge for new Members to join the Exchange until the expiration of the Initial Waiver Period to encourage market participants to trade on the Exchange and experience the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later, once there is sufficient depth and breadth of liquidity, amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives, before establishing membership fees, encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without membership fees serving as a potential barrier to attracting memberships and order flow. The waiver is also a protection to new Members. If new Members join the Exchange in order to participate on MIAx Sapphire and subsequently decide that they do not want to continue trading on MIAx Sapphire prior to expiration of the Initial Waiver Period, they can cancel their membership without incurring the one-time membership application fee.

Trading Permit Fees

The Exchange plans to commence operations on August 12, 2024⁵¹ and waive monthly Trading Permit fees for Market Makers and EEMs to trade on the Exchange during the Initial Waiver Period.⁵² Although the Exchange proposes to waive the Trading Permit fees during the Initial Waiver Period, the Exchange proposes to establish an initial fee structure to communicate the Exchange's intent to charge Trading

⁵¹ See *supra* note 8.

⁵² See *supra* note 6.

⁴⁴ See *supra* note 15.

⁴⁵ See *supra* note 16.

⁴⁶ 15 U.S.C. 78f(b)(4).

⁴⁷ See *supra* note 12.

⁴⁸ See, e.g., MIAx Membership Directory (last visited July 15, 2024), available at https://www.miaxglobal.com/miax_options_exchange_members.pdf (providing a list of 47 MIAx members); MIAx Emerald Membership Director (last visited July 15, 2024), available at https://www.miaxglobal.com/miax_emerald_options_exchange_members.pdf (providing a list of 37 MIAx Emerald members); MIAx Pearl Membership

Permit fees upon the expiration of the Initial Waiver Period. As a new exchange entrant, the Exchange chooses to offer Trading Permits for free to encourage market participants to trade on the Exchange and experience, among other things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships and trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing certain fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.⁵³

The Exchange believes its proposed Trading Permit fees are reasonable and not unfairly discriminatory because the proposed Trading Permit fees are lower than comparable membership/trading permit fees assessed by competing options exchanges.⁵⁴ Further, the Exchange believes that the proposal is reasonably designed to compete with other options exchanges by incentivizing market participants to register as Market Makers and EEMs on the Exchange in a manner than enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants upon launch. As stated above, the Exchange

believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the anticipated costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of class registrations will be subject to the same Market Maker Trading Permit fee. As proposed, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class. Exchange Rule 602(a) provides that a Member that has qualified as a Market Maker may register to make markets in individual series of options. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal is fair and reasonable because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee.

The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry marketplace. Since these smaller Market Makers typically utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fee, designated in proposed footnote "a." following the proposed Market Maker Trading Permit fee table. The Exchange also notes that the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, provide lower Trading Permit fees for Market Makers who quote the entire markets of those exchanges (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX, MIAX Pearl, or MIAX Emerald,⁵⁵ and, as such, this concept is not new or novel.

The Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable because Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month or upon certain class volume percentages of national ADV. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange's system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, more classes that are actively quoted on the Exchange by a Market Maker will require increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and not unfairly discriminatory when taking into account how the increased number of quoted classes directly impacts the costs and resources required for the Exchange to operate.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. As noted above, the Exchange anticipates a smaller number of market participants will become Members of the Exchange from launch through the end of the Initial Waiver Period, which will constitute the majority of the Exchange's membership. A competing options exchange noted in a similar proposal to amend their own trading permit fees that, at the time of that filing in 2022, of the 62 market making firms that were registered as Market Makers across Cboe, MIAX, and BOX, 42 firms accessed only one of the three exchanges.⁵⁶ In addition, the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX

⁵³ See e.g., Securities Exchange Act Release Nos. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (stating, "[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX . . .") and 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR-MEMX-2020-10) ("MEMX Membership Fee Proposal") (proposing to adopt the initial fee schedule and stating that "[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions."). MEMX has seen its market share increase and subsequently proposed to adopt a membership fee and fees for connectivity. See Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposing to adopt membership fees); and 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR-MEMX-2022-17) (proposing to adopt fees for connectivity). See also, e.g., Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05).

⁵⁴ See *supra* "Monthly Membership/Trading Permit Fee" table.

⁵⁵ See *supra* note 24.

⁵⁶ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

Emerald, have a total of 48 Members (as of July 15, 2024). Of those 48 total members, 36 are members of all three exchanges, four are members of only two exchanges, and eight are members of only one exchange. Of the members that are currently Market Makers at the Exchange's affiliates, five are not registered as Market Makers on MIAIX Emerald, five are not registered as Market Makers on MIAIX Pearl, and one is not registered as a Market Maker on MIAIX.⁵⁷ The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there no regulatory requirement to connect to every options exchange, the Exchange believes there is also no "de facto" or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange membership exists when it comes to purchasing a Trading Permit and, as evidenced by the data provided below, prior fee proposals have resulted in Members terminating their memberships. As an example, one Market Maker terminated their MIAIX Pearl membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes proposed by MIAIX Pearl. As another example, two Market Makers terminated their MIAIX Emerald memberships effective February 1, 2024, as a direct result of the proposed non-transaction fee changes proposed by MIAIX Emerald. Other exchanges have also experienced termination of memberships if their members deem fees to be unreasonable or excessive. The Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.⁵⁸ The absence of

new memberships coupled with the termination of memberships on the Exchange's affiliates, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, shows that elasticity of demand exists.

The Exchange notes that there are material anticipated costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange expects to incur technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the anticipated expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the anticipated cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the anticipated costs to the Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange notes that while Market Makers will account for a vast majority of the system usage placed on the Exchange, Market Makers are valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate Trading Permit fees for Market Makers that are more aligned with the anticipated costs and resources that Market Makers may place on the Exchange and its systems.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the

fact that such fees are comparable to, and lower than, the costs of similar membership and trading permit fees at other exchanges.⁵⁹ The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.⁶⁰ The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to register in options classes while also equitably allocating the fees in a reasonable manner amongst Market Maker registrations to account for trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange.

In sum, the Exchange believes the proposed Trading Permit fees are reasonable and reflect a competitive environment, as the Exchange seeks to establish Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the anticipated costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers

⁵⁷ See *supra* note 48.

⁵⁸ According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem

permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

⁵⁹ See *supra* note 54.

⁶⁰ The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

to access and make a market on the Exchange.

API Testing and Certification Fees

The Exchange believes it is reasonable to assess the proposed API testing and certification fees to Members and non-Members because of the anticipated time and resources to be spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction before firms use APIs in the production environment. The Exchange will not assess the proposed API testing and certification fees in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification; rather, the Exchange proposes to only assess such fee when a Member or non-Member has been credentialed to use one or more of the respective ports in the production environment and each time a Member initiates a change to its system that requires testing and certification.

The Exchange believes its proposed API testing and certification fees for Members and non-Members are reasonable, equitable, and not unfairly discriminatory because they are reasonably related to (and designed to recover) the Exchange's expected cost associated with conducting API testing and certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any system malfunction.

Further, the Exchange believes the price differential in API testing and certification fees for Members and non-Members is not unfairly discriminatory because, in the experience of the Exchange's affiliates, Member testing utilizes less resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are likely to be more numerous and complex than those tested and certified for Members. The Exchange believes its proposed API testing and certification fees are reasonable because they are priced at the same rates as those charged by Exchange's affiliates, MIAX and

MIAX Emerald, for the same services for Members and non-Members.⁶¹

The Exchange believes its proposal to waive API testing and certification fees for Members and non-Members during the Initial Waiver Period is reasonable, equitable and not unfairly discriminatory because it will provide an incentive to market participants to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible. The proposed fee waiver will apply equally to all firms during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that is reasonable to provide market participants with the overall structure of the proposed fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

Network Connectivity Testing and Certification Fees

The Exchange believes it is reasonable to assess the proposed network connectivity testing and certification fees to Members and non-Members because of the anticipated time and resources to be spent to ensure that Members and non-Members are able to successfully establish electronic connections to the Exchange. The Exchange will not assess the proposed network connectivity testing and certification fees in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification; rather, the Exchange proposes to only assess such fee initially per connection in the month the Member or non-Member has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection and each time a Member or non-Member initiates a change to its system that requires network connectivity testing and certification.

The Exchange further believes the proposed fees are reasonable because a Member or non-Member that utilizes a single, shared 1Gb cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX, MIAX Pearl, and MIAX Emerald will only be assessed one network connectivity testing and certification fee

per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange believes the proposed network connectivity testing and certification fees are reasonable because they represent expected installation and support costs to be incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Sapphire. The Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.⁶² Additionally, the Exchange believes its proposed network connectivity testing and certification fees are reasonable, equitable, and not unfairly discriminatory because they are reasonably related to (and designed to recover) the Exchange's anticipated cost associated with conducting network connectivity testing and certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member connectivity function correctly to prevent any system malfunction.

Further, the Exchange believes the price differential in network connectivity testing and certification fees for Members and non-Members is not unfairly discriminatory because, in the experience of the Exchange's affiliates, Member testing utilizes less resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

The Exchange believes the difference in the proposed 1Gb and 10Gb ULL network connectivity testing and certification fees is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act⁶³ because of the anticipated additional review and resources involved in testing and certifying a 10Gb ULL connection as opposed to a 1Gb connection, as 10Gb ULL connections offer vastly greater products and services which require significantly more time to test, including Market Maker quoting systems. The Exchange believes its proposed network connectivity testing and certification fees are reasonable because the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Emerald, charge the same fees for the same services for their Members and non-Members.⁶⁴

⁶² See *supra* notes 35 and 36.

⁶³ 15 U.S.C. 78f(b)(4).

⁶⁴ See *supra* notes 35 and 36.

⁶¹ See *supra* note 29.

The Exchange believes its proposal to waive network connectivity testing and certification fees for Members and non-Members during the Initial Waiver Period is reasonable, equitable and not unfairly discriminatory because it will provide an incentive to market participants to apply early for membership and to engage in network connectivity testing and certification such that they will be able to trade options on MIAX Sapphire as soon as possible. The proposed fee waiver will apply equally to all firms during the Initial Waiver Period. Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that is reasonable to provide market participants with the overall structure of the proposed fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

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.

Intra-Market Competition

One-Time Membership Application Fees

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers do not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed one-time membership application fees for EEMs and Market Makers are lower than, or similar to, the one-time application fees in place at the Exchange's affiliates⁶⁵ and other competing equity options exchanges.⁶⁶ Further, the Exchange proposes to waive the one-time membership application fee for EEMs and Market Makers for the Initial Waiver Period, which the Exchange believes will provide an incentive for market participants interested in becoming Members of the Exchange to submit early applications, resulting in increased potential order flow and liquidity as MIAX Sapphire begins electronic trading. In turn, the Exchange believes its lower one-time membership application fees may stimulate intra-

market competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. As discussed above, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see fewer than anticipated firms become Members of the Exchange as a result.

Trading Permit Fees

The Exchange believes that the proposed Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intra-market competition because, when these fees are viewed in the context of the overall expected activity on the Exchange, Market Makers will: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand will likely come from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, other Member types, *i.e.*, EEMs, take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intra-market competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intra-market competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted

on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

API and Network Connectivity Testing and Certification Fees

The Exchange believes that the proposed API and network connectivity testing and certification fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply to all new Exchange Members and those firms looking to establish APIs and network connectivity in the same manner. Market participants may not only choose whether to become Exchange Members at all, but may choose to become members at competing options exchanges instead.

The Exchange further believes the proposed fees do not place any market participant at a disadvantage compared to other market participants because the proposed API testing and certification and network connectivity testing and certification fees are intended to cover the situations where a Member or non-Member firm makes changes to its own system for its own business purpose (*i.e.*, instances where a firm is trying to improve its quoting engine), which requires the Exchange to test those re-architected systems. This testing requires the time of Exchange personnel in several departments (Trading Operations, Business, On-Boarding, Membership), and occurs primarily outside of normal business hours, often over the course of the weekend. The proposed fees are a way for the Exchange to recoup its anticipated costs associated with this testing. When the Exchange determines to make upgrades to its own system which requires mandatory testing and certification by Members, the Exchange does not charge any fees.

The Exchange believes that the proposed fees do not dampen innovation because the majority of Exchange's anticipated Members are members of most, if not all, of the other 17 options exchanges. Those exchanges also require testing and certification any time their members make changes to their systems at those exchanges, and

⁶⁵ See *supra* note 15.

⁶⁶ See *supra* note 16.

also charge a fee to recoup the anticipated costs associated with testing and certifying members. Without some sort of testing and certification fee, the Exchange believes that Members and non-Members might be less efficient in testing their systems, potentially resulting in excessive time being consumed by the Exchange re-testing and re-certifying Members and non-Members, to the detriment of all market participants as Exchange resources are diverted away from other trading operations.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that various market participants are charged different fees for per-instance API and network connectivity testing, those distinctions are not unfairly discriminatory and do not unfairly burden one set of market participants over another. The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent that will likely be spent by the Exchange's employees testing and certifying non-Members. It has been the experience of the Exchange's affiliates that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus will be redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The proposed higher fee for network connectivity testing and certification to be charged to non-Members reflects the likely greater amount of time to be spent by MIAX Sapphire employees testing and certifying non-Members. It has been the experience of the Exchange's affiliates that that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process. The proposed higher fee for testing and certifying 10Gb ULL connections versus 1Gb ULL connections reflects the likely greater amount of time to be spent by MIAX Sapphire employees testing and certifying 10Gb ULL connections. MIAX

Sapphire's proposed per-instance API and network connectivity testing and certification fees are set at the same levels for the same services provided by the Exchanges affiliates.⁶⁷

The Exchange believes that the proposed API and network connectivity testing and certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for the time and resource necessary for API testing and certification and network connectivity testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines). Accordingly, the proposed API and network connectivity testing and certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposed fees do not place an undue burden on competition on other SROs that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 17 other options exchanges where market participants can become members.

One-Time Membership Application Fee

The Exchange believes that the proposed one-time membership application fees for EEMs and Market Makers do not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will apply to all EEMs and Market Makers equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

Trading Permit Fees

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other self-regulatory

organizations that is not necessary or appropriate. The proposed tiered structure is based on the number of options classes the Market Maker is registered in, not the number of series within the options class. The Exchange believes its proposal would promote inter-market competition because the proposed tiered structure would encourage Market Makers to register in more series within each options class as each additional series in that class would not count towards the particular Market Maker's overall number of classes assigned, and cause them to qualify for a higher tier and higher fee. This could improve the Exchange's market quality by encouraging Market Makers to quote more series within an options class without it impacting its Trading Permit fee.

Market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it anticipates having far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but may not become Members of the Exchange. The Exchange is also unaware of any assertion that its proposed fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange or not become a Member at all.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange had more than approximately 14–15% of the equity options market share for the month of June 2024.⁶⁸ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund ("ETF") options order flow. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an

⁶⁸ See the "Market Share" section of the Exchange's website, available at www.miaxoptions.com (last visited July 24, 2024).

⁶⁷ See *supra* notes 29 and 33.

environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

API and Network Connectivity Testing and Certification Fees

The Exchange believes the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 17 other options exchanges where market participants can become members.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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,⁶⁹ and Rule 19b-4(f)(2)⁷⁰ 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.

⁶⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷⁰ 17 CFR 240.19b-4(f)(2).

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-2024-20 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-2024-20. 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-2024-20 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷¹

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100749; File No. SR-SAPPHIRE-2024-08]

Self-Regulatory Organizations; MIA X Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for the Liquidity Taker Event Report—Simple Orders, the Liquidity Taker Event Report—Complex Orders, and the Liquidity Taker Event Report—Resting Simple Orders

August 16, 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 August 6, 2024, MIA X Sapphire, LLC ("MIA X Sapphire" 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 adopt fees for three data products: (i) the Liquidity Taker Event Report—Simple Orders; (ii) Liquidity Taker Event Report—Complex Orders; and (iii) Liquidity Taker Event Report—Resting Simple Orders.³

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.

⁷¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rules 531(a)-(c).

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 offers three Member⁴-specific reports: (1) the Liquidity Taker Event Report—Simple Orders (referred to herein as the “Simple Order Report”); (2) the Liquidity Taker Event Report—Complex Orders (the “Complex Order Report”); and (3) the Liquidity Taker Event Report—Resting Simple Orders (the “Resting Simple Order Report”), which are available for purchase by Exchange Members on a voluntary basis.

The Exchange proposes to adopt fees for these three reports. The Exchange reports are described under Exchange Rules 531(a)–(c).⁵ The reports are optional products available to Members. As further described below, the Exchange also proposes to offer a discounted combined fee for Members who purchase annual subscriptions to both the Simple Order Report and Complex Order Report. The Exchange notes that the proposed fees and proposed discount are identical to the fees and discounts currently provided by the Exchange's affiliated options exchanges, Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX Pearl”),⁶ and MIAX Emerald, LLC (“MIAX Emerald”), for the same liquidity taker event reports available on those

exchanges.⁷ The proposed fees are also identical to the fees charged by a competing options exchange, BOX Exchange, LLC (“BOX”), for BOX's version of the Simple Order Report and Complex Order Report.⁸

By way of background, the reports are daily reports that provide a Member (“Recipient Member”) with its liquidity response time details for executions of an order (or complex order,⁹ as the case may be) resting on the Electronic Book,¹⁰ where that Recipient Member attempted to execute against such resting order¹¹ within a certain timeframe. It is important to note that the content of each report is specific to the Recipient Member and each report will not include any information related to any Member other than the Recipient Member.

Report Content

The content of the Simple Order Report, Complex Order Report, and Resting Simple Order Report are substantially similar to one another. The following paragraphs explain the content of three reports by delineating which information would be provided regarding the resting order, the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order.

Resting Order Information. The following information is included in the Simple Order Report, Complex Order Report, and Resting Simple Order Report regarding the resting order: (A) the time the resting order was received by the Exchange;¹² (B) symbol; (C) order

reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an affiliate¹³ of the Member that entered the resting order¹⁴; (E) origin type (e.g., Priority Customer,¹⁵ Market Maker¹⁶); (F) side (buy or sell); and (G) displayed price and size of the resting order.¹⁷ The Simple Order Report and Resting Simple Order Report include the same information about incoming orders seeking to remove resting orders from the Simple Order Book. Meanwhile, the content of the Complex Order Report includes the same information about incoming complex orders that seek to remove liquidity from the Exchange's Strategy Book.¹⁸

Execution Information. The following information is included in the Simple Order Report regarding the execution of the resting order: (A) the SBBO¹⁹ at the

trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹³ The term “affiliate” of or person “affiliated with” another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

¹⁴ Each report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and will not include any other information that may indicate the identity of the Member that entered the resting order.

¹⁵ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

¹⁶ The term “Market Maker” or “MM” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules. See Exchange Rule 100.

¹⁷ The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority (“OPRA”). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

¹⁸ The term “complex strategy” means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. See Exchange Rule 518(a). The Strategy Book is organized by complex strategy in that individual orders for a defined complex strategy are organized together in a book that is separate from the orders for a different complex strategy.

¹⁹ The term “SBBO” means the best bid or offer on the Simple Order Book of the Exchange. See Exchange Rule 100.

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's 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.

⁵ See *supra* note 3; see also Securities Exchange Act Release Nos. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240) and 100642 (August 2, 2024) (SR–SAPPHIRE–2024–05).

⁶ All references to “MIAX Pearl” in this filing are to the options trading facility of MIAX Pearl, and not the equities trading facility, which is referred to as “MIAX Pearl Equities.”

⁷ See MIAX Fee Schedule, Section 7); MIAX Pearl Fee Schedule, Section 7); and MIAX Emerald Fee Schedule, Section 7). The Exchange notes that MIAX Pearl does not offer complex order functionality; accordingly, it only offers its version of the Simple Order Report and Resting Simple Order Report.

⁸ See BOX Fee Schedule, Section III.C.2. At the time of this filing, BOX does not offer a version of the Resting Simple Order Report.

⁹ In sum, a “complex order” is “any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ‘legs’ or ‘components’ of the complex order), for the same account, in a conforming or non-conforming ratio” See Exchange Rule 518(a).

¹⁰ The term “Electronic Book” means the Exchange's Simple Order Book and Strategy Book. See Exchange Rule 100. The “Simple Order Book” is the Exchange's regular electronic book of orders and quotes. *Id.* The “Strategy Book” is the Exchange's electronic book of complex orders. *Id.*

¹¹ Only displayed orders will be included in the reports. The Exchange notes that it does not currently offer any non-displayed orders.

¹² The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System. The term “System” means the automated

time of execution;²⁰ (B) the ABBO²¹ at the time of execution;²² (C) the time the first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;²³ (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;²⁴ and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the SBBO and ABBO at the time of the execution against the first response will be included.

The Simple Order Report and Resting Simple Order Report include the SBBO, which is the Exchange's best bid or offer, and the ABBO, which is the best bid or offer of away exchanges. The content of the Complex Order Report is identical to the content of the Simple Order Report with three minor differences. The Complex Order Report includes the Complex SBBO²⁵ in place of the SBBO and Complex ABBO²⁶ in place of the ABBO. The Complex SBBO is calculated using the SBBO for each

component of a complex strategy to establish the Exchange's best net bid or offer for a complex strategy. The Complex SBBO is calculated using the icSBBO combined with the best price currently available on the Strategy Book to establish the Exchange's best net bid or offer for a complex strategy.²⁷ The Complex ABBO is calculated using the ABBO for each component of a complex strategy to establish the away markets' best net bid or offer for a complex strategy using OPRA data. The Exchange is providing the Complex SBBO and Complex ABBO because both are relevant and tailored to a Member that is entering a complex order to remove liquidity as part of a complex strategy and, therefore, more germane to the purpose of the Complex Order Report. The third difference is that the Complex Order Report includes the data listed in Exchange Rule 531(b)(1) for executions and contra-side responses that occurred within 400 microseconds of the time the resting order was received by the Exchange, rather than 200 microseconds, which is the timeframe utilized by the Simple Order Report.

But for the timeframe and one difference described below, the Resting Simple Order Report would include the same data as the Simple Order Report currently described under Exchange Rule 531(a), except that the Resting Simple Order Report will focus on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange and within 200 microseconds of receipt of any Member's first attempt to execute against the resting order after the initial 200 microsecond time period under subparagraph (c)(2)(i) of Exchange Rule 531 has expired. The Simple Order Report includes the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange. The Resting Simple Order Report does not include the same information because that timeframe could be for an extended period of time since the proposed Resting Simple Order Report focuses on orders that have been resting on the Simple Order Book for longer than 200 microseconds and, therefore, the Exchange believes is less likely to be valuable to the Recipient Member. The Simple Order Report and Resting Simple Order Report focus on 200 microsecond windows starting at the time of receipt of the resting order and the Resting Simple

Order Report's window starting with the first attempt to execute against the resting order after the order was resting on the Simple Order Book for at least 200 microseconds.

Recipient Member's Response Information. The following information is included in the Simple Order Report, Complex Order Report, and Resting Simple Order Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not;²⁸ (C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

Timeframe

The Simple Order Report provides data for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Complex Order Report provides data for executions and contra-side responses that occurred within 400 microseconds of the time the resting order was received by the Exchange. The minor difference in timeframes for the Simple Order Report and Complex Order Report is to allow sufficient time for the System to develop new complex strategies, which generally takes longer than 200 microseconds. Accordingly, the Complex Order Report provides for a timeframe of 400 microseconds to allow for the intended information to be captured by the Complex Order Report.

The Resting Simple Order Report includes the same data as the Simple Order Report and Complex Order Report but focuses on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange, and within 200 microseconds of receipt of any Member's first attempt to execute against the resting order after the initial 200 microsecond time period has expired. More specifically, the resting order must rest on the Simple Order Book for at least 200 microseconds and once that initial 200 microsecond period

²⁰ Exchange Rule 531(a)(1)(ii)(B) [sic] provides that if the resting order executes against multiple contra-side responses, only the ABBO [sic] at the time of the execution against the first response will be included.

²¹ The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²² Exchange Rule 531(a)(1)(ii)(A) [sic] further provides that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

²³ The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

²⁴ The time difference would be provided in nanoseconds.

²⁵ The Complex SBBO for a particular complex strategy is calculated using the Implied Complex Sapphire Best Bid or Offer ("icSBBO") combined with the best price currently available for that particular complex strategy on the Strategy Book to establish the Exchange's best net bid or offer for that complex strategy. The icSBBO is calculated using the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icSBBO for a Complex Strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a). The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²⁶ The Complex ABBO is calculated using the ABBO for each component of a complex strategy to establish the away markets' best net bid or offer for a complex strategy.

²⁷ See *supra* note 25.

²⁸ For purposes of calculating this duration of time, the Exchange will use the time the first response that executes against the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

has passed, a Member must then submit an order to attempt to execute against that resting order. This event starts a second 200 microsecond period within which the Resting Simple Order Report would include data on executions and contra-side responses submitted by the Recipient Member to execute against that resting order.

Scope of Data Included in the Reports

The Simple Order Report, Complex Order Report, and Resting Simple Order Report include trading data related to the Recipient Member and subject to the historical data requirement described below, and do not include information related to any other Member's trading data other than resting order information and execution information described above.

Historical Data

The Simple Order Report, Complex Order Report, and Resting Simple Order Report contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. These reports do not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Simple Order Report, Complex Order Report, and Resting Simple Order Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Simple Order Report, Complex Order Report, and Resting Simple Order Report will increase transparency and democratize information so that all firms that subscribe to these reports have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Simple Order Book or Strategy Book. The Simple Order Report, Complex Order Report, and Resting Simple Order Report identify by how much time an order that may have been marketable missed an execution. The Simple Order Report, Complex Order Report, and Resting Simple Order Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The Simple Order Report, Complex Order Report, and Resting Simple Order Report will be Member-specific reports and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Electronic Book.

The reports are being offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase any report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to each report or not.

The Exchange proposes to adopt new Section 7), Reports, in its Fee Schedule, which will provide that Members may purchase each report on a monthly or annual (12-month) basis. The Exchange proposes to assess a monthly fee of \$4,000 per month and a fee of \$24,000 per year for a 12-month subscription for each of the Simple Order Report and Complex Order Report. The Exchange proposes to assess a monthly fee of \$2,000 per month and a fee of \$12,000 per year for a 12-month subscription for the Resting Simple Order Report. The proposed fees are identical to the fees currently charged by the Exchange's affiliates, MIAX, MIAX Pearl (for the Simple Order Report and Resting Simple Order Report), and MIAX Emerald, for the same reports available on those exchanges.²⁹ The proposed fees for the Simple Order Report and Complex Order Report are identical to the fees charged by a competing options exchange, BOX, for its version of the Simple Order Report and Complex Order Report.³⁰

Members may cancel their subscription to any report at any time. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided report data for each trading day of the calendar month prior to the day on which they subscribed to any of the reports. The Exchange proposes to waive the monthly fees for the Simple Order Report, Complex Order Report and Resting Simple Order Report for the

Initial Waiver Period.³¹ Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

The Exchange also proposes to provide a discounted rate of \$40,000 per year to Members that purchase 12-month subscriptions to both the Simple Order Report and Complex Order Report (as compared to a total of \$48,000 for each 12-month subscription at a rate of \$24,000 for each report on an individual subscription basis). The Exchange also proposes to prorate the discounted 12-month subscription fee for Members that seek to add either their Simple Order Report or the Complex Order Report to an existing subscription. In particular, the Exchange proposes that for those Members with an existing 12-month subscription to either the Simple Order Report or Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12-month subscription. In such case, the fee for the added report will be prorated based on the \$40,000 combined rate for the 12-month subscription discount for the remainder of the subscriber's current 12-month subscription, and the number of months remaining in the existing subscription until the Member's renewal date. Members would then receive the 12-month discount (\$40,000 annually) for subscribing to both reports on the renewal date of their original subscription.

For example, assume "Member A" previously subscribed to the Simple Order Report on September 1, 2024, and paid \$24,000 for a 12 month subscription to the Simple Order Report. "Member A's" current subscription expires on August 31, 2025, for the Simple Order Report. Before "Member A's" subscription to the Simple Order Report expires, "Member A" decides to subscribe to the Complex Order Report, beginning March 1, 2025. Rather than being immediately charged \$40,000 for the 12 month subscription discount for subscribing to both reports ("Member

³¹ The term "Initial Waiver Period" means, for each applicable fee, the period of time from the initial effective date of the MIAX Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions Section of the Fee Schedule.

²⁹ See *supra* note 7.

³⁰ See *supra* note 8. At the time of this filing, BOX does not offer a version of the Resting Simple Order Report.

A" already paid \$24,000 upfront for the Simple Order Report 12 month subscription), "Member A" would only be charged an additional \$8,000 to add the Complex Order Report for the remaining months of "Member A's" current 12 month subscription to the Simple Order Report. On September 1, 2025, assuming "Member A" decided to keep both reports, "Member A" would then be charged the 12 month discounted rate of \$40,000 for both reports for the next year.

The Exchange proposes to determine the prorated fee described above as follows: on the date that "Member A" wanted to begin subscribing to the Complex Order Report (March 1, 2025), there were six months remaining on "Member A's" existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be calculated as ((6 months remaining/12 months total) * (\$40,000 discounted annual subscription for both reports—\$24,000 for annual subscription to each report individually) = \$8,000 for remaining 6 months. Beginning September 1, 2025 (the original renewal date for the Simple Order Report), "Member A" would then be charged the discounted 12 month subscription rate of \$40,000, assuming "Member A" renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange intends to begin to offer the reports on August 12, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³² in general, and furthers the objectives of Section 6(b)(5) of the Act,³³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the reports is consistent with Section 6(b) of the Act³⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act³⁵ in particular, in that it is an equitable allocation of dues, fees and other

charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the reports further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The reports also promote increased transparency through the dissemination of the data contained in each report. Particularly, the reports will benefit investors by facilitating their prompt access to the value added information that is included in each report. The reports will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, with the launch of MIAx Sapphire, there are 17 registered exchanges that trade options. For the month of June 2024, based on publicly available information, no single options exchange had more than approximately 14–15% of the equity options market share.³⁶ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁷ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S.

options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced reports.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and identical to fees charged by MIAx, MIAx Pearl, and MIAx Emerald for similar reports.³⁸ Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's data products, which as noted, are entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange's offerings.³⁹ As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in each of the reports. A lower annual subscription fee would also incentivize Members to subscribe to the reports on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the reports by doing so on a regular basis over a prolonged and set period of time.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of new market data products to Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's Simple Order Book or Strategy Book, as the case may be. The reports accomplish this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Simple Order Book or Strategy Book. Members may use this data to optimize their models and

³⁸ See *supra* note 7. See MIAx Rules 531(a)–(c) and MIAx Emerald Rules 531(a)–(c).

³⁹ This is supported by BOX introducing two nearly identical reports. See *supra* note 8; see also Securities Exchange Act Release Nos. 94563 (March 31, 2022), 87 FR 19985 (April 6, 2022) (SR–BOX–2022–10); and 94920 (May 16, 2022), 87 FR 31013 (May 20, 2022) (SR–BOX–2022–18).

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(4).

³⁶ See the "Market Share" section of the Exchange's website, available at <https://www.miaxglobal.com/> (last visited July 25, 2024).

³⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as one of the reports, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the reports, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can decrease or discontinue their use of the data and/or avail themselves of similar products that may be offered by other exchanges.⁴⁰ The Exchange, therefore, believes that the proposed fees for the reports reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase any of the reports. The Exchange's proposed fees would not differentiate between subscribers that purchase the reports and are set at modest levels that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the reports is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the reports, and the Exchange is not required to make the reports available to all investors. It is entirely a business decision of each Member to subscribe to the reports. The Exchange offers the reports as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the reports may discontinue receiving the reports at any time if that Member determines that the information contained in the reports is no longer useful.

Further, the Exchange proposes to waive the fees for the reports for the Initial Waiver Period in order to encourage market participants to subscribe to the reports. The Exchange believes it is reasonable to waive the fees for the reports for the Initial Waiver Period in order for Members to determine whether they realize value from the reports prior to the expiration of the Initial Waiver Period. The Exchange believes that it is reasonable to provide

market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange proposes to make the reports available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the reports will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the reports. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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,⁴¹ and Rule 19b-4(f)(2)⁴² 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-2024-08 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-2024-08. 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

⁴⁰ See *supra* note 8.

⁴¹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴² 17 CFR 240.19b-4(f)(2).

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-2024-08 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

J. Matthew DeLesDernier,
Deputy Secretary.

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BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100750; File No. SR-SAPPHIRE-2024-16]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Pass-Through of External Connectivity Fees and Establish MPID Fees and a Technical Support Request Fee

August 16, 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 7, 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 amend the MIAX Sapphire Options Exchange Fee Schedule (the "Fee Schedule").

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/all-options-exchanges/rule-filings>, at MIAX Sapphire'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

On July 15, 2024, the U.S. Securities and Exchange Commission ("Commission") approved the Exchange's Form 1 application to register as a national securities exchange under Section 6 of the Exchange Act.³ As previously announced, the Exchange anticipates that it will commence electronic operations on August 12, 2024.⁴ In anticipation of the launch of electronic equity options trading, the Exchange proposes to establish the following sections of the Fee Schedule, including proposed fee structures and amounts: (1) pass-through of external connectivity fees for Members⁵ and

non-Members; (2) Member Participant Identifier fees ("MPID"); and (3) a technical support request fee.

The Exchange first proposes to establish Section 5), System Connectivity Fees, which will contain sections for various connectivity and port-related fees. The Exchange will file separate rule filings to establish fees for connectivity and ports for Members and non-Members. Accordingly, the Exchange proposes to establish Sections 5)a), 5)b), and 5)d), which will be marked as "Reserved" for those types of fees.

Pass-Through of External Connectivity Fees

The Exchange proposes to establish Section 5)c), Pass-Through of External Connectivity Fees, which provides for the pass through of external connectivity fees to Members and non-Members that establish connections with MIAX Sapphire through a third-party. Fees assessed to MIAX Sapphire by third-party external vendors on behalf of a Member or non-Member connecting to MIAX Sapphire (including cross-connects), will be passed through to the Member or non-Member. The external connectivity fees passed through can include one-time set-up fees, monthly charges, and other fees charged to MIAX Sapphire by a third-party for the benefit of a Member or non-Member. The Exchange notes that its affiliated options markets, MIAX,⁶ MIAX Pearl⁷ and MIAX Emerald,⁸ provide for the same pass-through of external connectivity fees to their members and non-members.⁹ As such, this proposed fee is not new or novel.

MPID Fees

The Exchange proposes to establish Section 5)e), MPID Fees, pursuant to which the Exchange proposes to assess monthly MPID fees to Members based upon the type of MPID, either FIX¹⁰

⁴³ "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁶ The term "MIAX" means Miami International Securities Exchange, LLC. See Exchange Rule 100.

⁷ The term "MIAX Pearl" means MIAX PEARL, LLC. See Exchange Rule 100. All references to "MIAX Pearl" in this filing are to the options trading facility of MIAX PEARL, LLC. References to the equities trading facility of MIAX PEARL, LLC, will be to "MIAX Pearl Equities."

⁸ The term "MIAX Emerald" means MIAX Emerald, LLC. See Exchange Rule 100.

⁹ See MIAX Fee Schedule, Section 5)c); MIAX Pearl Fee Schedule, Section 5)c); and MIAX Emerald Fee Schedule, Section 5)c).

¹⁰ The term "FIX Interface" means the Financial Information Exchange interface used for submitting certain order types (as set forth in Rule 516) to the MIAX Sapphire System. See Exchange Rule 100.

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (the "Approval Order").

⁴ See MIAX Sapphire Alert, dated March 6, 2024, available at <https://www.miaxglobal.com/alert/2024/03/06/miax-sapphire-options-exchange-scheduled-launch-date-august-12-2024>.

⁵ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an

MPID or MEO¹¹ MPID. MPIDs allow the Exchange to provide additional services to its Members, including customer reporting, monitoring and risk protection services, down at the MPID level. MPIDs provide Members the ability to segment their business operations in a manner that can be tailored to their business needs, as well as receive certain additional administrative and operational services provided by the Exchange. MPID fees are assessed for providing these services. The Exchange proposes to provide MPIDs to Members for free. Even though the Exchange proposes to provide MPIDs for free, the Exchange believes that is appropriate to provide market participants with the overall structure of the fees by outlining the structure in the Fee Schedule, so that there is general awareness that the Exchange intends to assess such fees in the future. The Exchange will issue an alert to Members in the future when it plans to establish fee amounts for MPIDs.

Technical Support Request Fee

The Exchange proposes to establish Section 5)f), Member and Non-Member Technical Support Request Fee, which describes the technical support request fee to be charged to both Members and non-Members that request technical support at any of the MIAX Sapphire data centers. MIAX Sapphire proposes to charge a fee of \$250 per hour for requested technical support. The Exchange intends to provide Members and non-Members access to the Exchange's on-site data center personnel for technical support as a convenience to Members and non-Members to test or otherwise assess their connectivity to the Exchange. The Exchange's affiliated markets, MIAX, MIAX Pearl, and MIAX Emerald, charge a slightly lower technical support request fee of \$200 per hour to their members and non-members.¹² The Exchange notes that its affiliated markets established their respective hourly rate for the technical support request fee over five years ago and the hourly fee for employees to provide technical support has increased since that time.

2. Statutory Basis

The Exchange believes that the proposed fees are 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 provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act¹⁵ in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Pass-Through of External Connectivity Fees

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass-through external connectivity fees to Members and non-Members that establish connections with MIAX Sapphire through a third-party. MIAX Sapphire will only pass-through the actual costs it is charged by third-party external vendors. The Exchange's affiliated markets all pass-through external connectivity fee charges to their members and non-members.¹⁶ Additionally, at least one competing options exchange also passes along connectivity fee charges assessed to that exchange by third-party external vendors on behalf of its market participants.¹⁷ Accordingly, the Exchange believes the proposed pass-through of external connectivity fees is reasonable, equitable and not unfairly discriminatory.

MPID Fees

The Exchange believes that its proposal to establish an overall fee structure for MPIDs, without proposing fee amounts at this time, is reasonable, equitable and not unfairly discriminatory because it will provide notice to Members that the Exchange intends to assess such fees in the future. The Exchange will announce in advance any change to establish MPID fees so

that Members have time to adjust their MPIDs as necessary based upon the proposed fees. The Exchange believes it is reasonable and equitable to waive MPID fees as an incentive for market participants to register and become Members of the Exchange prior to launch. This in turn should provide the Exchange with potential order flow and liquidity providers as it begins operations.

Member and Non-Member Technical Support Request Fee

The Exchange believes that the proposed technical support request fee is reasonable, equitable and not unfairly discriminatory because it will be assessed equally to all Members and non-Members who request technical support at the proposed hourly rate. Furthermore, Members and non-Members are not required to use the service; instead, the Exchange proposes to offer this services as a convenience to all Members and non-Members. The Exchange believes the proposed fee is reasonable because it will permit both Members and non-Members to request the use of the Exchange's on-site data center personnel as technical support and as a convenience in order to test or otherwise assess the user's connectivity to the Exchange via its data centers. The proposed fee is reasonable because it is within the range of the fee charged by the Exchange's affiliated markets.¹⁸

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.

Intra-Market Competition

The Exchange believes the proposed pass-through of external connectivity fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because MIAX Sapphire will only pass-through the actual costs it is charged by third-party external vendors. The Exchange's affiliated markets all pass-through external connectivity fee charges to their members and non-members,¹⁹ and at least one competing options exchange also passes along connectivity fee charges assessed to that exchange by third-party external vendors on behalf of its market participants.²⁰

¹¹ The term "MEO Interface" means a binary order interface used for submitting certain order types (as set forth in Rule 516 and Rule 518) to the MIAX Sapphire System. See Exchange Rule 100.

¹² See MIAX Fee Schedule, Section 5)f); MIAX Pearl Options Fee Schedule, Section 5)f); and MIAX Emerald Fee Schedule, Section 5)f).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See *supra* note 9.

¹⁷ See BOX Exchange LLC ("BOX") Fee Schedule, Section III.A.1. ("BOX will pass-through any connectivity fees to Participants and non-Participants that are assessed to BOX by these third-party external vendors on behalf of a Participant or non-Participant. Connectivity fees can include one-time set-up fees, monthly charges, and other fees charged by the third-party vendor in exchange for the services provided to the market participant.")

¹⁸ See *supra* note 12.

¹⁹ See *supra* note 9.

²⁰ See BOX Exchange LLC ("BOX") Fee Schedule, Section III.A.1. ("BOX will pass-through any

The Exchange believes the proposed MPID fee structure, including waiver of the MPID fees, will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because there will be no cost for Members to utilize MPIDs across their firm and business lines. The Exchange believes waiving such fees will not impose any burden on intra-market competition because this will provide an incentive for market participants to register and become Members of the Exchange prior to launch. This in turn should provide the Exchange with potential order flow and liquidity providers as it begins operations, which may benefit all market participants of the Exchange.

The Exchange believes the proposed technical support request fee will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will be assessed equally to all Members and non-Members who request technical support at the proposed hourly rate. Furthermore, Members and non-Members are not required to use the service; instead, the Exchange proposes to offer this services as a convenience to all Members and non-Members. The Exchange believes the proposed fee will not impose any burden on intra-market competition because it will permit both Members and non-Members to request the use of the Exchange's on-site data center personnel as technical support and as a convenience in order to test or otherwise assess the user's connectivity to the Exchange via its data centers. The proposed fee is within the range of the fee charged by the Exchange's affiliated markets for the same service.²¹

Inter-Market Competition

The Exchange believes that the proposed changes will not result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, market participants are not forced to connect to and trade on all exchanges. The Exchange believes that the proposed pass-through of external connectivity fees, MPID fee structure, and technical support request fee will not cause any burden on inter-market competition because none of

connectivity fees to Participants and non-Participants that are assessed to BOX by these third-party external vendors on behalf of a Participant or non-Participant. Connectivity fees can include one-time set-up fees, monthly charges, and other fees charged by the third-party vendor in exchange for the services provided to the market participant.”).

²¹ See *supra* note 12.

these changes impact other exchanges' ability to compete.

Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²² and Rule 19b-4(f)(2)²³ 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-2024-16 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-2024-16. 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

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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-2024-16 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-18789 Filed 8-21-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100753; File No. SR-ISE-2024-38]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 3

August 16, 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 9, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7.³

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates, to increase the Priority Customer⁴ Select Symbol Taker Fee from \$0.37 to \$0.39 per contract.

Today, the Exchange assesses a Select Symbol Maker Fee of \$0.18 per contract in regular orders to all Non-Priority Customers.⁵ Priority Customers are not assessed a Select Symbol Maker Fee in regular orders. Additionally, today, ISE assesses Market Makers⁶ a \$0.45 per

contract Select Symbol Taker Fee in regular orders. Non-Nasdaq ISE Market Makers (FarMMs),⁷ Firm Proprietary⁸/ Broker Dealers,⁹ and Professional Customers¹⁰ are assessed a \$0.46 per contract Select Symbol Taker Fee in regular orders. Priority Customers are assessed a \$0.37 per contract Select Symbol Taker Fee in regular orders.

At this time, the Exchange proposes to increase the Priority Customer Select Symbol Taker Fee from \$0.37 to \$0.39 per contract in regular orders. While the Exchange is increasing the Priority Customer Select Symbol Taker Fee, it will remain the lowest Select Symbol Taker Fee assessed by ISE as compared to Select Symbol Taker Fees assessed to other market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v.*

Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for

execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ." ¹³

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." ¹⁴

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to increase the Priority Customer Select Symbol Taker Fee from \$0.37 to \$0.39 per contract for regular orders is reasonable because its taker fees remain competitive and lower than other options exchanges.¹⁵ Further, while the Taker Fee will be higher for Priority Customers, the Exchange believes that market participants will continue to be incentivized to send Priority Customer order flow to ISE because it will remain the lowest Select Symbol Taker Fee

³ On July 31, 2024, ISE filed SR-ISE-2024-37 and designated it effective on August 1, 2024. On August 9, 2024, the Exchange withdrew SR-ISE-2024-37 and filed this rule change.

⁴ A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1(c).

⁵ "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

⁶ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market

Makers" collectively. See Options 1, Section 1(a)(21).

⁷ A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

⁸ A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

⁹ A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

¹⁰ A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ *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)).

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

¹⁵ For example, Cboe C2 Exchange, Inc. ("C2") assesses Public Customers a \$0.43 per contract fee for removing liquidity in Penny Classes. See C2 Fee Schedule at: https://www.cboe.com/us/options/membership/fee_schedule/ctwo. In addition, MIAX Emerald, LLC ("MIAX Emerald") assesses Priority Customers a \$0.50 per contract taker fee in Penny Classes. See MIAX Emerald Fee Schedule at: https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_08052024.pdf.

assessed by ISE as compared to Select Symbol Taker Fees assessed to other market participants.¹⁶

The Exchange's proposal to increase the Priority Customer Select Symbol Taker Fee from \$0.37 to \$0.39 per contract for regular orders is equitable and not discriminatory because Priority Customers would continue to be assessed the lowest Select Symbol Taker Fee on ISE among market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE.

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.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

In terms of intra-market competition, the Exchange does not believe that this

proposal will place any category of market participant at a competitive disadvantage. The Exchange's proposal to increase the Priority Customer Select Symbol Taker Fee from \$0.37 to \$0.39 per contract in regular orders does not impose an undue burden on competition because Priority Customers would continue to be assessed the lowest Select Symbol Taker Fee on ISE among market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE.

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.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2024-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-38 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-18786 Filed 8-21-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁶ Today, ISE assesses Market Makers a \$0.45 per contract Select Symbol Taker Fee. ISE assesses Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker Dealers, and Professional Customers a \$.46 per contract Select Symbol Taker Fee in regular orders.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100751; File No. SR–SAPPHIRE–2024–09]

Self-Regulatory Organizations; MIAx Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for a Data Product Known as the Open-Close Report

August 16, 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 and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAx Sapphire Options Exchange Fee Schedule (“Fee Schedule”) to adopt fees for a data product known as the Open-Close Report.³

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

The Exchange currently plans to offer a data product known as the Open-Close Report, which will be available for purchase to Exchange Members⁴ and non-Members.⁵ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(d)(1).

By way of background, the Exchange plans to offer two versions of the Open-Close Report, an End-of-Day summary and Intra-Day report.⁶ Members and non-Members may request, on an ad hoc basis, historical End-of-Day and/or Intra-Day Open-Close Report data. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available.

The Exchange proposes to establish Section 6) of the Fee Schedule, titled “Market Data Fees.” The Exchange proposes that Sections 6)a)–b) will be marked as “Reserved” for other market data fees that the Exchange plans to establish. Proposed Section 6)c) will be titled “Open-Close Report” and provide the fees described below.

End-of-Day Subscription

The Exchange proposes to assess a fee of \$600 per month for subscribing to the End-of-Day summary Open-Close Report. The End-of-Day summary is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁷), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker volume is further broken

down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is a historical data product and not a real-time data feed. The Exchange notes that its affiliated markets offer similar data products that may be purchased on a monthly basis for the same prices as proposed herein.⁸ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁹

Intra-Day Subscription

The Exchange proposes to assess a monthly fee of \$2,000 for subscribing to the Intra-Day Open-Close Report. The Exchange also proposes that subscribers who purchase an Intra-Day subscription may request an End-of-Day subscription for no additional charge. The Intra-Day Open-Close Report provides similar information to the End-of-Day summary Open-Close Report but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the Intra-Day Open-Close Report receive the first calculation of intra-day data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.” The Intra-Day Open-Close Report data provides a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume is further broken down into

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of these 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.

⁵ See Securities Exchange Act Release No. 100539 (July 15, 2024) (File No. 10–240) (In the Matter of the Application of MIAx Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁶ The Intra-Day Open-Close Report provides similar information to that of End-of-Day Open-Close Report, but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

⁷ See Exchange Rule 100.

⁸ See Miami International Securities Exchange, LLC (“MIAx”) Fee Schedule, Section 6)e); MIAx PEARL, LLC (“MIAx Pearl”) Options Fee Schedule, Section 6)d); and MIAx Emerald, LLC (“MIAx Emerald”) Fee Schedule, Section 6)e).

⁹ See Nasdaq PHLX, LLC (“PHLX”) Options Pricing Schedule, Section 10; The Nasdaq Stock Market, LLC (“Nasdaq”) Options Pricing Schedule, Section 4; Nasdaq ISE, LLC (“ISE”) Options Pricing Schedule, Section 10; Nasdaq GEMX, LLC (“GEMX”) Options Pricing Schedule, Section 7; Cboe EDGX Exchange, Inc. (“EDGX”) Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section; and Cboe BZX Exchange, Inc. (“BZX”) Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Exchange Rule 531(d)(1).

trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Exchange notes that its affiliated markets offer similar Intra-Day Open-Close Reports for their market data, which may be purchased on a monthly basis for the same price as proposed herein.¹⁰ Further, other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.¹¹

End-of-Day Ad-Hoc Request (Historical Data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical End-of-Day Open-Close Report data for a fee of \$500 per request per month. An ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. The Exchange notes that its affiliated markets offer similar historical End-of-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹² Further, other exchanges that provide similar data products allow for ad hoc requests of their End-of-Day data for a fee¹³ and, like the Exchange proposes herein, allow for ad hoc requests back to a certain month.¹⁴

Intra-Day Ad-Hoc Request (Historical Data)

The Exchange proposes to provide Members and non-Members who request on an ad hoc basis historical Intra-Day Open-Close Report data for a fee of \$1,000 per request per month. The Exchange also proposes that subscribers who purchase an Intra-Day Ad-hoc Request (historical data) may submit an End-of-Day Ad-hoc Request (historical data) for the same date or date range for no additional charge. As it specifies for historical End-of-Day Open-Close Report data, an ad hoc request may be for any number of months beginning with the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange provides historical Intra-Day Open-Close Report data for the same time period. The Exchange notes that its affiliated markets offer similar historical

Intra-Day Open-Close Report data, which may also be purchased on a per request per month basis for the same price as proposed herein.¹⁵ Further, other exchanges that provide similar data products allow for ad hoc requests of their Intra-Day data for a fee.¹⁶

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

The Exchange also proposes to adopt an academic discount for ad hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request \$1,500 per year for the first year (instead of \$6,000 per year) and \$125 per month thereafter for historical End-of-Day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request \$3,000 per year for the first year (instead of \$12,000 per year) and \$250 per month thereafter for historical Intra-Day Open-Close Report data covering all of the Exchange's securities.

The Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options markets. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fees for qualifying academic purchasers of historical End-of-Day Open-Close Report data and Intra-Day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.*, academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. Academic users interested in qualifying will be required

to submit a brief application.¹⁷ Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that its affiliates—MIAx, MIAx Pearl Options, and MIAx Emerald¹⁸—as well as competing exchanges currently offer academic discounts for similar data sets on those exchanges.¹⁹ The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical End-of-Day Open-Close Report data and Intra-Day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical End-of-Day Open-Close and Intra-Day Open-Close Report data would be educational in use and purpose, and not vocational.

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Open-Close Report may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, Intra-Day Open-Close Report data may allow a market participant to identify new interest or possible risks throughout the trading day, while End-of-Day Open-Close Report data may allow a market participant to identify fading interests in a security. The Open-Close Report is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that its affiliates—MIAx, MIAx Pearl Options, and MIAx

¹⁰ See *supra* note 8.

¹¹ See *supra* note 8.

¹² See *supra* note 8.

¹³ See *supra* note 9.

¹⁴ See EDGX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section, and BZX Options Fee Schedule, Cboe LiveVol, LLC Market Data Fees Section. (Both EDGX and BZX allow for ad-hoc requests to be for any number of months beginning with January 2018 for which the data is available.)

¹⁵ See *supra* note 8.

¹⁶ See *supra* note 14.

¹⁷ The Exchange notes that it will have an academic user application available on the Exchange's website.

¹⁸ See *supra* note 8.

¹⁹ See *supra* note 9 (ISE offers academic discounts for Open/Close Trade Profile End of Day and Open/Close Trade Profile Intraday; EDGX and BZX also offer academic discounts for Open-Close Data).

Emerald—as well as competing exchanges offer similar data products.²⁰

The Exchange proposes to waive the Open-Close Report fees for the Initial Waiver Period.²¹ Even though the Exchange proposes to waive these particular fees during the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period.

The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month prior to the day on which they subscribed. The proposed fees will apply both to Members and non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.²²

The Exchange intends to begin to offer the Open-Close Report on August 12, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the reports is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁶ in particular, in that it is an equitable allocation of dues, fees and other

charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.²⁷

The Exchange operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. For the month of June 2024, based on publicly available information, no single options exchange had more than approximately 14–15% of the equity options market share.²⁸ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁹ Making similar data products available to market participants fosters

competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are identical to the fees charged for the Open-Close Report by the Exchange’s affiliates, MIAx, MIAx Pearl Options, and MIAx Emerald.³⁰ In addition, the Exchange believes the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.³¹ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data products, which as noted, is entirely optional. Like the Exchange’s Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close Report data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.³² Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close Report data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange’s Open-Close Report data as more attractive than the Exchange’s Open-Close Report, then such market participant can merely choose not to purchase the Exchange’s Open-Close Report and instead purchase another exchange’s Open-Close Report data product, which offers similar data points, albeit based on that market’s trading activity.

The Exchange also believes the proposed fees are reasonable as they

²⁰ See *supra* notes 8 and 9.

²¹ The term “Initial Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAx Sapphire Fee Schedule plus an additional six (6) full calendar months after the completion of the partial month of the Exchange launch. See the Definitions Section of the Fee Schedule.

²² See *supra* note 9.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4).

²⁷ See *supra* note 9.

²⁸ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/>.

²⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

³⁰ See *supra* note 8.

³¹ See *supra* note 9.

³² The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on the Exchange. The recently adopted Open-Close Report would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical End-of-Day Open-Close and Intra-Day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical End-of-Day Open-Close and Intra-Day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

Selling market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar

products offered by other exchanges.³³ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member and non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Open-Close Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Report, and the Exchange is not required to make the Open-Close Report available to all investors. Rather, the Exchange is voluntarily making the Open-Close Report available, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

The Exchange proposes to waive the fees for the proposed Open-Close Reports for the Initial Waiver Period in order to encourage market participants to subscribe to the reports. The Exchange believes it is reasonable to waive the fees for the reports for the Initial Waiver Period in order for market participants and academic users to determine whether they realize value from the reports prior to the expiration of the Initial Waiver Period. The Exchange believes that it is reasonable to provide market participants with the overall structure of the fees by outlining the structure and amounts in the Fee Schedule so that there is general awareness that the Exchange intends to assess such fees upon expiration of the defined term of the Initial Waiver Period. The Exchange believes the proposed fee waiver is equitable and not unfairly discriminatory because all subscribers to the Open-Close Reports will receive the fee waiver throughout the defined period of time of the Initial Waiver Period.

³³ See *supra* note 9.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.³⁴ The Exchange will make Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least six other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report.³⁵ As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.³⁶ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other

³⁴ *Id.*

³⁵ See *supra* notes 8 and 9.

³⁶ See *id.*

exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase the Open-Close Report, other than for qualifying academic users. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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,³⁷ and Rule 19b-4(f)(2)³⁸ 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-2024-09 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-2024-09. 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-2024-09 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-18793 Filed 8-21-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100743; File No. SR-ISE-2024-39]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend Complex Order Risk Protections

August 16, 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 9, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange to amend Options 3, Section 16, Complex Order Risk Protections.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 16, Complex Order Risk Protections. Specifically, the Exchange proposes to amend Options 3, Section 16(b), Strategy Protections, to provide that the protections in Options 3, Section 16(b) would not apply to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg.

The Exchange received approval to permit the listing and trading of p.m.-settled Nasdaq-100 Index® options³ with a third-Friday of-the-month

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq-100 Index options trade under the symbol (“NDX”).

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 17 CFR 240.19b-4(f)(2).

³⁹ 17 CFR 200.30-3(a)(12).

expiration.⁴ With this amendment, Options 4A, Section 12 was amended to permit the listing of p.m.-settled third-Friday-of-the-month Expiration Dates under the trading symbol “NDXP.” Therefore, ISE may list third-Friday-of-the-month expirations on Nasdaq-100 Index options that are both a.m.-settled and p.m.-settled on the same day.⁵

Pursuant to Options 3, Section 14(a)(1), a Complex Options Strategy is the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Only those Complex Options Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing.⁶ Pursuant to Options 3, Section 16(b), Vertical Spread Protections,⁷ Calendar Spread Protections,⁸ Butterfly Spread Protections⁹ and BOX Spread Protections¹⁰ apply throughout the trading day to Complex Orders, including pre-market, during the

Opening Process and during a trading halt.¹¹

With the approval of SR-ISE-2023-20, a Complex Options Strategy may consist of legs with different expirations based on settlement (a.m. or p.m.-settled). The Exchange proposes to provide at Options 3, Section 16(b) that the complex risk protections would not apply to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. The last day of trading for A.M.-settled index options shall be the business day preceding the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day preceding the last day of trading in the underlying securities prior to the expiration date.¹² In contrast, the last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date.¹³

At this time, the Exchange proposes to not apply the strategy protections in Options 3, Section 16(b) to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg.¹⁴ A Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg would not qualify as a Vertical Spread, Butterfly Spread, Calendar Spread or BOX Spread because the P.M.-settled leg and the A.M.-settled leg would have different expirations. The System considers these Complex Orders to be different products, as well as customized Complex Orders, so System limitations would prevent the application of the Strategy Price Protections to these Complex Orders. The Exchange notes that the Vertical Spread Protections, Butterfly Spread Protections and BOX Spread Protections all have the same expirations unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. The Exchange also notes that the System considers a Calendar Spread to have all legs in the same product, unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. A Complex Order that includes at least

one P.M.-settled leg and at least one A.M.-settled leg would still be subject to the price limits for Complex Orders in Options 3, Section 16(a) and the price protections in Options 3, Section 16(c), namely the Complex Order Price Protection, Size Limitation and Price Level Protection.

Implementation

The Exchange intends to begin implementation of the proposed rule change by Q1 2025. The Exchange will announce the date to Members in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to exclude a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg¹⁷ from the strategy protections in Options 3, Section 16(b) removes impediments to and perfect the mechanism of a free and open market because it would not qualify as a Vertical Spread, Butterfly Spread, Calendar Spread, or BOX Spread because the P.M.-settled leg and the A.M.-settled leg would have different expirations. The System considers these Complex Orders to be different products, as well as customized Complex Orders, so System limitations would prevent the application of the Strategy Price Protections to these Complex Orders. The Exchange notes that the Vertical Spread Protections, Butterfly Spread Protections and BOX Spread Protections all have the same expirations unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. The Exchange also notes that the System considers a Calendar Spread to have all legs in the same product, unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. A Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg would still be subject to the price limits for Complex Orders in Options 3, Section

⁴ See Securities Exchange Act Release No. 98935 (November 14, 2023), 88 FR 80792 (November 20, 2023) (SR-ISE-2023-20) (Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index® Options With a Third-Friday-of-the-Month Expiration) (“SR-ISE-2023-20”). The Exchange has not yet listed a Third-Friday-of-the Month P.M. expiration.

⁵ The conditions for listing p.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options will be similar to those for a.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options.

⁶ The term “complex strategy” includes Complex Options Strategies, Stock-Option Strategies, and Stock-Complex Strategies. See Options 3, Section 14(a)(4).

⁷ A vertical spread is an order to buy a call (put) option and to sell another call (put) option in the same security with the same expiration but at a higher (lower) strike price. See Options 3, Section 16(b)(1).

⁸ A calendar spread is an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price. See Options 3, Section 16(b)(2).

⁹ A butterfly spread is a three legged Complex Order with the following: (1) two legs to buy (sell) the same number of calls (puts); (2) one leg to sell (buy) twice the number of calls (puts) with a strike price at mid-point of the two legs to buy (sell); (3) all legs have the same expiration; and (4) each leg strike price is equidistant from the next sequential strike price. See Options 3, Section 16(b)(3).

¹⁰ A box spread is a four legged Complex Order with the following: (1) one pair of legs with the same strike price with one leg to buy a call (put) and one leg to sell a put (call); (2) a second pair of legs with a different strike price from the pair described in (1) with one leg to sell a call (put) and one leg to buy a put (call); (3) all legs have the same expiration; and (4) all legs have equal volume. See Options 3, Section 16(b)(4).

¹¹ The protections do not apply to Complex Orders being auctioned and auction responses in the Facilitation Mechanism, Solicited Order Mechanism within Options 3, Section 11, and Price Improvement Mechanism within Options 3, Section 13 and do not apply to Customer Cross Orders pursuant to Options 3, Section 12. See Options 3, Section 16(b).

¹² See Options 4A, Section 12(a)(5).

¹³ See Options 4A, Section 12(a)(6).

¹⁴ The a.m. expiration and p.m. expiration would have different settlement days.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ The a.m. expiration and p.m. expiration would have different settlement days.

16(a) and the price protections in Options 3, Section 16(c), namely the Complex Order Price Protection, Size Limitation and Price Level Protection. Finally, the Exchange's proposal informs Members that the strategy protections would not apply in those cases where the Member elected to utilize a combination of A.M.-Settled and P.M.-Settled leg expirations in the Complex Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal does not impose an undue burden on intra-market competition because the proposed changes are going to apply equally to all Members. The Exchange's proposal does not impose an undue burden on inter-market competition as other exchanges that utilize third-Friday-of-the-month P.M.-Settled Options could also adopt a similar rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-39 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-ISE-2024-39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-39 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-18785 Filed 8-21-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20333 and #20334; WEST VIRGINIA Disaster Number WV-20004]

Presidential Declaration Amendment of a Major Disaster for the State of West Virginia

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of WEST VIRGINIA (FEMA-4787-DR), dated 07/03/2024.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 04/11/2024 through 04/12/2024.

DATES: Issued on 08/16/2024.

Physical Loan Application Deadline Date: 09/03/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/03/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of WEST VIRGINIA, dated 07/03/2024, is hereby amended to include the following areas as adversely affected by the disaster: *Primary Counties (Physical Damage and Economic Injury Loans):* Boone. *Contiguous Counties (Economic Injury Loans Only):* West Virginia: Logan, Wyoming.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-18883 Filed 8-21-24; 8:45 am]

BILLING CODE 8026-09-P

²⁰ 17 CFR 200.30-3(a)(12).

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

DEPARTMENT OF STATE**[Public Notice 12502]****30-Day Notice of Proposed Information Collection: Request for Approval of Special Validation for Travel to a Restricted Country or Area**

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to September 23, 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: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Jennifer Tinianow, who may be reached on 202–485–8800 or at PPTSpecialValidations@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Approval for Multiple-Entry Travel to a Restricted Country or Area.

- *OMB Control Number:* 1405–0228.

- *Type of Request:* Revision of a Currently Approved Collection.

- *Originating Office:* Bureau of Consular Affairs, Passport Services, CA/PPT/S/A/AP.

- *Form Number:* No form.

- *Respondents:* Individuals requesting they be granted single or multiple-entry special validation, in accordance with 22 CFR 51.64, to use a U.S. passport to travel to, in, or through a country or area as to which U.S. passports have been declared invalid for such travel pursuant to 22 U.S.C. 211a and Executive Order 11295 (August 5, 1966) and in accordance with 22 CFR 51.63(a).

- *Estimated Number of Respondents:* 150.

- *Estimated Number of Responses:* 150.

- *Average Time per Response for single entry validation request:* 45 minutes.

- *Average Time per Response for multiple-entry validation request:* 90 minutes.

- *Total Estimated Burden Time:* 150 hours.

- *Frequency:* Once per year when the individual wishes to travel to the restricted country or area, with a single-entry validation. Once every two years for individuals with a multiple-entry validation.

- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Secretary of State may exercise authority, under 22 U.S.C. 211a, Executive Order 11295 (August 5, 1966), and 22 CFR 51.63, to invalidate all U.S. passports for travel to a country or area if he determines that any of three conditions exist: The country is at war with the United States; armed hostilities are in progress in the country or area; or there is imminent danger to the public health or physical safety of U.S. travelers in the country or area. The regulations of the Department of State provide that an individual's passport may be considered for validation for travel to, in, or through a country or area despite such restriction if the individual's travel is determined to fall within one of several categories established by the regulation 22 CFR 51.64. Without the requisite validation, use of a U.S. passport for travel to, in,

or through a restricted country or area may justify revocation of the passport for misuse under 22 CFR 51.62(a)(3) and subject the traveler to felony prosecution under 18 U.S.C. 1544 for misuse of a passport or other applicable laws.

The categories of persons specified in 22 CFR 51.64(b) as being eligible for consideration for passport validation are as follows:

(a) An applicant who is a professional reporter and journalist whose trip is for the purpose of collecting and making available to the public information about the restricted country or area;

(b) An applicant who is a representative of the American Red Cross or the International Committee of the Red Cross on an officially sponsored Red Cross mission;

(c) An applicant whose trip to the restricted country or area is justified by compelling humanitarian considerations; or

(d) An applicant whose trip to the restricted country or area is otherwise in the national interest.

The proposed information collection solicits data necessary for the Passport Services Directorate to determine whether an applicant is eligible to receive a special validation in their U.S. passport book permitting the applicant to make single or multiple round-trips to a restricted country or area, subject to additional requirements. The information requested consists of the applicant's name; a copy of the front and back of the applicant's valid government-issued photo identification card with the applicant's date of birth and signature; current contact information, including telephone number, email and mailing address; a statement explaining the reason that the applicant thinks their trip is in the national interest, including proposed travel dates and the applicant's role and responsibilities on the trip; and supporting documentary evidence. For those seeking a multiple-entry special validation, applicants must also identify they are seeking the multiple-entry type of special validation and submit the following: documentation showing the applicant or their organization has a well-established history of traveling to the DPRK to work on well-monitored projects with compelling humanitarian considerations; the applicant's draft itinerary, including dates of travel and what specific work they intend to perform on each trip; and documentation that shows the applicant's humanitarian work requires that they make multiple trips to the DPRK in the next two-year period. Those who are approved for a multiple-

entry special validation must also submit a final itinerary detailing dates and purpose of travel at least one month (30 days) prior to each trip to the DPRK while using their multi-entry special validation U.S. passport. Failure to provide the requested information may result in denial of a special validation to use a U.S. passport to travel to, in, or through a restricted country or area.

Effective September 1, 2017, upon determining that there is imminent danger to the public health or physical safety of U.S. travelers in the Democratic People's Republic of Korea (DPRK), the Secretary of State imposed a passport restriction with respect to travel to the DPRK. Such restriction was further renewed in 2018, 2019, 2020, 2021, 2022, and most recently in 2023 for one year, effective September 1, 2023. The estimated number of recipients represents the Department of State's estimate of the annual number of special validations requests individuals will submit who wish to use their U.S. passport to travel to the DPRK, based on the current number of requests following the implementation of the Secretary of State's passport restriction. At this time, there are no other countries or areas that are the subject of passport restrictions pursuant to 22 CFR 51.63.

Methodology

Instructions for individuals seeking to apply for a special validation to use a U.S. passport to travel to, in, or through a restricted country or area is posted on a web page maintained by the Department (travel.state.gov). The web page directs applicants to submit the requested information via email to the Passport Services Directorate (PPTSpecialValidations@state.gov) or by mail to Special Validations, U.S. Department of State, CA/PPT/S/A/AP, 44132 Mercure Circle, P.O. Box 1227, Sterling, VA 20166-1227.

Information collected in this manner will be used to facilitate the granting of special validations to U.S. nationals who are eligible. The primary purpose of soliciting the information is to establish whether an applicant is within one of the categories specified in the regulations of the Department of State codified at 22 CFR 51.64(b), and therefore eligible to be issued a U.S. passport containing a special validation enabling him or her to make one or multiple entry round-trips to a restricted country or area, and to facilitate the

application for a passport of such applicants.

Donald Jacobson,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2024-18821 Filed 8-21-24; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF STATE

[Public Notice 12503]

60-Day Notice of Proposed Information Collection: Request for Authentications Service

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department of State will accept comments from the public up to October 21, 2024.

ADDRESSES: You may submit comments by any of the following methods:

- **Web:** Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2024-0030" in the Search field. Then click the "Comment Now" button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.

Email: Passport-Form-Comments@State.gov.

You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION: • *Title of Information Collection:* Request for Authentications Service.

- *OMB Control Number:* 1405-0254.
- *Type of Request:* Renewal of a currently approved collection.

- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS-4194.

- *Respondents:* Individuals, Institutions, Government Agencies.
- *Estimated Number of Respondents:*

60,734.

- *Estimated Number of Responses:* 60,734.

- *Average Time per Response:* 10 minutes.

- *Total Estimated Burden Time:* 10,122 hours.

- *Frequency:* Information is requested only when an applicant submits the form to obtain a benefit.

- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Request for Authentications Service is used to request authentications services from the Authentications Office of the U.S. Department of State in the United States. In accordance with 22 CFR part 131, the Office of Authentications provides authentication services for federal public documents that will be used overseas. These services support individuals, commercial organizations, institutions, and federal and state government agencies seeking to use certain documents abroad.

Methodology

The form can be downloaded from <http://eforms.state.gov> and can be printed for manual signature and submission by mail or hand-delivery.

Amanda E. Smith,

Managing Director for Passport Support Operations, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2024-18819 Filed 8-21-24; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket #FAA–2024–1951]****FAA Contract Tower Competitive Grant Program; Fiscal Year (FY) 2025 Funding Opportunity****AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).**ACTION:** Notice of funding opportunity.**SUMMARY:** The Department of Transportation (DOT), Federal Aviation Administration (FAA), announces the

opportunity to apply for \$20 million in FY 2025 Airport Infrastructure Grant funds for the FAA Contract Tower (FCT) Competitive Grant Program, made available under the Infrastructure Investment and Jobs Act of 2021 (IIJA), herein referred to as the Bipartisan Infrastructure Law (BIL). The purpose of the FCT Competitive Grant Program is to make annual grants available to eligible airports for airport-owned airport traffic control tower (ATCT) projects that address the aging infrastructure of the nation's airports.

DATES: Airport sponsors that wish to be considered for FY 2025 FCT

Competitive Grant Program funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5:00 p.m. eastern time, September 18, 2024.

ADDRESSES: Submit applications electronically at <https://www.faa.gov/bil/airport-infrastructure/fct> per instructions in this NOFO.**FOR FURTHER INFORMATION CONTACT:** Jesse Carriger, Manager, BIL Branch APP–540, FAA Office of Airports, at (202)267–3263 or our FAA BIL email address: 9-ARP-BILAirports@faa.gov.**SUPPLEMENTARY INFORMATION:****SUMMARY OF KEY INFORMATION: FY 2025 FAA CONTRACT TOWER (FCT) PROGRAM**

Issuing agency	Department of transportation, federal aviation administration.
Program Overview	The FCT program is a competitive discretionary grant program that provides \$20 million in grant funding annually for five years to support airport-owned airport traffic control towers (ATCT) that participate in the FAA's Contract Tower Program.
Objectives	The purpose of the FCT Competitive Grant Program is to make annual grants available to eligible airports for projects at airport-owned ATCTs that address the aging infrastructure of the nation's airports.
Eligible Projects	Eligible projects: • Airport-owned ATCT projects that sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers. • Acquire and install airport traffic control, communications, and related eligible equipment for airport-owned ATCTs. • Construct remote towers certified by the FAA, to include acquisition and installation of airport traffic control, communications, and related equipment.
Deadlines	FY 2025 FCT deadline: No later than 5:00 pm Eastern time, September 18, 2024.
Funding	The Infrastructure Investment and Jobs Act (Pub. L. 117–58), November 15, 2021, “Bipartisan Infrastructure Law,” or BIL) provides \$20 million annually for FY 2022–2026.
Eligible Applicants	Eligible applicants are those airport sponsors approved in the FAA's Contract Tower Program or Contract Tower Cost Share Program as defined in 49 U.S.C. 47124, and normally eligible for Airport Improvement Program (AIP) discretionary grants as defined in 49 U.S.C. 47115.

The FCT Competitive Grant Program will align with DOT's Strategic Framework FY 2022–2026 at www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework. The FY 2025 FCT Competitive Grant Program will be implemented consistent with law and in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards, including climate change, and to effectively coordinate with State, local, Tribal, and Territorial government partners.

Airports that submitted projects under the FY 2025 Airport Terminal Program NOFO 89 FR 55670, that meet the eligibility requirements outlined in C.1., do not need to resubmit under this NOFO.

A. Program Description

BIL established the FCT Competitive Grant Program, a competitive discretionary grant program, that provides \$20 million in grant funding annually for five years (Fiscal Years 2022–2026) to sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers; acquire and install air traffic control, communications, and related equipment to be used in those towers; and construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. The FAA is committed to advancing safe, efficient transportation, including projects funded under the FCT program. This Program also supports the President's goals to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future. In support of the goals of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), and Executive Order 14096, *Revitalizing Our Nation's Commitment*

to *Environmental Justice for All*, the FAA encourages applicants to consider how the project will address the challenges faced by individuals in underserved communities, communities with environmental justice concerns, and rural areas, as well as accessibility for persons with disabilities.

The FCT Competitive Grant Program falls under the project grant authority for the Airport Improvement Program (AIP) in 49 United States Code (U.S.C.) 47104. Per 2 Code of Federal Regulation (CFR) part 200—*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the AIP Federal Assistance Listings Number is 20.106, with the objective to assist eligible airports in the development and improvement of a nationwide system that adequately meets the needs of civil aeronautics. The FY 2025 FCT Competitive Grant Program will be implemented consistent with the BIL and in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to

invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve opportunities for good-paying jobs with the free and fair choice to join a union by focusing on high labor standards, strengthen infrastructure resilience to all hazards, including climate change, and to effectively coordinate with State, local, Tribal, and Territorial government partners.

Consistent with statutory criteria and Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), the FAA also seeks to fund projects under the FCT Competitive Grant Program that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts. Specifically, the FAA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and transportation efficient design, support development compatible with the use of sustainable aviation fuels and technologies, increase climate resilience, incorporate sustainable and less emissions-intensive pavement and construction materials as allowable, and reduce pollution.

The FAA will also consider projects that advance the goals of the Executive Orders listed under section E.2.

B. Federal Award Information

This NOFO announces up to \$20,000,000, subject to availability of funds, for the Fiscal Year 2025 FCT Competitive Grant Program. The FCT Competitive Grant Program is a \$100 million grant program, distributed as \$20 million annually for five years (Fiscal Years 2022, 2023, 2024, 2025, and 2026).

The FAA will consider projects at an airport-owned Airport Traffic Control Tower (ATCT) that sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers; acquire and install air traffic control, communications, and related equipment to be used in those towers; or construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. To date, there are no certified remote tower systems. The FAA is currently evaluating this technology to assess its suitability for use in the National Airspace System. In addition, these projects will also be assessed based on overall impact on the National Airspace System, including age of facility, operational constraints, nonstandard facilities, or new FCT entrant requirements. This also includes

applicable Executive Orders as listed in section E.2.

The FAA intends to publish a NOFO annually to announce additional funding made available, expected to be \$20 million per year, for Fiscal Years 2025–2026.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are those airport sponsors approved in the FAA's Contract Tower Program or Contract Tower Cost Share Program as defined in 49 U.S.C. 47124, and normally eligible for Airport Improvement Program (AIP) discretionary grants as defined in 49 U.S.C. 47115. The eligible applicants include a public agency, private entity, state agency, Indian Tribe, or Pueblo owning a public-use National Plan of Integrated Airport Systems (NPIAS) airport, the Secretary of the Interior for Midway Island airport, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

2. Cost Sharing or Matching

No cost sharing or matching is required. The Federal cost share of the FCT Competitive Grant Program is 100 percent for all airports eligible to receive grants.

3. Project Eligibility

All projects funded from the FCT Competitive Grant Program must be airport-owned ATCT projects that:

- i. Sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers;
- ii. Acquire and install air traffic control, communications, and related equipment to be used in those towers; or
- iii. Construct a remote tower¹ certified by the FAA, including acquisition and installation of air traffic control, communications, or related equipment.

D. Application and Submission Information

1. Address To Request Application Package

An application for FCT Competitive Grant Program projects, FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information*, can be found at:

¹To date, the FAA has no certified Remote Towers. The FAA is currently evaluating this technology to assess its suitability for use in the National Airspace System. Remote Tower information is located at www.faa.gov/airports/planning_capacity/non_federal/remote_tower_systems/.

<https://www.faa.gov/bil/airport-infrastructure/fct>.

Direct all inquiries regarding applications to the appropriate Regional Office (RO) or Airports District Office (ADO), at https://www.faa.gov/about/office_org/headquarters_offices/arp/offices/regional_offices or to the BIL Team at 9-ARP-BILAirports@faa.gov.

2. Content and Form of Application Submission

Applicants are required to submit FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information*. The applicant should submit Form 5100–144 as a fillable digitally signed PDF document via email. If the applicant cannot provide a digital signature, the application may be submitted as two documents: (1) the completed fillable PDF without a signature and (2) a scanned version of the completed application with a written signature. Applicants should follow the instructions and provide a response to applicable items on the Form.

The “Submit by Email” button at the bottom of the Form will generate an email for the applicant to send to the FAA BIL Team at: 9-ARP-BILAirports@faa.gov. If the “Submit by Email” button does not generate an email the applicant can save the fillable PDF by selecting “File>Save As” to save as a fillable PDF. Once saved, the applicant can email the application to the FAA BIL Team at 9-ARP-BILAirports@faa.gov. The fillable PDF application must contain either a digital signature or the applicant's written signature.

Applicants selected to receive an FCT Competitive Grant Program grant will then be required to follow AIP grant application procedures prior to award, which include meeting all prerequisites for funding, and submission of Standard Form SF–424, *Application for Federal Assistance*, and FAA Form 5100–100, *Application for Development Projects*.

Airports covered under the FAA's State Block Grant Program or airports in a channeling act state should coordinate with their associated state agency on the process for deciding who should submit an application using the procedures listed above.

Applicants must address Administration and Departmental priorities in safety, climate change and sustainability, equity and workforce development which are further defined in section E.

Grant Funds, Sources and Uses of Project Funds: The FAA requests that each project application have a financial plan (or project budget) available for review upon request. Project budgets

should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: non-Federal, FCT, and other Federal with specific amounts from each funding source.

Sharing of Application Information: The FAA may share application information within the Department or with other Federal agencies if the FAA determines that sharing is relevant to the respective program's objectives.

All applicants, including those requesting full federal share of eligible project costs, should have a plan to address potential cost overruns as part of an overall funding plan.

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—*Universal Identifier and System for Award Management*. All applicants must have a unique entity identifier provided by SAM. Additional information about obtaining a Unique Entity Identifier (UEI) and registration procedures may be found at <http://www.sam.gov>. Each applicant is required to: (1) be registered in SAM; (2) provide a valid UEI prior to grant award; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by the FAA. Under the FCT Competitive Grant Program, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute FCT Competitive Grant Program grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in SAM until the grantee submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

The FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the FAA is ready to make an award, the FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for giving a Federal award to another applicant.

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM to ensure registration information is current and complies with federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Airports that wish to be considered for FY 2025 FCT Competitive Grant Program funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5 p.m. eastern time on September 18, 2024. Submit applications electronically to 9-ARP-BILAirports@faa.gov per instructions in this NOFO. Airports that submitted projects under the FY 2025 Airport Terminal Program NOFO 89 FR 55670, that meet the eligibility requirements outlined in C.1., do not need to resubmit under this NOFO.

5. Intergovernmental Review—Not Applicable

6. Funding Restrictions

All projects funded from the FCT Competitive Grant Program must be at airports approved in the FAA's Contract Tower Program or Contract Tower Cost Share Program defined in 49 U.S.C. 47124.

FCT Competitive Grant Program funds may not be used to support or oppose union organizing.

Pre-Award Authority: All project costs must be incurred after the grant execution date unless specifically permitted under 49 U.S.C. 47110(c). Certain airport development costs incurred before execution of the grant agreement, but after November 15, 2021, are allowable, only if certain conditions under 49 U.S.C. 47110(c) are met [see Table 3–60 of the AIP Handbook, FAA Order 5100.38 D Change 1, for specific guidance regarding when project costs can be incurred in relation to section 47110(c)].

7. Other Submission Requirements

Applications will only be accepted on FAA Form 5100–144 fillable PDF via email and must be received on or before September 18, 2024, 5:00 p.m. Eastern time. No other forms of applications will be accepted.

E. Application Review Information

1. Criteria

Applications for FY 2025 FCT Competitive Grant Program will be rated using the following criteria:

i. Projects must meet eligibility requirements under the FCT

Competitive Grant Program outlined under sections C.1 and C.3 above.

ii. The FAA will consider timeliness of implementation, with priority given to those projects, including “design only” projects, that can satisfy all statutory and administrative requirements for grant award by October 2025.

iii. ATCT projects will be assessed based on the overall impact on the National Airspace System, including age of facility, operational constraints, nonstandard facility conditions, or new FCT entrant requirements.

iv. Priority will be given to projects that advance aviation safety or enhance air traffic efficiency.

v. The applicant should describe whether and how project delivery and implementation creates good-paying jobs with the free and fair choice to join a union to the greatest extent possible; the use of demonstrated strong labor standards, practices and policies (including for direct employees, contractors, and sub-contractors, and service workers on airport property); use of project labor agreements; distribution of workplace rights notices; union neutrality agreements; wage and/or benefit standards; safety and health standards; the use of Local Hire Provisions;² registered apprenticeships; joint-labor management partnerships; or other similar standards or practices. The applicant should describe how planned methods of project delivery and implementation (for example, use of Project Labor Agreements and/or Local Hire Provisions,³ training, placement, and the provision of supportive services for underrepresented workers) provide opportunities for all workers, including workers underrepresented in construction jobs, to be trained and placed in good-paying jobs directly related to the project. The FAA will consider this information in assessing the application.

2. Review and Selection Process

Federal awarding agency personnel will assess applications based on how well the projects meet the criteria in E.1, including project eligibility, justification, readiness, and impact on the National Airspace System. The FAA will also consider how well projects

² IJA div. B section 25019 provides authority to use geographical and economic hiring preferences, including local hire, for construction jobs, subject to any applicable State and local laws, policies, and procedures.

³ Project labor agreement should be consistent with the definition and standards outlined in Executive Order 14063.

advance the goals of the following Executive Orders: the President's January 20, 2021, Executive Order 13990, "*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*"; the President's January 20, 2021, Executive Order 13985, "*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*"; the President's January 27, 2021, Executive Order 14008, "*Tackling the Climate Crisis at Home and Abroad*"; the President's May 20, 2021, Executive Order 14030, "*Climate Related Financial Risk*"; and the President's July 9, 2021, Executive Order 14036, "*Promoting Competition in the American Economy*"; the President's December 8, 2021, Executive Order 14057, "*Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*" and the President's April 21, 2023, Executive Order 14096, "*Revitalizing Our Nation's Commitment to Environmental Justice for All*."

Applications are first reviewed for eligibility, justification, and timeliness of implementation consistent with the requirements of this NOFO and the intent of the FCT. Applications are then reviewed for how well the proposed project(s) meets the criteria in E.1. and ranked by field and Regional office staff. The top projects (as outlined in BIL) are then assessed by a National Control Board (NCB). The NCB has representatives from each Region and Headquarters management. The NCB recommends project and funding levels to senior leadership.

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered. The FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

BIL awards are announced through a Congressional notification process and a DOT Secretary's Notice of Intent to Fund. The FAA Regional Office (RO) or Airports District Office (ADO) (RO/ADO) representative will contact the airport with further information and instructions. Once all pre-grant actions are complete, the FAA RO/ADO will offer the airport sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means. Once this offer is signed by the airport sponsor, it becomes a grant agreement. Awards made under this program are subject to conditions and assurances in the grant agreement.

2. Administrative and National Policy Requirements

i. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, found in 49 U.S.C. chapter 471. Grant recipients are subject to requirements in the FAA's *AIP Grant Agreement* for financial assistance awards; the annual certifications and assurances required of applicants; and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements and 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Grant requirements include, but are not limited to, approved projects on an airport layout plan; compliance with Federal civil rights laws; Buy American requirements under 49 U.S.C. 50101; Build America, Buy America requirements in sections 70912(6) and 70914 in Public Law No: 117-58; the *Department of Transportation's Disadvantaged Business Enterprise (DBE) Program* regulations for airports (49 CFR part 23 and 49 CFR part 26); the Infrastructure Investment and Jobs Act; and prevailing wage rate requirements under the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5, and reenacted at 40 U.S.C. 3141-3144, 3146, and 3147).

Domestic Preference Requirements: As expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this notice are subject to the

domestic preference requirements in the Buy American requirements under 49 U.S.C. 50101. The FAA expects all applicants to comply with that requirement without needing a waiver. However, to obtain a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project.

Civil Rights and Title VI: As a condition of a grant award, grant recipients should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR 21), the Americans with Disabilities Act of 1990 (ADA), and section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. DOT's and the applicable Operating Administrations' Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

Critical Infrastructure Security, Cyber Security and Resilience: It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats, consistent with the President's National Security Memorandum on Critical Infrastructure Security and Resilience (NSM-22) and the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (NSM-5). Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction. Information on cybersecurity performance goals can be found at <https://www.cisa.gov/cpg>. These performance goals provide a baseline set of cybersecurity practices broadly applicable across critical infrastructure with known risk-reduction value, a benchmark for critical infrastructure owners and operators to measure and

improve their cybersecurity maturity, and recommended practices for information technology (IT) and operational technology (OT) systems, including a prioritized set of security practices. Additionally, funding recipients must be in compliance with 2 CFR 200.216 and the prohibition on certain telecommunications and video surveillance services or equipment.

Federal Contract Compliance: As a condition of grant award and consistent with E.O. 11246, Equal Employment Opportunity (30 FR 12319, and as amended), all Federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of Federally-assisted projects over which OFCCP has jurisdiction and that have a project cost above \$35 million. DOT will require project sponsors with costs above \$35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of their DOT award.

Performance and Program Evaluation: As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT, the FAA, or another agency or partner. The evaluation may take different forms, such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records and any other relevant documents to

calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff. Requested program records or information will be consistent with record requirements outlined in 2 CFR 200.334–338 and the grant agreement.

ii. Standard Assurances

Each grant recipient must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other federal administrative requirements in carrying out any project supported by the FCT Competitive Grant Program grant. The grant recipient must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with the FAA. The grant recipient understands that federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The grant recipient must agree that the most recent Federal requirements will apply to the project unless the FAA issues a written determination otherwise.

The grant recipient must submit the Certifications at the time of grant application and Assurances must be accepted as part of the grant agreement at the time of accepting a grant offer. Grant recipients must also comply with 2 CFR part 200, which "are applicable to all costs related to Federal awards," and which is cited in the grant assurances of the grant agreements. The Airport Sponsor Assurances are available on the FAA website at: https://www.faa.gov/airports/aip/grant_assurances.

3. Reporting

Grant recipients are subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the FCT Competitive Grant Program, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Financial Reporting Policy, which is available at: https://www.faa.gov/sites/faa.gov/files/airports/aip/grant_payments/aip-grant-payment-policy.pdf.

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients,

if applicable, must comply with 2 CFR part 200 subpart F Audit Reporting Requirements. The grant recipient must comply with any requirements outlined in 2 CFR part 180, *Office of Management and Budget (OMB) Guidelines to Agencies on Government wide Debarment and Suspension*.

G. Federal Awarding Agency Contact(s)

For further information concerning this notice, please contact the FAA BIL Branch via email at: 9-ARP-BILAirports@faa.gov. In addition, the FAA will post answers to frequently asked questions and requests for clarifications on FAA's website at <https://www.faa.gov/general/bipartisan-infrastructure-law-faqs>. To ensure applicants receive accurate information about eligibility for the program, the applicant is encouraged to contact the FAA directly, rather than through intermediaries or third parties, with questions.

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

Jesse Carriger,

Manager, FAA Office of Airports BIL Infrastructure Branch, APP-540.

[FR Doc. 2024–18837 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Commercial Space Transportation Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Commercial Space Transportation Advisory Committee (COMSTAC) meeting.

SUMMARY: This notice announces a meeting of the COMSTAC.

DATES: The meeting will take place on September 16, 2024, from 9:00 a.m. to 4:00 p.m. Eastern Time.

ADDRESSES: The FAA will post instructions on how to virtually attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: https://www.faa.gov/space/additional_information/comstac/.

FOR FURTHER INFORMATION CONTACT: Brian A. Verna, Designated Federal Officer, U.S. Department of Transportation, at brian.verna@faa.gov. Submit any committee-related request to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Transportation created the Commercial Space Transportation Advisory Committee under the Federal Advisory Committee Act (FACA) in accordance with Public Law 92–463. Since its inception, industry-led COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through the FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Proposed Agenda

- Welcome Remarks
 - Designated Federal Officer
 - COMSTAC Chair and Vice Chair
 - Associate Administrator for AST
- COMSTAC discussion on taskings
- FAA briefing on addressing COMSTAC recommendations
- Around the table discussions
- Public Comment Period
- Closing Comments
- Adjournment

III. Public Participation

The meeting listed in this notice will be open to the public per 41 CFR 102–3.150(a) meeting notice requirements, both in-person and virtually. Please see the website no later than five working days before the meeting for details on viewing the meeting on YouTube.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least 10 calendar days before the meeting. The FAA can make sign and oral interpretation available if it is requested 10 calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant to the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in writing (mail or email) by September 11, 2024, so that the information is available to COMSTAC members for their review and consideration before the meeting. Written statements should be in the following formats: one hard copy with original signature and/or one electronic copy via email. The preference for email submissions is Portable Document

Format (PDF) attachments. A detailed agenda will be posted on the FAA website at https://www.faa.gov/space/additional_information/comstac/.

Issued in Washington, DC.

Brian A. Verna,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2024–18822 Filed 8–21–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0200]

Drug and Alcohol Clearinghouse Requirements; Driver Qualification Requirements; Waste Management Holdings, Inc. Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Waste Management Holdings, Inc. (WMH), for an exemption from certain driver qualification requirements and drug and alcohol clearinghouse regulations when its drivers are transferred among two or more WMH carriers with different USDOT numbers. The requested exemption would remove the administrative burden of requalifying already-qualified drivers every time they are reassigned among related WMH motor carrier affiliates. FMCSA requests public comments on WMH's application for an exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2024–0200 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2024–0200 for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at <https://www.transportation.gov/privacy>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366–4225; or pearlie.robinson@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0200), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number “FMCSA–2024–0200” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant’s safety analyses. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the

exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)).

III. Applicant’s Request

WMH is seeking an exemption from certain driver qualification requirements in 49 CFR part 391 and from the query requirements of the drug and alcohol clearinghouse rules in 49 CFR part 382. The exemption would apply to drivers transferred among two or more of WMH’s affiliated carriers with different USDOT numbers.

WMH reports that it has been providing residential and commercial trash and recycling collection and waste disposal services to millions of customers throughout the country for 50 years. To perform these services, WMH employs tens of thousands of commercial motor vehicle drivers among its affiliates, which operate under 83 USDOT numbers. It has centralized USDOT compliance efforts across all its related carriers under its Employment Screening Program (ESP). Critical compliance processes and documents are managed through centralized information technology systems. WMH states that this system provides WMH unmatched compliance-related visibility across all related entities.

WMH asserts that the existing driver qualification and drug and alcohol testing rules fail to contemplate the types of intercompany driver transfers that WMH’s operations necessitate, leading to severe administrative inefficiencies, record duplication, and an inability to respond timely to surges in demand for waste removal, which often occur following natural disasters, public health emergencies (such as the recent COVID pandemic), mass gatherings or events, infrastructure failures, community clean-up efforts, industrial accidents or spills, or regional disruptions.

The time the driver works for the transferee carrier varies by circumstance but is rarely less than seven (7) days. Accordingly, WMH is unable to take advantage of the driver qualification exemption in 49 CFR 391.65. WMH must therefore require transferred

drivers to complete new employment applications, contact previous employers, run new motor vehicle records, query the drug and alcohol clearinghouse, analyze whether pre-employment drug testing is necessary and perform testing if required, and create new qualification files, all of which can take several days to complete and may delay or deter the transfer.

WMH contends that it maintains an equivalent level of visibility into the drug/alcohol clearinghouse status of all drivers across its entire organization. This is achieved through the centralization of its driver qualification and drug/alcohol testing processes, policies, and documents under its ESP Department across all its affiliated carriers. If granted, the requested exemptions would remove the burden of administrative processes required by the regulations and allow WMH the ability to move drivers among related motor carrier affiliates without having to requalify them.

A copy of the exemption application is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on WMH’s application for an exemption from the driver qualification requirements in 49 CFR part 391 and the drug and alcohol clearinghouse query requirements in 49 CFR part 382. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–18781 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket No. FRA–2024–0005]****Proposed Agency Information Collection Activities; Comment Request**

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On April 2, 2024, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On April 2, 2024, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. See 89 FR 22767. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30-days’ notice for public comment. Federal law requires OMB to approve or disapprove

paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); See also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: FRA Workforce Development (WFD) Study on Performance Management Systems and Organizational Culture and Diversity.

OMB Control Number: 2130–NEW.

Abstract: This project is being conducted in response to a Broad Agency Announcement (BAA) topic released in 2020 entitled “Research in Response to Railroad Systems Issues Strategic Priorities.” FRA has released BAAs aimed at workforce training and development, developing educational and vocational pipelines, and addressing issues around equity and inclusivity within the rail industry. Existing research on demographics, organizational practices, and policies, as well as industry culture need to be updated to account for the profound changes in employment practices and workforce dynamics in the last few years, including inflation and supply chain issues. This data collection effort will improve the understanding of the current state of the industry and establish a baseline against which to measure future impacts.

The team conducting this research will survey and interview a cross-section of stakeholders familiar with the current culture in rail, about barriers to entry they see and experience as

impacting minority populations. Part of the data analysis will examine findings by employment position to determine if the views at the executive or managerial levels are similar or shared by individuals and staff in more entry-level positions. The research team will also review source documents and artifacts which show how the stakeholder’s performance management system was designed and how it is intended to work. Data will be collected and compiled from interviews and focus groups about how well the performance management system functions in practice, whether the intended use differs from actual use, and whether observed differences in use benefit or hinder efficacy in recruiting and retaining diverse talent.

The study focuses on performance management systems because there is evidence that organizational culture plays a significant role in shaping industry demographics. The findings from this research will provide a better understanding of how employees at various levels are affected by performance management systems and how these systems contribute to organizational culture. The project team will provide FRA with data and best practices that could be used to recommend workforce development initiatives, that may affect organizational culture, for rail organizations and other related industries. Therefore, the research will offer novel, actionable solutions for diversifying the rail workforce.

The main objectives in this study are to: (1) expand on research done to date and to gain a better understanding of the organizational culture and challenges in recruiting and retaining underrepresented individuals in the rail industry; (2) understand how employees at various levels are affected by performance management systems and organizational culture; and (3) examine and identify best practices for the use of performance management systems as a tool for equitable and diverse recruitment, development, retention, and promotion.

Primary users of this information will be those in the rail industry. The findings of this study will provide qualitative data on the current workforce culture in rail and how performance management systems may affect organizational culture. Industry stakeholders, FRA, and DOT may use this data to identify gaps, develop approaches, and create interventions/solutions to enhance workforce development initiatives for underrepresented groups.

FRA will publish the results of this study. A summary of the results may also be presented at technical meetings, such as the annual meeting of the Transportation Research Board, or at conferences/talks with professional associations such as the Women's Transportation Seminar and the American Public Transportation Association.

Type of Request: Approval of a new collection of information.

Affected Public: Rail stakeholders including those in labor positions, carrier management, research/academia, professional association staff, HR personnel, regulators, executive level staff, etc.

Form(s): FRA F 6180.278 and FRA F 6180.279.

Respondent Universe: Rail stakeholders including those in labor positions, carrier management, research/academia, professional association staff, human resources (HR) personnel, regulators, executive level staff, etc.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 95.

Total Estimated Annual Burden: 25 hours.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Deputy Chief Counsel.

[FR Doc. 2024–18855 Filed 8–21–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2024–0007]

Notice of FTA's Review of Its Partial Waiver of Buy America Requirements for Vans and Minivans and Request for Comment

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice; request for comment.

SUMMARY: The Federal Transit Administration (FTA) is seeking comment on an extension of its existing partial general nonavailability waiver for mass-produced, unmodified, non-ADA accessible vans and minivans. Following review and consideration of comments, FTA will determine whether to extend the waiver, modify the waiver, or allow the waiver to lapse.

DATES: Comments must be received by September 23, 2024. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit all comments electronically to the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

Instructions: All submissions must refer to the Federal Transit Administration and the docket number at the top of this notice. Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public at <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>. Confidential Business Information may be protected following the procedures outlined at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Jason Luebbers, FTA Attorney-Advisor, at (202) 366–8864 or jason.luebbers@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether FTA should grant an extension to its October 25, 2022, partial general nonavailability waiver for mass-produced, unmodified vans and minivans (87 FR 64534). If not extended, the waiver will expire after October 24, 2024.

Background

On November 15, 2021, President Biden signed into law the Build America Buy America Act (BABA), enacted as Title IX of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, div. G, sections 70901–27). BABA requires Federal agencies periodically to review existing general applicability waivers of Buy America requirements by publishing in the **Federal Register** a notice that: (i) describes the justification for a general applicability waiver and (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver. BABA section 70914(d).

Obtaining information through this notice and request for comment is consistent with the BABA requirement to review waivers of general applicability and will help FTA determine the current state of domestic production of vans and minivans prior to expiration of the partial general nonavailability waiver. Following the review of comments received, FTA will publish in the **Federal Register** a

determination on whether it will renew the general applicability waiver, modify the waiver, or allow it to lapse. Through this notice, FTA describes the original justification for its partial general nonavailability waiver for mass-produced unmodified non-ADA-accessible vans and minivans and seeks public comment on whether it continues to be justified.

Partial General Buy America Waiver for Vans and Minivans

Under FTA's Buy America statute (49 U.S.C. 5323(j)), FTA may obligate funds for a project to procure rolling stock only if the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and final assembly of the rolling stock occurs in the United States. 49 U.S.C. 5323(j)(2)(C). A manufacturer of rolling stock must submit to pre-award and post-delivery audits and independent inspections to verify its compliance with Buy America. 49 U.S.C. 5323(m).

On October 25, 2022, following multiple individual requests for a Buy America waiver for non-ADA-accessible vans or minivans that can be used in federally funded vanpool programs, FTA issued a partial, time-limited, general nonavailability waiver from the Buy America requirements. FTA issued a partial waiver to maximize the use of materials produced in the United States, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475). Specifically, FTA waived the Buy America requirements for mass-produced, unmodified, non-ADA-accessible vans and minivans with seating capacity for at least six adults, not including the driver. Eligible vehicles, in lieu of applying the general Buy America standards for rolling stock, must meet the following qualifications:

- (1) Final assembly must occur in the United States, as reported to the National Traffic Safety Administration (NHTSA) under the American Automobile Labeling Act (AALA); and
- (2) The country of origin of the engine or motor must be the United States, as reported to NHTSA under the AALA. See 49 U.S.C. 32304 and 49 CFR part 583.

FTA planned for the waiver to expire two years after the date of issuance, or upon FTA's publication of a **Federal Register** notice rescinding the waiver after determining that a fully Buy America-compliant vehicle has become available, whichever occurred first. Unless FTA extends the waiver, the

waiver will expire after October 24, 2024.

Original Justification for General Waiver for Vans and Minivans

In issuing its partial waiver, FTA struck a balance between making vanpool-capable vehicles available to public transportation providers and at the same time maximizing U.S. manufacturing activity in accordance with E.O. 14005. For example, although forty-nine commenters requested that FTA not require U.S.-manufactured engines or motors, FTA noted that a number of van and minivan models available at the time met the U.S. manufacturing requirement for engines or motors, and therefore maintained this requirement in the October 2022 waiver.

Since FTA issued the waiver, FTA has received no new information suggesting that unmodified vans and minivans that comply with Buy America are produced in the United States in a sufficient and reasonably available amount. While a number of manufacturers continue to produce commercial vehicles meeting the domestic manufacturing requirements of FTA's waiver—that is, U.S. final assembly and U.S. manufacture of the engine or motor—no manufacturer has notified FTA of such a vehicle fully meeting the Buy America requirements. Further, no manufacturer has submitted a vehicle model for a Buy America pre-award audit.

Requests From the Public To Extend the Waiver

On November 13, 2023, the Association for Commuter Transportation (ACT) requested that FTA extend the current van and minivan waiver in order to avoid a significant disruption to vanpool services. ACT (on behalf of its government, metropolitan planning organization, higher education institution, and service provider members) requested that FTA engage stakeholders to identify a path forward that avoids a disruption of vanpool programs while also upholding the spirit and intent of the Buy America rules. In addition to the ACT request, FTA has received numerous, less formal requests from transit operators in the form of emails, phone calls, and in-person contacts during meetings or conferences to maintain the waiver.

Questions on FTA's General Waiver for Vans and Minivans

FTA is soliciting comments from the public, including public and private stakeholders, regarding whether it should extend, modify, or allow the partial van and minivan waiver to lapse.

In answering the questions below, please also explain the likely impacts of your suggested course of action for FTA on administering and delivering FTA-funded projects and on supporting domestic manufacturing and jobs.

General Considerations

1. Are there any unmodified non-ADA-accessible vans or minivans with seating capacity for at least six adults, not including the driver, for which the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components, and final assembly of the vehicle occurs in the United States?

a. If so, which vehicles?

b. If so, in what quantity are they available?

2. Do the market conditions that led to FTA's decision to issue the partial van and minivan waiver still exist and, if so, do they warrant continuing the waiver?

3. What actions could FTA take, if any, to promote the domestic production of Buy America-compliant vans and minivans?

4. Is there a publicly available source better suited than AALA reports (<https://www.nhtsa.gov/part-583-american-automobile-labeling-act-reports>) to determine the domestic content and country of final assembly for vans and minivans? If so, please specify the data source and explain why it is preferred.

Considerations for Modifying the Waiver

5. If FTA were to modify the van and minivan waiver, what would be the likely impact on administering and delivering Federal transit projects? In what ways could modifications to the waiver promote or hinder the effective and efficient delivery of Federal transit projects across the United States? As examples, commenters may wish to consider the following modifications to the van and minivan waiver, specifying the likely impact of each and explaining why that impact is likely to occur:

a. In addition to engines and motors, require U.S.-manufactured transmissions as reported to NHTSA under the AALA.

b. Add a requirement that a vehicle contain some minimum percentage of "Content US/Canada," as defined by and reported to NHTSA under the AALA.

6. FTA is also interested in any other proposals to modify the waiver not listed here that would meet the goals of promoting the efficient delivery of Federal transit projects and supporting domestic manufacturing and jobs. For

each proposal, please explain how the waiver modification proposed achieves both goals and provide supporting information or documentation, where applicable.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. You may ask FTA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as "Confidential"; (2) send FTA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. FTA will protect confidential information complying with these requirements to the extent required by applicable law. If DOT receives a FOIA request for information that the submitter has marked in accordance with this notice, DOT will follow the procedures described in DOT's FOIA regulations at 49 CFR 7.29. Any information that is marked in accordance with this notice and ultimately determined to be exempt from disclosure under FOIA and § 7.29 will not be released to a requester or placed in the public docket of this notice. Submissions containing CBI should be sent to jason.luebbers@dot.gov. Any comment submissions that FTA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

FTA encourages commenters to share all information responsive to the questions below, including confidential information. Doing so will allow FTA to have a complete picture of the effects of continuing, discontinuing, or modifying the existing partial general applicability waiver for vans and minivans.

Veronica Vanterpool,
Acting Administrator.

[FR Doc. 2024-18818 Filed 8-21-24; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****Announcement Type: Notice and Request for Public Comment**

AGENCY: Community Development Financial Institutions Fund, Treasury.

ACTION: Notice and request for public comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the changes to the Transaction Level Report (TLR) that will capture transactions related to the Community Development Financial Institutions Equitable Recovery Program (CDFI ERP).

DATES: Written comments must be received on or before October 21, 2024 to be assured of consideration.

ADDRESSES: Submit your comments via email to Shannon McKay, Program Manager, Office Financial Strategies and Research, CDFI Fund, U.S. Department of the Treasury, at *CDFI-FinancialStrategiesandResearch@cdfi.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Shannon McKay, Program Manager for Office of Financial Strategies and Research, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or by phone at (202) 653-0300. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *https://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION:

Title: CDFI/NACA Program Award Recipient and NMTC Allocatee Annual Report including CDFI ERP.

OMB Number: 1559-0027.

Abstract: This information collection currently captures quantitative transactional information from CDFIs as part of their reporting requirements under the CDFI Program Financial Assistance (FA) and CDFI Rapid Response Program (CDFI RRP) Awards. The CDFI Fund is proposing additional changes and data points to these transaction-level reports to capture transaction data associated with the

CDFI Equitable Recovery Program (CDFI ERP) as well. CDFIs submit these TLRs as part of their annual award compliance reporting requirements. The current reporting requirements for the FA, CDFI RRP, and CDFI ERP Programs can be found on the CDFI Fund website at *https://www.cdfifund.gov/*. The current version of the existing TLR guidance is available at *https://www.cdfifund.gov/amis-reportingunderCDFI/NACA/RRP* Transaction Level Report (TLR) Data Point Collection Guide—December 2023.

This information is used to assess: (1) the Award Recipient's approved use of the Award Funds; (2) the Award Recipient's financial condition; (3) the socio-economic characteristics of Award Recipient's borrowers/investees, loan and investment terms, repayment status, and community development outcomes; (4) the Award Recipient's compliance with certain CDFI Certification and Target Market requirements; and (5) overall compliance with the terms and conditions of the allocation agreement entered into by the CDFI Fund and the Recipient.

To address the CDFI ERP reporting, impact measurement, and compliance needs, the following changes are proposed:

Updates to the Existing TLR, Address Record, and Loan Purchase Reports

- New answer choices for existing data fields.
- New data fields for measuring the specific impacts, geographies, and characteristics of CDFI ERP transactions.

New Reporting Templates for CDFI ERP-Specific Grants and Consumer Loans

- A new Grant-Level Report (GLR) template and data fields to capture grantmaking activity that CDFI ERP Award Recipients may conduct as part of meeting their CDFI ERP Performance Goals and Activities.
- A new CDFI ERP-specific Consumer Loans/Investments Report (ERP CLR) subtotal breakout completed by regulated entities only (banks, credit unions, cooperatives, and depository institution holding companies) that summarizes CDFI ERP consumer loan activity at the census tract level and is completed in addition to the existing CLR.

The data points and reports (new and revised) align with the CDFI ERP Eligible Activities and will allow the CDFI Fund to track and assess CDFI ERP impacts and compliance with certain terms and conditions of the CDFI ERP Award. The proposed changes also aim

to minimize reporting burden for Award Recipients and maximize use of existing forms/reports where possible. The new data points and templates will only be required for transactions the CDFI is choosing to associate with CDFI ERP. In addition, the proposed changes are presented with careful consideration of and intended compatibility with the CDFI Certification Application's use of TLR data.

For existing TLR data fields, one data point has been revised in the TLR and Loan Purchase TLR Objects in the Awards Management Information System to allow CDFIs to indicate a TLR transaction is associated with CDFI ERP:

- Financial Assistance (FA) Program Type

New data fields (limited to CDFI ERP transactions only) have been added to the following existing TLR forms to capture data on CDFI ERP Eligible Activities, progress relating to CDFI ERP objectives, and compliance with unique CDFI ERP requirements (*i.e.*, transactions taking place in CDFI ERP-Eligible Geographies). The form name is indicated in brackets following each data point.

- ERP 2010 Census Tract [TLR Address, Loan Purchases]
- ERP Small Business [TLR]
- ERP Race [TLR, Loan Purchases]
- ERP Ethnicity [TLR, Loan Purchases]
- ERP Minority Owned or Controlled [TLR, Loan Purchases]
- ERP Impact (Employment) [TLR, Loan Purchases]
- ERP Impact (Healthcare) [TLR, Loan Purchases]
- ERP Impact (Childcare) [TLR, Loan Purchases]
- ERP Impact (Housing Stability) [TLR, Loan Purchases]
- ERP Impact (Affordable Housing) [TLR, Loan Purchases]
- ERP Impact (Broadband) [TLR, Loan Purchases]
- ERP Impact (Food Insufficiency) [TLR, Loan Purchases]
- ERP Impact (Business Disruption) [TLR, Loan Purchases]
- ERP Impact (Other) [TLR, Loan Purchases]
- ERP Impact (Other)—Explain [TLR, Loan Purchases]
- ERP Small Business [TLR, Loan Purchases]
- ERP Qualifying Native Transaction [TLR, Loan Purchases]

In the current version of the TLR, award recipients are not allowed to report on grants because they are not considered an eligible financial product reportable on the TLR. Since grants are an allowed eligible activity under CDFI ERP, the Fund has created a new form

to capture grants activity from CDFI ERP recipients only. The new form's data points are listed below:

New CDFI ERP Grant-Level Report (GLR)

- GLR Submission Year
- Grant Award Date
- Amount
- Status
- Purpose *
- Climate-Focused Purpose
- Investee Type *
- ERP 2010 Census Tract
- Originator Transaction ID *
- Client ID *
- Other Targeted Populations *
- Description of Other Approved OTP *
- OTP End Users *
- Description of Other Approved OTP End-Users *
- ERP Race
- ERP Ethnicity
- ERP Minority Owned or Controlled
- ERP Impact (Employment)
- ERP Impact (Healthcare)
- ERP Impact (Childcare)
- ERP Impact (Housing Stability)
- ERP Impact (Affordable Housing)
- ERP Impact (Broadband)
- ERP Impact (Food Insufficiency)
- ERP Impact (Business Disruption)
- ERP Impact (Other)
- ERP Impact (Other)—Detail
- ERP Small Business
- ERP Qualifying Native Transaction

In the current version of the TLR's Consumer Loan Report (CLR), the Fund does not collect information on the race and/or ethnicity of the borrower as well as impact of the consumer loans. These are necessary data points that the Fund needs to collect in order to assess compliance with the CDFI ERP Award Agreement. In addition, the existing CLR is set up for 2020 census tracts whereas CDFI ERP eligible geographies were based on 2010 census tracts. CDFI ERP recipients who are regulated entities with consumer loans that they want to count towards CDFI ERP will complete new CDFI ERP-Specific Consumer Loan Report (ERP CLR) in addition to the existing CLR. If a CDFI ERP Recipient who is a regulated entity does not want to count any consumer loans towards the CDFI ERP, then they will only complete the existing CLR. The new form's data points are listed below:

New CDFI ERP-Specific Consumer Loan Report Subtotal Breakout (ERP CLR)

- Fiscal Year *
- Census Vintage Year *
- Purpose *
- ERP 2010 Census Tract
- ERP Total Originated Amount
- ERP Total Originated Number

- ERP OTP Amount
- ERP OTP Number
- ERP Race Amount (American Indian)
- ERP Race Number (American Indian)
- ERP Race Amount (Alaska Native)
- ERP Race Number (Alaska Native)
- ERP Race Amount (Asian)
- ERP Race Number (Asian)
- ERP Race Amount (Black or African American)
- ERP Race Number (Black or African American)
- ERP Race Amount (Native Hawaiian)
- ERP Race Number (Native Hawaiian)
- ERP Race Amount (Other Pacific Islander)
- ERP Race Number (Other Pacific Islander)
- ERP Race Amount (White)
- ERP Race Number (White)
- ERP Race Amount (Multi-Racial)
- ERP Race Number (Multi-Racial)
- ERP Race Amount (Other)
- ERP Race Number (Other)
- ERP Race Amount (Declined)
- ERP Race Number (Declined)
- ERP Hispanic Amount
- ERP Hispanic Number
- ERP Hispanic Amount Declined
- ERP Hispanic Number Declined
- ERP Impact Amount (Employment)
- ERP Impact Number (Employment)
- ERP Impact Amount (Healthcare)
- ERP Impact Number (Healthcare)
- ERP Impact Amount (Childcare)
- ERP Impact Number (Childcare)
- ERP Impact Amount (Housing Stability)
- ERP Impact Number (Housing Stability)
- ERP Impact Amount (Affordable Housing)
- ERP Impact Number (Affordable Housing)
- ERP Impact Amount (Broadband)
- ERP Impact Number (Broadband)
- ERP Impact Amount (Food Insufficiency)
- ERP Impact Number (Food Insufficiency)
- ERP Impact Amount (Business Disruption)
- ERP Impact Number (Business Disruption)
- ERP Impact Amount (Other)
- ERP Impact Number (Other)
- ERP Qualifying Native Transaction Amount
- ERP Qualifying Native Transaction Number

In the lists of data points above for CDFI ERP GLR and the ERP CLR, respectively, there are data points with asterisks indicating existing data points already reported in the current TLR and/or CLR. While these asterisked data points will be pulled into the new CDFI ERP GLR and the new ERP CLR, the

properties of these existing data points are not being altered to fit any CDFI ERP reporting requirement.

More details on the changes described above can be found in the updated guidance document available on the CDFI Fund website at <https://www.cdfifund.gov/requests-for-comments>.

Type of Review: Regular Review.

Affected Public: CDFIs including businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents:

TLR (CDFI ERP related data points only), ERP CLR, and GLR: 603.

Estimated Annual Time (in hours) per Respondent:

TLR (CDFI ERP related data points only), ERP CLR, and GLR: 10.

Estimated Total Annual Burden in Hours:

TLR (CDFI ERP related data points only), ERP CLR and GLR: 6,030.

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 all aspects of the information collections, but commentators may wish to focus particular attention on: (a) whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Please note this request for public comment is restricted to the changes tied to recipient reporting in the TLR and its supporting objects from CDFI ERP Award Recipients.

Authority: 12 U.S.C. 4707 *et seq.*; 26 U.S.C. CFR part 1805.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2024-18769 Filed 8-21-24; 8:45 am]

BILLING CODE 4810-05-P

DEPARTMENT OF THE TREASURY**Open Meeting of the Federal Advisory Committee on Insurance**

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet in the Cash Room at the U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC, and also via videoconference on Thursday, September 26, 2024, from 1:30 p.m.—4:30 p.m. Eastern Time. The meeting will be open to the public. The FACI provides non-binding recommendations and advice to the Federal Insurance Office (FIO) in the U.S. Department of the Treasury.

DATES: Thursday, September 26, 2024, from 1:30 p.m.—4:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220 and also via videoconference.

The meeting is open to the public, and the site is accessible to individuals with disabilities. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must register online. Attendees may visit <https://events.treasury.gov/s/event-template/a2m3d00000wtZhAAI/detail> and fill out a secure online registration form. A valid email address will be required to complete online registration. (Note: online registration will close on September 23rd or when capacity is reached.) The public can also attend remotely via live webcast: <https://usdotyorktel.rev.vbrick.com/#/events/7b86f1d2-80d5-44e9-ac59-8836672e5d16>.

The webcast will also be available through the FACI's website: <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci>. Please refer to the FACI's website for up-to-date information on this meeting. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Snider Page, Office of Civil Rights and Equal Employment Opportunity, Department of the Treasury at (202) 622-0341, or snider.page@treasury.gov.

FOR FURTHER INFORMATION CONTACT: John Gudgel, Senior Insurance Regulatory Policy Analyst, Federal Insurance

Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622-1748 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(a)(2), through implementing regulations at 41 CFR 102-3.150.

Public Comment: Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

Electronic Statements

- Send electronic comments to faci@treasury.gov.

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220. In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to faci@treasury.gov. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622-2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This will be the third FACI meeting of 2024. In this meeting, the FACI will discuss topics related to climate-related financial risk and the insurance sector, cyber insurance developments, and international insurance issues. The FACI will also receive status updates from each of its subcommittees and from FIO on its activities and consider any new business.

Dated: August 16, 2024.

Stephanie Schmelz,

Deputy Director, Federal Insurance Office.

[FR Doc. 2024-18778 Filed 8-21-24; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0697]

Agency Information Collection Activity Under OMB Review: Application for Approval of a Licensing or Certification Test and Organization or Entity

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link www.reginfo.gov/public/do/PRAMain, select "Currently under Review—Open for Public Comments", then search the list for the information collection by Title or "OMB Control No. 2900-0697."

FOR FURTHER INFORMATION CONTACT:

VA PRA information: Maribel Aponte, 202-461-8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of a Licensing or Certification Test and Organization or Entity. No Form.

OMB Control Number: 2900-0697, <https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a currently approved collection.

Abstract: SAAs and VA will use the information to decide whether the licensing and certification tests, and the organizations offering them, should be approved for use under the education programs VA administers. VA did not develop an official form for this information collection since section

3689 of title 38, United States Code permitted VA to delegate the approval functions to the State Approving Agencies; and from the inception of this information collection, VA has given the State Approving Agencies the authority to approve licensing and certification tests and organizations. Consequently, the State Approving Agencies have developed their own forms to gather information they will need per their respective state laws to decide whether the licensing and certification tests and the organizations offering them should be approved. In the case of an organization seeking approval directly from VA, any information VA receives

concerning the request for approval is forwarded directly to the appropriate State Approving Agency. Since SAAs have approval authority, education institutions and licensing and certification organizations supply information to the SAAs for approval in a manner specified by the SAA.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 51391, June 17, 2024.

Affected Public: Individuals and Households.

Estimated Annual Burden: 3,453 hours.

Estimated Average Burden Time per Respondent: 3 hours or 180 minutes.

Frequency of Response: Once Occasionally.

Estimated Number of Respondents: 1,151.

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. 2024-18846 Filed 8-21-24; 8:45 am]

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Part II

Federal Trade Commission

16 CFR Part 465

Trade Regulation Rule on the Use of Consumer Reviews and
Testimonials; Final Rule

FEDERAL TRADE COMMISSION**16 CFR Part 465****RIN 3084–AB76****Trade Regulation Rule on the Use of Consumer Reviews and Testimonials****AGENCY:** Federal Trade Commission.**ACTION:** Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is issuing this final rule and Statement of Basis and Purpose (“SBP”) relating to certain specified unfair or deceptive acts or practices involving consumer reviews or testimonials. This final rule, among other things, prohibits selling or purchasing fake consumer reviews or testimonials, buying positive or negative consumer reviews, certain insiders creating consumer reviews or testimonials without clearly disclosing their relationships, creating a company-controlled review website that falsely purports to provide independent reviews, certain review suppression practices, and selling or purchasing fake indicators of social media influence.

DATES: This rule is effective October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Michael Ostheimer, (202) 326–2699, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC–6316, 600 Pennsylvania Avenue NW, Washington, DC 20580.

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I. Background*A. Advance Notice of Proposed Rulemaking*

On November 8, 2022, the Federal Trade Commission (“Commission” or “FTC”) published an advance notice of proposed rulemaking (“ANPR”) to address certain deceptive or unfair acts or practices involving consumer reviews or testimonials.¹ Specifically, the ANPR discussed: (1) reviews or endorsements by people who do not exist, who did not actually use or test the product or service, or who were misrepresenting their experience with it; (2) review hijacking, where a seller steals or repurposes reviews of another product; (3) marketers offering compensation or other incentives in exchange for, or conditioned on, the writing of positive or negative consumer reviews; (4) owners, officers, or managers of a company (a) writing reviews or testimonials of their own products or services, or publishing testimonials by their employees or family members, which fail to provide clear and conspicuous disclosures of those relationships, or (b) soliciting reviews from employees or relatives without instructing them to disclose their relationships; (5) the creation or operation of websites, organizations, or entities that purportedly provide independent reviews or opinions of products or services but are, in fact, created and controlled by the companies offering the products or services; (6) misrepresenting that the consumer reviews displayed represent most or all of the reviews submitted when, in fact, reviews are being suppressed based upon their negativity; (7) the suppression of customer reviews by physical threat or unjustified legal threat; and (8) selling, distributing, or buying followers, subscribers, views, and other indicators of social media influence. As part of the ANPR, the Commission solicited public comment on, among other things, whether such practices are prevalent and, if so, whether and how to proceed with a notice of proposed rulemaking

¹ Fed. Trade Comm’n, Trade Regulation Rule on the Use of Reviews and Endorsements, 87 FR 67424 (Nov. 8, 2022) [hereinafter “ANPR”], <https://www.federalregister.gov/documents/2022/11/08/2022-24139/trade-regulation-rule-on-the-use-of-reviews-and-endorsements>. The ANPR was entitled “Trade Regulation Rule Concerning Reviews and Endorsements.” In order to better reflect its content, the Commission subsequently decided to change the name of the proposed rule to “Trade Regulation Rule on the Use of Consumer Reviews and Testimonials.”

(“NPRM”).² The ANPR provided for a 60-day comment period, and the Commission received 42 responsive comments³ from review platforms and other businesses, trade associations, consumer advocacy organizations, entities dedicated to fighting fake reviews, a public interest research center, a think tank, academic researchers, and individual consumers.⁴ Most commenters expressed support for the Commission proceeding with the rulemaking. Five comments expressed the view that a rulemaking was unnecessary, was premature, or should not apply to the commenter’s constituents, or expressed skepticism about the utility of a rulemaking.

B. Notice of Proposed Rulemaking

Based on an extensive review of the comments received in response to the ANPR, the Commission’s own history of enforcement, and other sources of information, the Commission published the NPRM on July 31, 2023.⁵ In the NPRM, the Commission stated that it has reason to believe that certain unfair or deceptive acts or practices involving consumer reviews or testimonials are prevalent, including: (1) fake consumer reviews and testimonials, as well as reviews and testimonials that otherwise misrepresent the experiences of the reviewers and testimonialists; (2) the unfair or deceptive reuse or repurposing of consumer reviews; (3) the giving of incentives for reviews conditioned on the sentiment of the reviews; (4) the use of consumer reviews and testimonials written by company insiders without disclosure of their relationships to the company; (5) marketers setting up purportedly independent websites, organizations, or entities to review or endorse their own products; (6) seller websites representing that the consumer reviews displayed represent most or all of the reviews submitted when, in fact, reviews are being suppressed based upon their negativity; (7) review suppression by unjustified legal threat or physical threat; and (8) the sale and misuse of fake indicators of social media influence for commercial purposes.⁶ The Commission identified no disputed issues of material fact; explained its

considerations in developing the proposed rule; solicited additional public comment thereon, including specific questions designed to assist the public in submitting comments; and provided interested parties the opportunity to request to present their position orally at an informal hearing.⁷ Finally, the NPRM set out the Commission’s proposed regulatory text.⁸

In response to the NPRM, the Commission received 100 responsive and non-duplicative comments⁹ from entities and individuals interested in the proposed rule,¹⁰ which are discussed in sections III and IV. Although some commenters raised concerns and recommended specific modifications or additions to the Commission’s proposal, the majority of commenters generally supported the Commission’s proposal. Three commenters submitted timely requests to make oral statements at an informal hearing (“the hearing requesters”).¹¹

C. Notice of Informal Public Hearing

On January 16, 2024, the Commission published an Initial Notice of Informal Hearing, which also served as the Final Notice of Informal Hearing.¹² The Notice designated the Honorable Carol Fox Foelak, an Administrative Law Judge for the Securities and Exchange Commission, to serve as the presiding officer for the informal hearing and stated that the hearing requesters could speak at the informal hearing, make documentary submissions to be placed on the public rulemaking record, or both. Written submissions were due on or before January 30, 2024. In response to the Notice of Informal Hearing, the Commission received seven comments.¹³ The Notice also stated that

the Commission had decided not to proceed with proposed § 465.3,¹⁴ which pertained to the unfair or deceptive reuse or repurposing of a consumer review written or created for one product so that it appears to have been written or created for a substantially different product.

As announced in the Notice of Informal Hearing, the informal hearing began as scheduled on February 13, 2024.¹⁵ Because the Commission had not designated disputed issues of material fact, the February 13 hearing session included no cross-examination or rebuttal submissions but did include oral statements from the three hearing requesters.¹⁶ One of the hearing requesters, the Interactive Advertising Bureau (“IAB”), a trade association, argued that there were two disputed issues of material fact.¹⁷ The other two hearing requesters discussed their comments submitted pursuant to the NPRM. At the conclusion of this hearing session, the presiding officer issued an order inviting further submissions, including specific evidence, concerning whether there were disputed issues of material fact.¹⁸ IAB submitted a letter that described the results from a survey directed to its members—to which eighteen unidentified members responded¹⁹—regarding the impact of the proposed rule, including their estimated compliance costs.²⁰

On February 23, 2024, the presiding officer issued an order finding one disputed issue of material fact, namely, “[w]hether the compliance costs for businesses will be minimal.”²¹ However, the February 23 order stated that “[i]t can be argued that . . . even

¹⁴ Hearing Notice, 89 FR 2528.

¹⁵ Members of the public were able to watch the informal hearing live on the Commission’s website, <https://www.ftc.gov>.

¹⁶ A transcript of the February 13 hearing session is available at https://www.ftc.gov/system/files/ftc_gov/pdf/transcript-consumer-reviews-and-testimonials-rule-informal-hearing-feb-13-2024.pdf [hereinafter “February 13 Hearing Transcript”].

¹⁷ IAB’s proposed disputed issues of material fact were “whether the compliance costs for businesses will be minimal, particularly if the ‘knew or should have known’ standard is finalized” and “whether the Commission finding that unattended consequences from the NPRM are unlikely is accurate.” February 13 Hearing Transcript at 9.

¹⁸ Order by Presiding Officer Foelak at 2 (Feb. 13, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003alorder20240213.pdf.

¹⁹ IAB “represents over 700 leading media companies, brand marketers, agencies and technology companies.” February 13 Hearing Transcript at 6.

²⁰ Letter Brief from Interactive Advertising Bureau to Presiding Officer Foelak (Feb. 20, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003iabsubmission20240220.pdf.

²¹ Order by Presiding Officer Foelak (Feb. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/p311003alorder20240226.pdf.

² See ANPR, 87 FR 67427.

³ The Commission also received six unresponsive comments.

⁴ The comments are publicly available on this rulemaking’s docket at <https://www.regulations.gov/docket/FTC-2022-0070/comments>.

⁵ See Fed. Trade Comm’n, Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 88 FR 49364 (July 31, 2023) [hereinafter “NPRM”], <https://www.federalregister.gov/documents/2023/07/31/2023-15581/trade-regulation-rule-on-the-use-of-consumer-reviews-and-testimonials>.

⁶ See *id.* at 49370–77.

⁷ *Id.* at 49377–81, 49389–90.

⁸ *Id.* at 49390–92.

⁹ The Commission also received sixteen comments that were non-responsive and two that were duplicates.

¹⁰ The comments are publicly available on this rulemaking’s docket at <https://www.regulations.gov/document/FTC-2023-0047-0001/comment>.

¹¹ Fake Review Watch, Cmt. on NPRM at 4–5 (Aug. 8, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0015> (“Fake Review Watch Cmt.”); Researchers at Brigham Young University, Pennsylvania State University, and Emory University, Cmt. on NPRM at 4 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0060> (“The Researcher Cmt.”).

¹² Fed. Trade Comm’n, Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 89 FR 2526 (Jan. 16, 2024) [hereinafter “Hearing Notice”], <https://www.federalregister.gov/documents/2024/01/16/2024-00678/rule-on-the-use-of-consumer-reviews-and-testimonials>.

¹³ The comments are publicly available on this rulemaking’s docket at <https://www.regulations.gov/docket/FTC-2024-0004/comments>.

if the actual costs are more than double what the FTC assumed, it would not change the outcome of the rule, and therefore, it is not a ‘disputed issue[] of *material* fact necessary to be resolved.’”²² The order provided that the presiding officer was nevertheless scheduling an additional hearing session for March 5, 2024, because “an expert witness or proposed testimony from affected firms’ compliance officers or legal counsel” might “shed light on what would be involved with compliance review and implementation” and “could give the FTC a way of better quantifying cost.”²³ The March 5 hearing session was subsequently moved to March 6, 2024 at the trade association’s request.²⁴

At the March 6 hearing session, the trade association put on one witness: its Executive Vice President for Public Policy, an attorney, who testified about the results of two limited surveys of its members.²⁵ FTC staff conducted cross examination. The attorney’s testimony about the surveys²⁶ did not call the Commission’s cost estimates into legitimate question. Only a small number of unidentified trade association members completed the surveys, and no evidence was submitted to indicate that they were representative of any group, much less all affected businesses.²⁷ Further, only a few of the survey respondents gave compliance cost estimates, none of which were accompanied by explanation or evidence of their factual bases, and all of which could have been influenced by the trade association’s misconceptions about the law and the proposed rule.²⁸

The presiding officer issued a recommended decision on May 8, 2024,

stating that based on the evidence, “it cannot be found whether or not the proposed rule will have compliance costs that will be minimal.”²⁹ Later in the decision, the presiding officer explained that the evidence “falls short as the basis for a finding that compliance costs would not be minimal” because “a minute sample of businesses that would be affected by the proposed rule responded to the surveys, and there is insufficient information about the nature of those businesses, how they calculated potential compliance costs, and the methodology of the surveys.”³⁰

In crafting the final rule, the Commission has carefully considered the comments received and the rulemaking record as a whole, which includes the oral statements made at and documents submitted for the informal hearing. As a result, the final rule contains some changes from the proposed rule. These modifications, mostly clarifications and limitations, discussed in detail in section IV of this document, are based upon input from commenters and careful consideration of relevant law. Section IV also discusses commenters’ recommendations that the Commission declined to adopt, along with the Commission’s reasons for rejecting them. Accordingly, the Commission adopts the proposed rule with limited modifications as discussed below. The rule will take effect October 21, 2024.

II. The Legal Standard for Promulgating the Rule

The Commission is promulgating 16 CFR part 465 pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, which authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices in or affecting commerce that are unfair or deceptive within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).³¹

Whenever the Commission promulgates a rule under section 18(a)(1)(B), the rule must also include a Statement of Basis and Purpose (“SBP”) that addresses: (1) the prevalence of the acts or practices addressed by the rule; (2) the manner and context in which the

acts or practices are unfair or deceptive; and (3) the economic effect of the rule, taking into account the effect on small businesses and consumers.³² In this section of the preamble, the Commission summarizes its findings regarding each of these requirements.

A. Prevalence of Acts or Practices Addressed by the Rule

In its ANPR, the Commission described its enforcement record, demonstrating the pervasiveness of the deceptive or unfair commercial acts or practices involving reviews or other endorsements it was examining.³³ In the NPRM, the Commission cited additional enforcement evidence, including actions brought by State Attorneys General (“AGs”) and private lawsuits, as well as international evidence, and also took notice of additional indications of prevalence that came from commenters.³⁴

In support of the finding that fake reviews are prevalent, the NPRM cited to (1) FTC, State, and private cases; (2) statistics from review platforms, a platform insider, academic and other researchers, consumer surveys, investigative journalists, and others about the incidence of fake reviews; (3) information about the pervasiveness of consumer review rings that facilitate the buying, selling, or exchange of fake reviews; (4) the experiences of regulators in other countries and of international bodies; and (5) reporting regarding the use of generative artificial intelligence (“AI”) tools that make it easier for bad actors to write fake reviews.³⁵ In support of the finding that fake testimonials are prevalent, the NPRM discussed relevant FTC cases, an in-depth Better Business Bureau investigative study that examined fake celebrity endorsements, a celebrity lawsuit involving the fraudulent use of the celebrities’ names, and an FTC consumer alert about fake Shark Tank celebrity testimonials.³⁶ In support of the finding that misrepresentations of endorsers’ experiences are prevalent, the NPRM cited to FTC cases and a

²² *Id.*

²³ *Id.*

²⁴ Order by Presiding Officer Foelak (Feb. 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003_alj_order_3_2024.02.28.pdf.

²⁵ A transcript of the March 6 hearing session is available at https://www.ftc.gov/system/files/ftc_gov/pdf/r311003informalhearing03062024.pdf. See also, Interactive Advertising Bureau’s Submission of Exhibits (Mar. 5, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003iabsubmissionexhibits20240305.pdf.

²⁶ The presiding officer stated that testimony by the trade association’s “attorney about survey responses is hearsay and will be weighed accordingly.” Order by Presiding Officer Foelak (Mar. 4, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003aljorder20240304-1.pdf.

²⁷ IAB received eighteen responses to the first survey and nineteen to the second. See Post-Hearing Letter Brief from Interactive Advertising Bureau to Presiding Officer Foelak (Mar. 13, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003iabposthearingbrief20240313.pdf.

²⁸ See Transcript of Informal Hearing on Proposed Trade Regulation Rule on the Use of Consumer Reviews and Testimonials (Mar. 6, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003informalhearing03062024.pdf.

²⁹ Order by Presiding Officer Foelak at 5 (May 8, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r311003aljdecision20240508.pdf. The presiding officer added that, “[u]nquestionably, there is insufficient evidence in the record to make a specific finding as to the size of the compliance costs associated with the proposed rule.” *Id.* at 5 n.9.

³⁰ *Id.* at 6.

³¹ See 15 U.S.C. 57a(a)(1)(B).

³² 15 U.S.C. 57a(d)(1). In addition, section 22(b)(2) of the FTC Act requires the Commission to prepare a final regulatory analysis. 15 U.S.C. 57b–3(b)(2). The final regulatory analysis is in section VI of this document.

³³ ANPR, 87 FR 67425–26.

³⁴ NPRM, 88 FR 49370–77.

³⁵ *Id.* at 49370–72. AI tools make it easier for bad actors to pollute the review ecosystem by generating, quickly and cheaply, large numbers of realistic but fake reviews that can then be distributed widely across multiple platforms. AI-generated reviews are covered by the final rule, which the Commission hopes will deter the use of AI for that illicit purpose.

³⁶ NPRM, 88 FR 493720–73.

comment by the North American Insulation Manufacturers Association (“NAIMA”) asserting that testimonials by those misrepresenting their experiences with insulation products are plentiful.³⁷ The Commission concluded that the unfair or deceptive reuse or repurposing of consumer reviews is prevalent, relying upon a prior Commission case and numerous news articles.³⁸ To show how commonly incentives are given in exchange for reviews with the incentives conditioned on the sentiment of the reviews, the NPRM pointed to FTC and private cases, analyses by researchers of markets for procuring reviews, and the experience of a small business employee commenter who said a competitor was providing incentives for 5-star reviews.³⁹ The Commission found prevalence of unfair or deceptive insider reviews and testimonials based on its prior cases; a State AG action; statistics from a review platform commenter about how many reviews of businesses were written by their owners, officers, or employees, or their family members; and an individual commenter who relied upon insider reviews in selecting an auto repair shop.⁴⁰ The NPRM cited prior cases regarding the prevalent practice of marketers setting up purportedly independent websites, organizations, or entities to review or endorse their own products.⁴¹ The Commission found prevalence of suppression of negative reviews on retailer or business websites based on a platform’s comment, a recent FTC case, and what it learned in another investigation about more than 4,500 merchants that were automatically publishing only 4- or 5-star consumer reviews.⁴² The NPRM relied upon reports by platform and other commenters, as well as FTC and State AG cases, regarding review suppression by unjustified legal threat or physical threat.⁴³ Finally, with respect to the prevalence of sales and misuse of fake indicators of social media influence for commercial purposes, the NPRM discussed cases brought by the FTC, a State AG, and private parties, and published reports on social media bots and fake social media accounts.⁴⁴

B. Manner and Context in Which the Acts or Practices Are Deceptive or Unfair

The rule is intended to curb certain unfair or deceptive uses of consumer reviews and testimonials. It contains several provisions to promote accuracy and truthfulness in reviews and testimonials and, thus, will allow American consumers to make better-informed purchase decisions. The key provisions of the rule prohibit conduct that is inherently deceptive or unfair, including creating, selling, and buying fake or false reviews or testimonials; buying reviews in exchange for, or conditioned on, their sentiment; and using reviews and testimonials from company insiders that hide their relationships to the company. The rule also includes prohibitions against misleading, company-controlled review websites or entities; unfair or deceptive review suppression practices; and the misuse of fake indicators of social media influence.

C. The Economic Effect of the Rule

As part of the rulemaking proceeding, the Commission solicited public comment and data (both qualitative and quantitative) on the economic impact of the proposed rule and its costs and benefits.⁴⁵ In issuing the final rule, the Commission has carefully considered the comments received and the costs and benefits of each provision, taking into account the effect on small businesses and consumers, as discussed in more detail in sections VI and VIII of this document. The record demonstrates that the most significant anticipated benefit of the final rule is increased deterrence of clearly unfair or deceptive acts or practices involving consumer reviews or testimonials. Another significant benefit is the expansion of the remedies available to the Commission, including the ability to more effectively obtain monetary relief. This is particularly critical given the U.S. Supreme Court’s decision in *AMG Capital Management, LLC v. FTC*, which held that equitable monetary relief, including consumer redress, is not available under section 13(b) of the FTC Act.⁴⁶ Post-*AMG*, the Commission’s primary means for obtaining redress is section 19 of the FTC Act. By issuing the final rule, the Commission can obtain such redress based on violations of the rule in one proceeding under section 19(a)(1), which will be significantly faster than the two-step

process for obtaining redress under section 19(a)(2).⁴⁷ By allowing the Commission to secure redress more quickly and efficiently, this rule will also allow the Commission to preserve enforcement resources for other mission priorities.⁴⁸ As an additional benefit, the rule will enable the Commission to seek civil penalties against violators.⁴⁹ Without an efficient way to seek civil penalties, bad actors have little fear of being penalized for using fraud and deception in connection with reviews and endorsements. Increased deterrence will have consumer welfare benefits and will benefit honest competition.⁵⁰ Moreover, the final rule is likely to impose relatively small compliance costs on honest businesses.⁵¹

III. Overview of the Comments⁵²

The Commission received 100 responsive and non-duplicative comments in response to the NPRM from a diverse group of individuals (including consumers and law students), industry groups and trade associations, review platforms, retailers, and other businesses, consumer advocacy organizations, and government entities.

In the NPRM, the Commission invited the public to comment on any issues or concerns the public believed were relevant or appropriate to the Commission’s consideration of the

⁴⁷ See 15 U.S.C. 57b(a)(1), (2); see also NPRM, 88 FR 49377–78 (discussing impact of *AMG Cap. Mgmt.*).

⁴⁸ When the rule has been violated, the Commission can commence a Federal court action and seek to recover money for consumers or obtain an order imposing civil penalties. See 15 U.S.C. 57b(a)(1), 15 U.S.C. 45(m)(1)(A). Without the rule, the path to monetary relief is longer and requires the Commission to first conduct an administrative proceeding to determine whether the respondent violated the FTC Act; if the Commission finds that the respondent did so, the Commission issues a cease-and-desist order, which might not become final until after the resolution of any resulting appeal. Then, to recover money for consumers, the Commission must prove in a separate Federal court action that the violator engaged in fraudulent or dishonest conduct. See 15 U.S.C. 57b(a)(2).

⁴⁹ See section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (providing that violators of a trade regulation rule “with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule” are liable for civil penalties for each violation). In addition, any entity or person who violates such a rule (irrespective of the state of knowledge) is liable for any injury caused to consumers by the rule violation. The Commission may pursue such recovery in a suit under section 19(a)(1) of the FTC Act, 15 U.S.C. 57b(a)(1).

⁵⁰ NPRM, 88 FR 49382–85.

⁵¹ *Id.* at 49385–87; see *infra* sections VI and VIII of this document.

⁵² Minor changes to formatting, grammar, and punctuation have been made to some of the comments quoted in this document. These changes do not entail any substantive changes.

³⁷ *Id.* at 49373.

³⁸ *Id.* at 49373–74.

³⁹ *Id.* at 49374.

⁴⁰ *Id.* at 49374–75.

⁴¹ *Id.* at 49375.

⁴² *Id.* at 49376.

⁴³ *Id.*

⁴⁴ *Id.* at 49376–77.

⁴⁵ ANPR, 87 FR 67426–27; NPRM, 88 FR 49387–88.

⁴⁶ See *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 82 (2021).

proposed rule.⁵³ The NPRM also posed twenty-three specific questions for the public.⁵⁴ The first two are broad questions addressed in this section III, which also discusses several issues or concerns that commenters raised generally without reference to particular sections of the rule. Responses to the more specific questions in the NPRM are discussed in section IV of this document, a section-by-section analysis of the final rule. Questions relating to the Paperwork Reduction Act (“PRA”) and Regulatory Flexibility Act (“RFA”) and are addressed in sections VII and VIII of this document, respectively.⁵⁵

A. Furthering the Commission’s Goal

In Question 1 of the NPRM, the Commission asked whether its proposal would further the Commission’s goal of protecting consumers from clearly unfair or deceptive acts or practices involving consumer reviews and testimonials.⁵⁶

Several commenters expressly addressed this question. A review platform and a business that specializes in identifying fake online reviews submitted comments stating that the proposed rule would further the Commission’s goal of protecting consumers from clearly unfair or deceptive acts or practices involving consumer reviews.⁵⁷ Another review platform commenter answered that there are “numerous advantages of the FTC’s proposed new Rule,” that it is “generally supportive of this intervention overall,” and that the proposed rule “will be helpful to set out clear rules that expressly prohibit practices like writing or purchasing fake reviews, providing compensation or incentives in exchange for reviews, and certain acts of unfair review suppression.”⁵⁸ A business commenter similarly answered that the “Proposed

Rule addresses many concerns about unfair or deceptive acts or practices involving consumer reviews and testimonials, such as false and biased reviews.”⁵⁹ Both of these commenters also noted areas in which they thought certain provisions of the proposed rule should be adjusted or clarified; those issues are addressed below.⁶⁰ A consumer organization said that “[i]n general, . . . the proposed Rule will reduce the incentives for businesses to purchase, disseminate, or sell fake consumer reviews or testimonials,” but thought that the proposed rule should have placed explicit restrictions on third-party review platforms.⁶¹ The Commission notes that this topic is beyond the scope of the rulemaking, which focuses instead on those responsible for inarguably unfair or deceptive acts or practices regarding reviews and testimonials.

B. Adoption of the Proposed Rule as a Final Rule

In Question 2 of the NPRM, the Commission inquired whether it should finalize the proposed rule, the reasons for why commenters were in favor of or against the finalization of the proposed rule, and whether the Commission should make any changes to its original proposal.⁶²

Only two commenters directly addressed this question. A business commenter agreed that the Commission should finalize the proposed rule.⁶³ A review platform commenter said it “supports this Rule and would support the Commission finalizing the Rule.”⁶⁴ It also suggested adjustments to the Commission’s proposal, which are addressed below in this document.

Numerous individual commenters,⁶⁵ trade associations,⁶⁶ and consumer organizations⁶⁷ expressed general support for the proposed rule. For example, an individual commenter wrote, “I completely agree with the proposal. . . . Because review sections have become so untrustworthy (being impossible to tell whether a company has paid for positive reviews of its own product, or for negative reviews on a rival’s product), review sections have become functionally useless for me. This makes it difficult to purchase any products online, since real consumer feedback is one of the few ways to determine whether I should buy the product or service without first examining it in person.”⁶⁸ Another individual stated, “I support the rules as specified, and applaud the FTC’s action in this regard. It is extremely difficult for the consumer to determine the validity of online reviews—even within specific retailers such as amazon. There is little benefit for large online retailers to ensure that reviews are accurate, and this fact is evident in the large number of bogus reviews found on amazon, newegg, youtube and other sites.”⁶⁹ A third individual wrote, “I strongly support the rules against fake review

⁶⁵ Amelia Markey, Cmt. on NPRM (July 31, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0003> (“Markey Cmt.”); Chris Hippensteel, Cmt. on NPRM (Aug. 1, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0006> (“Hippensteel Cmt.”); Jeremy Anderson, Cmt. on NPRM (Aug. 1, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0007> (“Anderson Cmt.”); Caroline Fribance, Cmt. on NPRM (Aug. 11, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0017> (“Fribance Cmt.”); Pia Edborg, Cmt. on NPRM (Aug. 17, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0027> (“Edborg Cmt.”); Anonymous 1, Cmt. on NPRM (Aug. 20, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0031> (“Anonymous 1 Cmt.”); Jessica Ludlam, Cmt. on NPRM (Aug. 24, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0036> (“Ludlam Cmt.”); SUPERGUEST, Cmt. on NPRM (Sept. 8, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0046> (“Superguest Cmt.”); Sean Poole, Cmt. on NPRM at 1–2 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0063> (“Poole Cmt.”); Artemio Magana, Cmt. on NPRM (Sept. 28, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0079> (“Magna Cmt.”).

⁶⁶ American Dental Association, Cmt. on NPRM at 1 (Sept. 28, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0078> (“ADA Cmt.”); Travel Technology Association, Cmt. on NPRM at 1, 4–5 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0097> (“Travel Tech. Cmt.”).

⁶⁷ Coalition of Civil Society Organizations, Cmt. on NPRM at 1–3 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0108>; U.S. Public Interest Research Group Education Fund, Cmt. on NPRM at 2 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0109> (“US PIRG Cmt.”).

⁶⁸ Markey Cmt.

⁶⁹ Anderson Cmt.

⁵³ NPRM, 88 FR 49388.

⁵⁴ *Id.* at 49388–89.

⁵⁵ *Id.* at 49388. In addition to soliciting public comment on the NPRM’s PRA and RFA analyses in the PRA and RFA sections, the NPRM also posed two specific questions related to the PRA and RFA analyses. Question 4 inquired whether “the proposed rule contains a collection of information,” and Question 5 asked, “Would the proposed rule, if promulgated, have a significant economic impact on a substantial number of small entities? If so, how could it be modified to avoid a significant economic impact on a substantial number of small entities?” *Id.* at 49381–86, 49388.

⁵⁶ NPRM, 88 FR 49388.

⁵⁷ Yelp Inc., Cmt. on NPRM at 3 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0088> (“Yelp Cmt.”); The Transparency Company, Cmt. on NPRM at 1, 5 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0107> (“Transparency Company Cmt.”).

⁵⁸ Trustpilot, Cmt. on NPRM at 2 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0084> (“Trustpilot Cmt.”).

⁵⁹ Family First Life, LLC, Cmt. on NPRM at 2 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0104> (“Family First Life Cmt.”).

⁶⁰ Trustpilot Cmt. at 2–3; Family First Life Cmt. at 2–3.

⁶¹ Consumer Reports, Cmt. on NPRM at 2–3 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0099> (“Consumer Reports Cmt.”).

⁶² NPRM, 88 FR 49388.

⁶³ Transparency Company Cmt. at 6.

⁶⁴ Trustpilot Cmt. at 3.

and testimonials and fines for businesses and people who write them. As a consumer, I often use reviews to help determine whether a product or service is reliable; the prevalence of fake reviews makes this impossible.”⁷⁰ A trade association commented, “The NPRM proposes rules that are appropriately scoped to target the bad actors [who are] intent on committing fraud through fake or deceptive reviews. . . . The NPRM strikes the appropriate balance between enhancing the Commission’s tools to target bad actors and preserving industry flexibility to develop innovative and effective solutions to maintain consumer confidence in reviews.”⁷¹ A consumer organization stated, “The Commission absolutely should finalize the proposed rule to better protect shoppers and hold businesses accountable.”⁷²

A number of individual consumers,⁷³ a review platform,⁷⁴ other industry members,⁷⁵ and consumer organizations⁷⁶ supported the Commission’s proposal, but urged the Commission to go further and impose additional requirements, such as by adding provisions that would apply to third-party review platforms. As noted above, such provisions would be beyond the scope of the rulemaking. Similarly beyond the scope of the rulemaking is an individual’s suggestion that the Commission should restrict the highlighting of testimonials on websites

and prohibit payments for reviews.”⁷⁷ A review platform’s comment “applaud[ed] . . . the Commission . . . for its extensive efforts to address the problem of deceptive review practices, as reflected in the Commission’s notice of proposed rulemaking, and . . . fully support[ed] and endorse[d] the Commission’s proposed Rule.”⁷⁸ Its suggestions for several provisions are discussed below. A consumer group stated that the proposed rule “is needed” and “addresses an urgent problem: fabricated and otherwise deceptive reviews and ratings of products and services,” but asked for numerous modifications to strengthen it.⁷⁹ These proposals are discussed below.

A few individual commenters⁸⁰ and industry commenters⁸¹ were supportive of a rule but expressed the need for clarifications or modifications. An individual commenter wrote that “[a]ll of the rules proposed . . . make (common) sense” but identified “a few scenarios that highlight that the language in the proposed rules is a bit ambiguous” and that with “steep penalties like this, guidelines need to be clear, concrete, AND simple so businesses can understand.”⁸² Another individual commenter said that the proposed rule “takes great strides,” but that two proposed sections, 465.4 and 465.6, are too restrictive.⁸³ A retailer wrote, “On the whole, . . . the Proposed Rule contains provisions that are reasonable and would provide additional protection to consumers” but “there are a few provisions . . . that are not well drafted or that need additional language.”⁸⁴ Another retailer said that it “supports a tailored rule that focuses on the bad actors that harm consumers,” but that the proposed rule “sweeps

more broadly, extending to the activities of legitimate businesses that do not uncover abuses that they ‘should have’ identified, regardless of their good faith efforts” and that “[s]uch an overbroad rule would have significant unintended negative consequences on legitimate conduct.”⁸⁵ An industry organization commented that the proposed rule “is an important step, and we share the Commission’s goal of improving consumer confidence in reviews and testimonials” but “strongly urge[d] the Commission to reexamine . . . [four] provisions” to address what it viewed as First Amendment concerns and for other reasons.⁸⁶ The specific suggestions or concerns raised by these and other commenters are addressed below. In particular, whether in the text of the final rule or in the discussion below, the Commission is clarifying the scope or meaning of various rule provisions to cover the specific activities or conduct that harm consumers and avoid ambiguity or overbreadth.

Only four commenters, two individual commenters⁸⁷ and two trade associations,⁸⁸ said that the proposed rule was unnecessary or unwarranted. One of the individuals, wrote that “the rule seems to be unnecessary as it is unlikely to actually provide the benefit to consumers of removing falsified reviews” because it is difficult to identify and trace fake reviews and “punish[] an offender” and that the proposed rule “also has potential to penalize non-offenders” when competitors purchase “review bombs.”⁸⁹ The commenter asserted that the FTC’s estimated benefits are based on faulty assumptions such as that “the entirety of the loss” from false reviews “would be eliminated simply because the rule is enacted.”⁹⁰ The commenter said that the FTC should either maintain the status quo or require websites with consumer reviews to include a disclosure that “some reviews may have not been made by genuine customers, may potentially have been paid

⁷⁰ Anonymous 1 Cmt.

⁷¹ Travel Tech. Cmt. at 1, 4.

⁷² US PIRG Cmt. at 2.

⁷³ Michael Ravnitzky, Cmt. on NPRM at 1–2 (Aug. 6, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0013> (“Ravnitzky Cmt.”); Adam Foster, Cmt. on NPRM at 1–2 (Sept. 21, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0052> (“Foster Cmt.”); Anonymous 2, Cmt. on NPRM at 1, 4 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0065> (“Anonymous 2 Cmt.”); Anonymous 3, Cmt. on NPRM (Sept. 27, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0069> (“Anonymous 3 Cmt.”).

⁷⁴ Yelp Cmt. at 1, 5–8.

⁷⁵ Strategic Marketing, Cmt. on NPRM (Aug. 7, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0014>; PerfectRec Inc., Cmt. on NPRM at 1–3 (Aug. 23, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0035>; Mozilla, Cmt. on NPRM at 5–7 (Sept. 28, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0076> (“Mozilla Cmt.”); The Responsible Online Commerce Coalition, Cmt. on NPRM at 2, 4–6 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0086>.

⁷⁶ Fake Review Watch Cmt. at 1–4; Truth in Advertising, Inc., Cmt. on NPRM at 2, 4–11 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0083> (“TINA Cmt.”); National Consumers League, Cmt. on NPRM at 2–9 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0096> (“NCL Cmt.”); Consumer Reports Cmt. at 2–11.

⁷⁷ Anonymous 3 Cmt.

⁷⁸ Yelp Cmt. at 1, 4–8.

⁷⁹ TINA Cmt. at 4, 6.

⁸⁰ Anonymous 4, Cmt. on NPRM (Sept. 1, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0040> (“Anonymous 4 Cmt.”); Riley Albert, Cmt. on NPRM at 3 (Sept. 21, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0053> (“Albert Cmt.”); Alyssa Frieling, Cmt. on NPRM at 1–4 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0059> (“Frieling Cmt.”).

⁸¹ Hammacher, Schlemmer and Co., Inc., Cmt. on NPRM at 1–7 (Aug. 21, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0032> (“Hammacher Schlemmer Cmt.”); Amazon.com, Inc., Cmt. on NPRM at 5–13 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0085> (“Amazon Cmt.”); TechNet Cmt. on NPRM at 2–4 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0089> (TechNet Cmt.”); Family First Life Cmt. at 2–16.

⁸² Anonymous 4 Cmt.

⁸³ Frieling Cmt. at 1–4.

⁸⁴ Hammacher Schlemmer Cmt. at 1.

⁸⁵ Amazon Cmt. at 5.

⁸⁶ TechNet Cmt. at 2–4.

⁸⁷ Marc Slezak, Cmt. on NPRM at 1–5 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0054> (“Slezak Cmt.”); Sumner Camp-Martin, Cmt. on NPRM at 1–5 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0056> (“Camp-Martin Cmt.”).

⁸⁸ National Automobile Dealers Association, Cmt. on NPRM at 1–2 (Sept. 28, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0077> (NADA Cmt.”); Association of National Advertisers, Cmt. on NPRM at 3–7 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0105> (“ANA Cmt.”).

⁸⁹ Slezak Cmt. at 1–4.

⁹⁰ *Id.* 3.

testimonials, etc.”⁹¹ The other individual commenter said that the “proposed rule is unnecessary because all of the practices considered by the rule ‘are already unlawful under Section 5 of the FTC Act,’ it has potentially massive compliance costs for American businesses” (citing the FTC’s estimated cost), “and the better salutation [sic] is to work with States and review platforms to resolve the issue.”⁹² One of the trade associations stated that the “Proposed Rule is [u]nnecessary,” that “current FTC enforcement authority has been effective in addressing such clearly deceptive practices, and there is no indication how or why a trade regulation rule is needed, or how such a rule would more effectively address concerns about such deceptive practices,” and that “a need to alleviate the ‘difficulty’ of obtaining monetary relief under the FTC Act where such authority has never existed, does not provide an adequate basis for the issuance of a Magnuson-Moss rulemaking.”⁹³ The other trade association asserted that (1) it “does not believe that rulemaking is warranted, wise, or a balanced approach, in part because it raises serious First Amendment concerns;” (2) “a well-designed rule would focus on a defined trade” but the “record to date does not establish that customer reviews, the use of those reviews, or the dissemination of those reviews by commercial platforms is itself a defined trade;” (3) the “FTC should not promulgate a rule solely because the augmented penalties attendant to a rule violation could ostensibly advance a Commission goal generally;” and (4) “the FTC fail[ed] to show how enforcement actions, many of which were settled by consent order, translate into ‘prevalence.’”⁹⁴

The Commission disagrees with the four commenters who said that the proposed rule was unnecessary or unwarranted. The Commission believes that the status quo is inadequate to address consumer harm and that the rule will add deterrence and aid enforcement even though the practices covered by the rule are already unlawful under section 5 of the FTC Act. Greater deterrence and more effective enforcement are legitimate reasons to engage in a rulemaking, whereas difficulties in enforcing a rule against some violators are no reason to eschew

it.⁹⁵ Further, the compliance costs estimated by the Commission are greatly outweighed by the estimated benefits to consumers and honest competition. The Commission notes that the harm caused by the acts and practices addressed cut across multiple trades. The Commission addresses potential First Amendment concerns and arguments regarding prevalence below.

IV. Section-by-Section Analysis

The following discussion provides a section-by-section analysis of the provisions proposed in the NPRM, and discusses the comments received, the Commission’s responses to the comments, and the provisions adopted in the final rule.⁹⁶

A. § 465.1—Definitions

1. Overview

The proposed rule included definitions for the following terms: “business”; “celebrity testimonial”; “clear and conspicuous”; “consumer review”; “consumer testimonial”; “indicators of social media influence”; “officers”; “purchase a consumer review”; “reviewer”; “substantially different product”; “testimonialist”; and “unjustified legal threat.” In Question 6 of the NPRM, the Commission asked whether the proposed definitions are clear and what changes should be made to any definitions. In Questions 11 and 21 of the NPRM, the Commission asked specifically about the definitions of “substantially different product” and “unjustified legal threat,” respectively. In the following definition-by-definition analysis, the Commission discusses each definition proposed in the NPRM, relevant comments not otherwise addressed in the discussion of the corresponding substantive provisions of the final rule, and the definitions that the Commission is finalizing.⁹⁷

⁹⁵ The Commission is aware that a business could attempt to damage a competitor’s reputation by purchasing fake positive reviews for that competitor and then reporting those reviews to the platform on which they appear. In investigating a fake review matter, FTC staff would take such a possibility into account.

⁹⁶ The Commission notes that many commenters raised similar concerns or addressed overlapping issues. To avoid repetition, the Commission has endeavored to respond to issues raised in similar comments together. Responses provided in any given section apply equally to comments addressing the same subject in the context of other sections. Moreover, throughout the SBP, the Commission discusses justifications for the final rule that are informed by its careful consideration of all comments received, even where that discussion is not linked to a particular comment.

⁹⁷ Because the Commission is adding additional definitions and not including one proposed definition, the definitions are renumbered in the final rule.

2. Definition-by-Definition Analysis

a. Business

The proposed rule defined “business” as “an individual, partnership, corporation, or any other commercial entity that sells products or services.” This term appeared in the proposed definitions of “celebrity testimonial,” “consumer review,” “consumer testimonial,” and “officers,” and in every substantive section of the proposed rule. For the following reasons, the Commission adopts the definition of “business” largely as proposed, with a minor, non-substantive clarification as described below.

A trade association commenter noted correctly that the Commission’s rulemaking authority is limited to acts or practices “in or affecting commerce.”⁹⁸ It recommended that the Commission insert “in or affecting commerce as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 44)” in the definition of a “business.”⁹⁹ The Commission declines to make this modification. An entity that is selling products or services is engaging in commerce and, even without the commenter’s proposed addition, the acts and practices covered by the final rule are limited to commercial practices.

A consumer advocacy organization commenter argued that the definition of a business potentially liable under the proposed rule was unduly narrow and should be expanded to include “advertisers,” “endorsers,” and “[a]dvertising agencies, public relations firms, review brokers, reputation management companies, and other similar intermediaries.”¹⁰⁰ However, advertisers, advertising agencies, public relations firms, review brokers, reputation management companies, and other similar intermediaries all sell products or services and are covered by the Commission’s definition of “business.” To the extent that an endorser is in the business of selling reviews or testimonials, the endorser is covered by the definition. The Commission is therefore not making the proposed change.

A review platform commenter suggested that, to avoid ambiguity, the Commission clarify that “sells products or services” in the definition of “business” applies to each of the types of entities listed in the definition, not just to “any other commercial

⁹⁸ National Federation of Independent Businesses, Cmt. on NPRM at 2 (Sept. 12, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0047> (“NFIB Cmt.”).

⁹⁹ *Id.*

¹⁰⁰ TINA Cmt. at 6–7.

⁹¹ *Id.* 4.

⁹² Camp-Martin Cmt. at 1–2. The commenter said, “In the alternative to the complete abandonment of the proposed rule, Section 465.4 should be amended” and broadened. *Id.* at 1.

⁹³ NADA Cmt. at 1–2.

⁹⁴ ANA Cmt. at 3–7.

entity.”¹⁰¹ The Commission is adopting this recommendation to clarify the intended scope of the definition.

For the reasons explained in this section, the Commission is finalizing the definition of “business” to mean an individual who sells products or services, a partnership that sells products or services, a corporation that sells products or services, or any other commercial entity that sells products or services.

b. Celebrity Testimonial

The proposed rule defined “celebrity testimonial” as “an advertising or promotional message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual) that consumers are likely to believe reflects the opinions, beliefs, or experiences of a well-known person who purchased, used, or otherwise had experience with a product, service, or business.” The Commission is finalizing the definition of this term—which is used in § 465.2, Fake or False Consumer Reviews, Consumer Testimonials, or Celebrity Testimonials—with one modification.

A trade association commenter said that the definition of a celebrity endorsement should be clarified to exclude “a situation where a celebrity or celebrity likeness appears or is used by a business as a promotion, without any specific advertising or opinions presented.”¹⁰² The commenter gave the example of an athlete who appears at a business to sign autographs or simply appears, without making any statements or representations about the business.¹⁰³ Such situations should not be excluded from the scope of the definition because a business’s use in advertising or promotion of a celebrity or a celebrity’s image can, even without any additional statements, imply that the celebrity has a positive opinion of the business or its products or services and therefore constitute a celebrity testimonial. However, if consumers would not interpret the celebrity’s appearance to reflect the celebrity’s opinions of, beliefs about, or experiences with, a business or its products or services, then the appearance is not a testimonial. That issue is thus highly dependent on specific facts. Further, to take the commenter’s example, it is highly unlikely that a celebrity who does nothing more than sign autographs or appear at a business could violate § 465.2, because such signings or

appearances alone would likely not communicate anything to consumers about the celebrity’s use or experience with a product, service, or business.

A second trade association asserted that the definition of a “celebrity testimonial” does not give advertisers adequate notice as to when a testimonial is a “celebrity” testimonial or a “consumer” testimonial.¹⁰⁴ The commenter requested that the Commission provide further guidance on what constitutes a “well-known” individual.¹⁰⁵ Based upon common usage, well-known individuals include those famous in the areas of entertainment, such as film, music, writing, or sport, and those known to the public for their positions or successes in business, government, politics, or religion. Individuals who earn money through their work as “influencers” are also well known, as are those who have been featured in the news or media. More important, whether someone is well known does not matter for purposes of rule interpretation and enforcement because any provisions that apply to celebrity testimonials also apply to consumer testimonials.

A business commenter suggested replacing “a well-known person” in the definition with a “widely known all-purpose public figure” or “widely known public figure” for the purpose of “clarity.”¹⁰⁶ It said that Black’s Law Dictionary defines the term “all-purpose public figure” to mean “[s]omeone who achieves such pervasive fame or notoriety that he or she becomes a public figure for all purposes and in all contexts.”¹⁰⁷ To be “well known,” one need not have such pervasive fame as to be a public figure for all purposes and in all contexts. For example, an influencer may be well known to a subset of individuals interested in a particular subject. The commenter gave no justification for narrowing the definition of a “celebrity testimonial,” and the Commission declines to do so.

A public interest research center commenter said that the definitions of “celebrity testimonials” and “consumer testimonials” should “be broadened to explicitly include non-natural persons, such as businesses and public sector entities.”¹⁰⁸ Although endorsements by such organizations are addressed in the

Commission’s Endorsement Guides,¹⁰⁹ the Commission did not intend for any provision using the term “testimonials” to apply to endorsements by entities. To clarify that the Commission does not intend for any provision using the term “testimonials” to apply to endorsements by entities, the Commission is substituting the word “individual” for the word “person” wherever the word appeared in the Commission’s original proposal.¹¹⁰ The only section of the rule that applies to endorsements by entities or purported entities is § 465.6, which addresses company-controlled review websites or entities. However, § 465.6 does not apply to consumer or celebrity testimonials.

c. Clear and Conspicuous

The proposed rule defined “clear and conspicuous” to mean “that a required disclosure is easily noticeable (*i.e.*, difficult to miss) and easily understandable,” including in eight enumerated ways, listing proposed requirements for “any communication that is solely visual or solely audible,” “[a] visual disclosure,” “[a]n audible disclosure,” and “any communication using an interactive electronic medium,” and providing, *inter alia*, that such disclosures “must use diction and syntax understandable to ordinary consumers,” “must appear in each language in which the representation that requires the disclosure appears,” and “must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.” Based on the following, the Commission is finalizing the definition of this term—which is used in § 465.5, Insider Consumer Reviews and Consumer Testimonials—with one modification.

A trade association commenter suggested not using the terms “diction” and “syntax” in the definition because many of those subject to the rule “may not know the meaning of th[os]e words.”¹¹¹ The commenter suggested replacing them with “words” and

¹⁰⁹ See Fed. Trade Comm’n, Guides Concerning Use of Endorsements and Testimonials in Advertising (“Endorsement Guides”), 16 CFR 255.4.

¹¹⁰ The Commission is using the term “individual” in the context of this rule to mean a single human being. See *Individual* (def. 1), *Dictionary.com*, LLC, <https://www.dictionary.com/browse/individual> (last visited July 5, 2024) (defining “individual” as “a single human being, as distinguished from a group”). The Commission notes that, in the context of a different rulemaking, it has proposed defining “individual” to mean “a person, entity, or party, whether real or fictitious, other than those that constitute a business or government” under 16 CFR 461. See Fed. Trade Comm’n, Trade Regulation Rule on Impersonation of Government and Businesses, 89 FR 15072, 15083 (Mar. 1, 2024).

¹¹¹ NFIB Cmt. at 2.

¹⁰¹ Yelp Cmt. at 3.

¹⁰² NADA Cmt. at 5.

¹⁰³ *Id.*

¹⁰⁴ IAB Cmt. at 14.

¹⁰⁵ *Id.*

¹⁰⁶ Family First Life Cmt. at 4–5.

¹⁰⁷ *Id.* at 5. See Black’s Law Dictionary (11th ed. 2019).

¹⁰⁸ Electronic Privacy Information Center, Cmt. on NPRM at 3 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0111> (“EPIC Cmt.”).

“grammar.”¹¹² “Diction” means the choice and use of words.¹¹³ “Syntax” involves the arrangement of words and phrases and is a subset of grammar.¹¹⁴ The Commission believes that the meaning of “diction” and “syntax” are sufficiently clear.

One trade association commenter asserted that it is unnecessary to have a definition of “clear and conspicuous” because the “phrase . . . has a meaning under FTC jurisprudence.”¹¹⁵ The definition is based on that jurisprudence and decades of Commission experience policing deceptive and unfair conduct. The Commission believes it is both helpful and necessary that the rule provides more explicit guidance on what does and does not constitute a clear and conspicuous disclosure.

Several commenters asserted that the proposed definition was overly prescriptive and not sufficiently flexible.¹¹⁶ The Commission disagrees and reiterates that the definition contains basic, common-sense principles, such as requiring visual disclosures in a size consumers can see and audible disclosures at a volume they can hear. The definition merely provides a baseline and provides a great deal of flexibility in what a disclosure should say and how it appears. The basic, enumerated requirements are necessary for a disclosure to be effective.

Two commenters objected to the requirement that internet disclosures be “unavoidable,” an objective standard that depends on whether consumers could have avoided the disclosure, which, per the definition is the case when “a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see” the disclosure.¹¹⁷ The commenters do not believe that a disclosure has to be unavoidable for it to be effective; they

noted that a staff business guidance document, issued in 2000 and updated in 2013, allowed for the possibility that avoidable disclosures, e.g., those available through a hyperlink, could be clear and conspicuous.¹¹⁸ The Commission believes that a disclosure is not effective when it is not seen or heard, including when the reason for it not being seen or heard is its avoidability. The staff guidance said that “[d]isclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink,” and the purported independence and objectivity of a reviewer or testimonialist is often integral.¹¹⁹ Further, some readers misunderstood the staff guidance about the necessity of properly labeling hyperlinks to convey the “importance, nature, and relevance of the information” to which the hyperlinks lead. The staff guidance said that, to be effective, the label of the hyperlink might need to give the essence of the disclosure, with the hyperlink leading to the details.¹²⁰ Even had these qualifications been absent, the Commission is not bound by the 2013 staff business guidance, which is currently under review in light of an evolution of views over time regarding online disclosures and avoidability.¹²¹

One commenter asked whether a disclosure in the first line of a product review would be considered unavoidable.¹²² For the purposes of this rule, the Commission would consider such a disclosure to be unavoidable. A different commenter expressed concern that the requirement that a disclosure “stand out” would require new formatting techniques for companies hosting reviews and preclude a disclosure from being in the review itself.¹²³ For the purposes of this rule,

the Commission would consider a disclosure at the beginning of a text-only consumer review to “stand out.”

A trade association said that “the average social media user is familiar with where text is found in any given social media post, and social media platforms already make text visible against a variety of backgrounds” so “[r]equiring the endorsement-disclosure text to differ from other text is not only impractical, but it could actually create confusion for social media users who have grown accustomed to viewing all text related to a post in a certain manner.”¹²⁴ The Commission recognizes that, on a social media platform that allows only uniform text, it is not possible to have the text of a disclosure appear in different text. As with a text-only consumer review, the Commission would consider a disclosure at the beginning of such a text-only testimonial to “stand out.” On visual platforms with superimposed text, it is quite possible and reasonable to require that the text of a disclosure “stand out.”

One commenter asserted that being “unavoidable” and being “easily noticed” are ambiguous concepts.¹²⁵ The Commission disagrees. “Unavoidable” means that a consumer cannot avoid a disclosure such as by failing to click on a link or by failing to scroll. “Easily noticeable” is a simple and objective standard evaluated from the perspective of a reasonable consumer.

Two commenters asserted that it would be difficult to make clear and conspicuous disclosures required by the proposed rule on a small screen.¹²⁶ They did not explain why that would be the case, and the Commission does not believe that compliance with the rule’s disclosure requirement should be difficult on handheld devices.

One commenter asserted that, because of the proposed definition of clear and conspicuous, “[t]here is no need for the FTC to determine whether the resulting speech is rendered deceptive, untrue, or inaccurate.”¹²⁷ The Commission disagrees. The only substantive provision for which the definition is relevant is § 465.5. A business would not violate that provision merely by having a disclosure that is not clear and conspicuous. Rather, the business would have to engage in conduct that would be unfair or deceptive in the absence of a clear and conspicuous disclosure (e.g., a corporate officer

¹¹² *Id.*

¹¹³ See *Diction* (def. 2), Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/diction> (last visited July 5, 2024) (defining “diction” as the “choice of words especially with regard to correctness, clearness, or effectiveness”).

¹¹⁴ See *Syntax* (defs. 1a, 1b), Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/syntax> (last visited July 5, 2024) (defining “syntax” as the “the way in which linguistic elements (such as words) are put together to form constituents (such as phrases or clauses)” and as “the part of grammar dealing with this”).

¹¹⁵ ANA Cmt. at 11.

¹¹⁶ IAB Cmt. at 14; U.S. Chamber of Commerce, Cmt. on NPRM at 7–8 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0087> (“Chamber of Commerce Cmt.”); National Retail Federation, Cmt. on NPRM at 10 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0090> (“NRF Cmt.”).

¹¹⁷ IAB Cmt. at 14; Chamber of Commerce Cmt. at 8.

¹¹⁸ *Id.*

¹¹⁹ Fed. Trade Comm’n, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* at 10 (Mar. 2013), <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

¹²⁰ *Id.* at 11. (“Although the label itself does not need to contain the complete disclosure, it may be necessary to incorporate part of the disclosure to indicate the type and importance of the information to which the link leads.”)

¹²¹ See Press Release, Fed. Trade Comm’n, *FTC Looks to Modernize Its Guidance on Preventing Digital Deception* (June 3, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-looks-modernize-its-guidance-preventing-digital-deception>.

¹²² Trustpilot Cmt. at 14. The same commenter also raised concerns about the applicability of the definition to ratings and aggregate ratings. *Id.* That is issue is discussed below in the discussion of the corresponding substantive rule provision. See *infra* section IV.E.6 of this document.

¹²³ NRF Cmt. at 10.

¹²⁴ *Id.* at 11.

¹²⁵ ANA Cmt. at 11.

¹²⁶ IAB Cmt. at 14; NRF Cmt. at 11.

¹²⁷ ANA Cmt. at 11.

giving a consumer endorsement without disclosing that they are an insider). As discussed below, the Commission is finalizing proposed § 465.5 with a modification to clarify that the provision is limited to conduct that would violate section 5 of the FTC Act.¹²⁸ The same commenter also surmised, based on the similarity of the definition of “clear and conspicuous” to the definition of the same phrase in the Endorsement Guides, that the Commission intends that the examples used in the Endorsement Guides would also be examples of violative behavior under the rule.¹²⁹ That is not the case. The Endorsement Guides address a broader range of conduct than the rule. Of the three examples in the Endorsement Guides that illustrate whether disclosures are clear and conspicuous, two of them address issues—the payment of influencers and implied typicality—not covered by the rule.¹³⁰ The third example involves a disclosure that individuals appearing in a television ad and giving testimonials are paid actors.¹³¹ Such conduct would not be covered by the rule unless the underlying testimonials were fake or false.

One commenter, a trade association, stated that it was “unclear if the Commission has considered any social media platform constraints with respect to the length of posts (e.g., character and time limits),” and asked (1) whether and how hashtags can meet the “clear and conspicuous” requirement, (2) whether “#Ad” is a sufficient visual disclosure of a material relationship,” and (3) that the Commission “provide more examples, including appropriate use of hashtags in disclosures, in its final rule.”¹³² Another trade association requested in its comment that the Commission provide “visual examples of ‘insider’ endorsement disclosures that the Commission finds acceptable.”¹³³ The Commission believes it is not difficult to comply with the rule’s disclosure requirements in the social media context. Depending upon their wording and appearance, hashtags can be clear and conspicuous for purposes of the rule. In a social media post promoting a brand, it might be sufficient to prominently disclose an employee relationship via a hashtag beginning with the brand name and followed by

the word “employee.” Whether “#ad” would be an adequate disclosure would depend on the specific context. It could be adequate at the beginning of a social media post by the testimonialist, but it would likely be inadequate in a television ad or magazine ad featuring the testimonialist. Because the only provision for which the definition is relevant is § 465.5, which addresses the failure to disclose insider relationships, the disclosure could be as simple as the testimonialist describing a product as “my company’s” or “my wife’s company’s.”

A commenter asserted that disclosures “utilizing a social media platform’s built-in disclosure tool should be . . . at least sufficient enough to avoid the risk of penalties under the FTC’s rulemaking authority.”¹³⁴ As it has previously said, the Commission supports development of effective, built-in disclosure tools but is concerned that some of the existing tools lead to inadequate disclosures that are too poorly contrasting, fleeting, or small, or may be placed in locations where they do not catch the user’s attention.¹³⁵ Whether a business could be subject to civil penalties for social media posts by insiders who utilized a social media platform’s built-in disclosure tool would depend on whether a court would find that the business met the knowledge standard of section 5(m)(1)(A) of the FTC Act.

A trade association’s comment expressed concerns about the proposed requirement that “[i]n any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.”¹³⁶ The commenter said that “it is unnecessary and duplicative to require video endorsements that include visual and audio components to include both visual and audio disclaimers,” and “requiring an additional visual disclaimer, on top of a disclaimer that an endorser may easily include via audio, is cumbersome, and restricts companies’ marketing capabilities.”¹³⁷ On reflection, in the context of this rulemaking and as to the relationships of company insiders, if a

communication makes an endorsement in only its visual or audio portion, then it should be sufficient for a disclosure to appear in the same format as the claim that requires the disclosure. On the other hand, if an endorsement is conveyed in both the audio and visual portions of a communication, then the disclosure should be made in both the audio and visual portions. Consumers can watch a video with the sound off or listen to it without looking at the screen. The Commission is changing the relevant language to, “[i]n any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented in at least the same means as the representation(s) requiring the disclosure.” This change makes the rule less restrictive while still accomplishing the Commission’s goal of ensuring that consumers are fully informed. A different trade association noted that the “simultaneous disclosure requirement is confusing and would benefit from examples of sufficient simultaneous disclosure.”¹³⁸ Because the Commission is not finalizing the simultaneous disclosure requirement contained in the proposed rule, it is not providing further guidance on the meaning of simultaneous.

The second trade association also asked “if a social media influencer posts a video and discloses verbally in the video that they have a brand ambassador relationship with the retailer/brand, is it sufficient to display in the text accompanying the posted video some written disclosure” or would the disclosure “need to be embedded or flash across the video itself.”¹³⁹ The rule does not address or apply to an influencer’s disclosure of a brand ambassador relationship. The rule’s only disclosure requirements are in § 465.5 and apply to company insiders. Whether a testimonial in a social media post by a company insider requires a superimposed textual disclosure depends on whether there is an endorsement communicated by the visual portion of the post. If there is an endorsement in the visual portion, there would need to be a disclosure in the visual portion. If the endorsement is communicated only in the audio portion of the post, there would not need to be a disclosure in the visual portion.

d. Consumer Review

The proposed rule defined “consumer review” as “a consumer’s evaluation, or a purported consumer’s evaluation, of a product, service, or business that is

¹²⁸ See *infra* section IV.E.1 of this document.

¹²⁹ *Id.*

¹³⁰ 16 CFR 255.0(g)(9) and (11).

¹³¹ 16 CFR 255.0(g)(10).

¹³² Retail Industry Leaders Association, Cmt. on NPRM at 5 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0094> (“RILA Cmt.”).

¹³³ NRF Cmt. at 10.

¹³⁴ *Id.*

¹³⁵ Fed. Trade Comm’n, Guides Concerning the Use of Endorsements and Testimonials in Advertising, 87 FR 44288, 44290 (July 26, 2022) (proposing changes to guides and soliciting public comment).

¹³⁶ NRF Cmt. at 11.

¹³⁷ *Id.*

¹³⁸ RILA Cmt. at 5.

¹³⁹ *Id.*

submitted by the consumer or purported consumer and that is published to a website or platform dedicated in whole or in part to receiving and displaying such evaluations.” The proposed definition also noted that, for the purposes of the rule, consumer reviews include consumer ratings regardless of whether they include any text or narrative. The Commission has determined to finalize the definition of this term—which is used in §§ 465.2 through 465.6—with a minor, technical change.

A comment from a review platform supported the proposed definition, calling it “particularly clear and holistic.”¹⁴⁰

A comment from an individual asserted that the “definition of ‘consumer’ implies an individual who purchased the product for their own use” and that when a “product is provided by the company seeking a review, for the purposes of it being reviewed, the reviewer is arguably not a consumer.”¹⁴¹ The Commission disagrees that a “consumer” is necessarily a purchaser. For purposes of the rule, a consumer is a person who purchased, used, or otherwise had experience with a product, service, or business.

A trade association commenter suggested deleting the definition’s element that a consumer review be “published.”¹⁴² It said that a “consumer review should still be considered a ‘review’ before it is publicly displayed by a website or platform.”¹⁴³ Although that may be true for some purposes, the Commission declines to make that change. A consumer review that is submitted to a website or platform but never published does not in and of itself deceive consumers, although the failure to publish a review may be deceptive pursuant to paragraphs (a)(1) and (b) of § 465.7. Paragraphs (a)(1) and (b) of § 465.7 are worded in a way that does not limit their application to published reviews, because they relate to suppressed reviews.

A comment from a consumer advocacy organization suggested deleting the portion of the definition that refers to publication to a website or platform “dedicated in whole or in part to receiving and displaying such evaluations.”¹⁴⁴ It asked whether the definition would “only apply to reviews on a website ‘dedicated’ to posting

reviews, such as Yelp” and whether “it include[s] any website where reviews are possibly posted, like Reddit?”¹⁴⁵ The commenter continued, “Would a website be excluded if only a very small portion of the website contained consumer evaluations?”¹⁴⁶ The commenter asserted that “[a]ll fake reviews and ratings that are used to market a product or service should be captured in the . . . Rule—no matter where they are posted.”¹⁴⁷ The definition is not limited to consumer reviews on websites that are dedicated entirely to posting such reviews. It would also cover reviews on a portion of a website, no matter how small a portion, that is dedicated to receiving and displaying such reviews, such as a reviews page or the review sections of product pages on a retailer’s website. The definition would not, however, cover consumer statements about products or services on a website or portion of a website, such as Reddit, that is not dedicated to receiving and displaying reviews. Such free-floating consumer statements are outside of the generally understood context in which content is submitted and published as reviews. Under some circumstances, such statements might be considered “consumer testimonials,” such as when an advertiser has paid for them.

A comment from a review platform raised two issues with the “consumer review” definition.¹⁴⁸ It said that “[b]are ratings provide no context, making them virtually useless for other consumers or to businesses that might use consumer feedback to improve their services” and suggested that “the Commission differentiate between reviews and ratings.”¹⁴⁹ The fact that bare ratings do not provide context does not mean that consumers do not rely on them or on aggregate ratings that include bare ratings. The Commission does not see a reason to distinguish between reviews and ratings for the purposes of the rule, and the commenter did not provide such a reason. The same commenter also expressed “concern[] with the definition’s use of the word ‘purported[.]’ . . . which has a negative connotation that feeds into the false narrative that consumer reviews are inherently unreliable” and suggested replacing “purported” with different language.¹⁵⁰ The definition simply recognizes and accounts for the undisputed fact that some reviews are

fake. Just because some reviews are unreliable does not suggest that reviews are generally unreliable. The Commission declines to adopt this recommendation.

To conform with the Office of the Federal Register’s drafting requirements, the Commission is changing a reference to “this Rule” to “this part.”¹⁵¹

e. Consumer Testimonial

The proposed rule defined “consumer testimonial” as “an advertising or promotional message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual) that consumers are likely to believe reflects the opinions, beliefs, or experiences of a consumer who has purchased, used, or otherwise had experience with a product, service, or business.” The Commission is finalizing the definition of the term—which is used in §§ 465.2 and 465.5—as originally proposed.

A trade association commenter expressed concern that consumers seeing a clearly dramatized television commercial might unreasonably believe that the actors’ scripted lines actually reflected their opinions, beliefs, or experiences and could therefore be considered consumer testimonials.¹⁵² It suggested clarifying the definition by inserting “reasonably in the circumstances” after “that consumers are likely to believe.”¹⁵³ The Commission agrees that it would not be reasonable for viewers to consider “an obviously fictional dramatization” to be an endorsement.¹⁵⁴ The Commission does not, however, believe it is necessary to modify the definition. The concept of “reasonable consumers” from FTC jurisprudence¹⁵⁵ is incorporated into the concept of consumers being likely to believe something.

The same public interest research center that commented, as discussed above, that the Commission should broaden the definition of “celebrity testimonials” to explicitly include non-natural persons (such as businesses and

¹⁵¹ The Commission is making this change throughout the rule, including in §§ 465.2(a), (b), and (c), 465.4, 465.5(a), 465.6, 465.7, 465.8, and 465.9.

¹⁵² NFIB Cmt. at 2–3.

¹⁵³ *Id.* at 4.

¹⁵⁴ See Endorsement Guides, 16 CFR 255.0(g)(2).

¹⁵⁵ See, e.g., Fed. Trade Comm’n, *FTC Policy Statement on Deception*, 103 F.T.C. 174, 176–77 (1984) [hereinafter *FTC Policy Statement on Deception*] (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)), available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

¹⁴⁰ Trustpilot Cmt. at 8.

¹⁴¹ Anonymous 2 Cmt. at 1.

¹⁴² IAB Cmt. at 13–14.

¹⁴³ *Id.*

¹⁴⁴ TINA Cmt. at 7.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Yelp Cmt. at 3–4.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 4.

public sector entities)¹⁵⁶ made the same comment with respect to the definition of “consumer testimonials.”¹⁵⁷ The Commission declines to make that change in the latter definition for the same reason it declined to make it in the former definition.

f. Indicators of Social Media Influence

The proposed rule defined “indicators of social media influence” as “any metrics used by the public to make assessments of an individual’s or entity’s social media influence, such as followers, friends, connections, subscribers, views, plays, likes, reposts, and comments.” For the following reasons, the Commission adopts the definition of “indicators of social media influence”—a term which is used in § 465.8, *Misuse of Fake Indicators of Social Media Influence*—largely as proposed, with one modification described below.

A comment from a consumer advocacy organization suggested explicitly including “Saves” and “Shares” within the definition of indicators of social media influence.¹⁵⁸ The commenter explained that the number of times that social media posts are saved or shared serves as indicators of social media influence and that both “Saves” and “Shares” are offered for sale on the internet.¹⁵⁹ Because the NPRM proposed to define the term as “any metrics used by the public to make assessments of an individual’s or entity’s social media influence,” “Saves” and “Shares” were already covered by the definition as originally proposed. However, merely for the purpose of clarification, the Commission is adding them to the listed examples of indicators. The same commenter also suggested that the Commission expand the definition to include engagement metrics that are not publicly visible but that are used to gain an algorithmic advantage.¹⁶⁰ Such non-visible indicators are outside the scope of this rulemaking, and the Commission chooses not to address them at this time.

One review platform commenter suggested that the Commission “simplify the definition to exhaustively list the current metrics that are such indicators.”¹⁶¹ The commenter continued that “whether a given metric is ‘used by the public to make assessments of an individual’s or

entity’s social media influence’ may become the subject of substantial dispute in future cases . . . in the absence of an exhaustive, disjunctive list of indicators.”¹⁶² The Commission intends the listed indicators to be examples and non-exhaustive, a flexible and efficient approach that avoids having to modify the rule when such metrics change. The Commission has no reason to believe that its approach will result in substantial disputes in its cases.

For the reasons explained in this section, the Commission is finalizing the definition of “indicators of social media influence” to mean any metrics used by the public to make assessments of an individual’s or entity’s social media influence, such as followers, friends, connections, subscribers, views, plays, likes, saves, shares, reposts, and comments.

g. Officers

The proposed rule defined “officers” as “including owners, executives, and managing members of a business.” The Commission is finalizing the definition of this term—which is used in §§ 465.2 and 465.5.

A review platform commenter said that including “managing members” in the definition of “officers” “could suggest that managers are officers.”¹⁶³ The commenter also suggested that the definition of “officers” “should be refined to only include ‘senior management members’ of a business,” thereby creating “a clearer distinction between those in a position of leadership versus lower-level employees, or staff that may have the title ‘manager’ without any practical level of control and power to exert influence over others.”¹⁶⁴

Because a “managing member” is a commonly understood term referring to an owner and senior manager of a limited liability company, and because the term does not refer to all “managers” of a business, the Commission declines to remove “managing members” from the definition of “officer.” As discussed below, the Commission continues to believe it appropriate that §§ 465.2 and 465.5 apply to both officers and managers and is therefore not limiting the definition of “officers” to “senior management members.” A new definition of “managers” is discussed below.¹⁶⁵

h. Purchase a Consumer Review

The proposed rule defined “purchase a consumer review” as “provid[ing] something of value, such as money, goods, or another review, in exchange for a consumer review.” For the following reasons, the Commission adopts the definition of “purchase a consumer review”—a term which is used in § 465.2, *Fake or False Consumer Reviews, Consumer Testimonials, or Celebrity Testimonials*—largely as proposed, with two modifications described below.

An individual commenter wrote, “[r]egarding payment for reviews, the use of . . . discounts on future purchases from the business should be specifically prohibited as well.”¹⁶⁶ A review platform commenter suggested “that the Commission list additional examples of . . . what the Commission considers ‘value.’”¹⁶⁷ Specifically, it suggested adding “gift certificates,” “services,” “discounts,” “coupons,” and “contest entries.”¹⁶⁸ Such examples of value were covered by the proposed definition, which applies to “something of value” provided in exchange for a consumer review” but, for purposes of clarification, the Commission is adding these examples of value in the final definition. The review platform commenter also suggested adding “other incentives,”¹⁶⁹ which the Commission thinks is unnecessary, given that the list is only exemplary and preceded by the words “such as.”

Another review platform commenter suggested using language explicitly stating that the listed examples of “value” are not exhaustive.¹⁷⁰ The Commission believes that, because the phrase “such as” precedes the list of examples, this is already sufficiently clear from the language of the definition.

The proposed definition used the term “goods.” To ensure that terminology is used consistently throughout the rule, the Commission is replacing the term “goods” with the synonymous word “products” in the final definition.¹⁷¹

For the reasons explained in this section, the Commission is finalizing the definition of “purchase a consumer review” to mean to provide something

¹⁶⁶ John Christofferson, Cmt. on NPRM (Aug. 16, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0025>.

¹⁶⁷ Yelp Cmt. at 5.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Trustpilot Cmt. at 8.

¹⁷¹ The Commission is also replacing the term “goods” with the word “products” in the final definition of the phrase “purchase a consumer review” (final § 465.1(m)).

¹⁵⁶ See *supra* Section IV.A.2.b of this document.

¹⁵⁷ EPIC Cmt. at 3.

¹⁵⁸ NCL Cmt. at 3.

¹⁵⁹ *Id.* at 3–6.

¹⁶⁰ *Id.* at 6–8.

¹⁶¹ Yelp Cmt. at 4–5.

¹⁶² *Id.* at 5.

¹⁶³ Trustpilot Cmt. at 12.

¹⁶⁴ *Id.*

¹⁶⁵ See *infra* Section IV.A.3.b of this document.

of value, such as money, gift certificates, products, services, discounts, coupons, contest entries, or another review, in exchange for a consumer review.

i. Reviewer

The proposed rule defined “reviewer” as “the author or purported author of a consumer review.” The Commission is finalizing the definition of the term—which is used in §§ 465.2 and 465.5—as originally proposed.

One review platform commenter objected to the use of the word “purported” in the definition of “reviewer,” just as it objected to that word’s inclusion in the definition of “consumer review.”¹⁷² The commenter asserted that “purported” feeds into the false narrative that consumer reviews are inherently unreliable. As discussed above, the use of the word “purported” simply recognizes and accounts for the undisputed fact that some reviews are fake.¹⁷³ The Commission declines to modify the definition of “reviewer.”

j. Substantially Different Product

The proposed rule defined “substantially different product” as a product that differs from another product in one or more material attributes other than color, size, count, or flavor. The defined term appeared in proposed § 465.3, Consumer Review or Testimonial Reuse or Repurposing, which the Commission is no longer planning on finalizing.¹⁷⁴ Given that the Commission has decided not to proceed with proposed § 465.3 at this time, it is not including a definition of “substantially different product” in the final rule.

k. Testimonialist

The proposed rule defined “testimonialist” as “the person giving or purportedly giving a consumer testimonial or celebrity testimonial.” None of the comments received addressed the definition of testimonialist. As already discussed in section IV.A.2.b of this document, the Commission is substituting the word “individual” for the word “person” wherever the word appeared in the

Commission’s original proposal. Aside from this minor, clarifying modification, the Commission has determined that it will finalize the definition of the term—which is used in §§ 465.2 and 465.5—as originally proposed.

l. Unjustified Legal Threat

The proposed rule defined “unjustified legal threat” as “a threat to initiate or file a baseless legal action, such as an action for defamation that challenges truthful speech or matters of opinion.” For the following reasons, the Commission adopts the definition—a term which is used in § 465.7, Review Suppression—largely as proposed, with two modifications described below.

The NPRM asked whether “the definition of ‘unjustified legal threat’ is sufficiently clear.” One company’s comment said that the proposed definition was clear.¹⁷⁵ A trade association said “the term ‘unjustified’ is a vague standard that leaves unclear what legal support a business must have for its legal position before it warns the creator of a review of possible legal proceedings.”¹⁷⁶ A comment from State Attorneys General suggested changing “unjustified” to “unfounded, groundless, or unreasonable” in order to provide a more objective legal standard for evaluating the types of legal threats that are not permitted.¹⁷⁷ The Commission agrees in part with this recommendation. As a clarification of what it intended, the Commission is changing “unjustified” to “unfounded or groundless.” Specifically, this change avoids the unintended, potentially broader scope of the term “unjustified,” which is also freighted with subjective considerations, in favor of terms that reflect objective legal standards. For similar reasons, the Commission is not adding “unreasonable,” a term which is unnecessary and not as precise in this particular situation as “unfounded or groundless.”

The State Attorneys General comment also recommended that the definition include “a threat to enforce an agreement that is void, voidable, or unenforceable.”¹⁷⁸ It said that the word “unjustified” may be insufficient to address merchants arguing that their legal threats were justified by their non-disclosure agreements that limit consumer reviews.¹⁷⁹ The change from “unjustified” to “unfounded or groundless” addresses this concern. A

comment from a review platform suggested that the Commission expand the definition to include threats based on form contracts that violate the Consumer Review Fairness Act (“CRFA”).¹⁸⁰ Given that such form contracts are already prohibited by the CRFA,¹⁸¹ the Commission declines to address them in this rulemaking.

A consumer group’s comment disagreed with the definition’s use of the phrase “baseless legal action” on the basis that it “open[s] just as many questions as the underlying term it attempts to define.”¹⁸² A company’s comment noted that the phrase “a baseless legal action” is vague, and recommend that the Commission instead adopt language that is based upon Rule 11(b)(2) of the Federal Rules of Civil Procedure.¹⁸³ Specifically, the commenter recommended changing “a baseless legal action” to “a legal action that is not warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law.”¹⁸⁴

The Commission is partially adopting the commenter’s suggestion by adopting language that is loosely based upon Federal Rule of Civil Procedure 11(b)(2) and (3).¹⁸⁵ However, the Commission is not adopting the phrase “extending, modifying, or reversing existing law or establishing new law” because it is highly doubtful that companies would threaten consumers by asserting that, while no lawsuit is warranted under existing law, they will bring a lawsuit anyway and try to change existing law. Instead, the Commission chooses to clarify the definition by changing “threat to file a baseless legal action” to “legal threat based on claims, defenses, or other legal contentions unwarranted by existing law or based on factual contentions that have no evidentiary support or will likely have no evidentiary support after a reasonable opportunity for further investigation or discovery.”

A review platform commenter was concerned that the proposed definition’s “wording opens the door to bad actors being able to claim defamation on weakly justified grounds and to seek to game the system by deliberately constructing legal terms which can then be deployed to suppress reviews.”¹⁸⁶ The Commission believes that the revised definition addresses this

¹⁷² Yelp Cmt. at 4.

¹⁷³ See *supra* Section IV.A.2.d of this document.

¹⁷⁴ Some commenters suggested edits to the definition, such as removing “flavor” from the list of attributes that might not be material, adding other product attributes to that list, or adding flexibility by removing the listed attributes altogether. TINA Cmt. at 6; Amazon Cmt. at 9–10; Chamber of Commerce Cmt. at 6–7; RILA Cmt. at 3; NRF Cmt. at 7–8; IAB Cmt. at 8; ANA Cmt. at 15–16; NRF Cmt. at 8. Other commenters asked questions about how the definition would apply to an updated version of a product or to different scenarios. Magana Cmt.; NADA Cmt. at 5.

¹⁷⁵ Transparency Company Cmt. at 14.

¹⁷⁶ NFIB Cmt. at 4.

¹⁷⁷ State Attorneys General, Cmt. on NPRM at 2–3 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0100> (“State AGs Cmt.”).

¹⁷⁸ *Id.* at 2.

¹⁷⁹ *Id.* at 3.

¹⁸⁰ Yelp Cmt. at 5.

¹⁸¹ Consumer Review Fairness Act of 2016 § 2(b)(1), 15 U.S.C. 45b(b)(1).

¹⁸² Consumer Reports Cmt. at 10.

¹⁸³ Family First Life Cmt. at 16.

¹⁸⁴ *Id.*

¹⁸⁵ See Fed. R. Civ. P. 11(b)(2) and (3).

¹⁸⁶ Trustpilot Cmt. at 17–18.

concern, especially given its inclusion of language from Federal Rule of Civil Procedure 11(b)(2) and (3), which is intended to avoid such misuse of the court system. In any event, the Commission is deleting “such as an action for defamation that challenges truthful speech or matters of opinion” because this example is unnecessary and possibly confusing in this context.

For the reasons explained in this section, the Commission is adopting the proposed definition of an “unfounded or groundless legal threat” with clarifying changes. The final definition provides that an “unfounded or groundless legal threat” is a legal threat based on claims, defenses, or other legal contentions unwarranted by existing law or based on factual contentions that have no evidentiary support or will likely have no evidentiary support after a reasonable opportunity for further investigation or discovery.

3. Proposed Additional Definitions

In Question 7 of the NPRM, the Commission asked what additional definitions, if any, are needed. In Questions 14 and 18 of the NPRM, the Commission asked whether it should define the terms “managers” and “relatives,” respectively. As discussed below, various commenters suggested that the Commission define the following terms and phrases that appear in the proposed rule: “dissemination,” “manager,” “relative,” and “purchase or procure fake indicators.” One commenter suggested that the Commission define “review hosting” and exclude it from the scope of § 465.2.¹⁸⁷

a. Dissemination

The term “disseminate” appears in both proposed and final §§ 465.2 and 465.5. A comment from a trade association stated that the Commission should define “disseminate” “within Proposed § 465.2(b) to include only the affirmative posting or intentional distribution of reviews, where a company has actual knowledge that the reviews are false or fraudulent in nature.”¹⁸⁸ The commenter continued by saying that “disseminate” should “not include passive actions such as allowing a review to be posted or published on a company’s web page, unless the company has actual knowledge that the review is false or

fraudulent in nature” or “retailers sharing reviews with third-party platforms such as Google.”¹⁸⁹ Within both §§ 465.2 and 465.5, however, “disseminate” applies only to testimonials, not to consumer reviews. One of the basic canons of statutory and regulatory construction is that words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.¹⁹⁰ In §§ 465.2 and 465.5, the Commission intended for the term to have its ordinary, everyday meaning—that is, to spread or to convey something, rather than the proposed definition.¹⁹¹ Accordingly, the Commission declines to add the proposed definition.

b. Manager

The term “manager” appeared in proposed § 465.5, Insider Consumer Reviews and Consumer Testimonials, and was undefined. Due to the clarifying changes to § 465.2 that are discussed in further detail below, the term is now included in both final § 465.5 and final § 465.2, Fake or False Consumer Reviews, Consumer Testimonials, or Celebrity Testimonials.

One business commenter noted that it is unnecessary to define “manager.”¹⁹² An industry organization wrote in its comment that the failure to define the term “manager” “raises concerns about the number of a firm’s employees impacted.”¹⁹³ A review platform commenter said that using the term “manager” without any definition is

particularly problematic,¹⁹⁴ noting that someone “may have the title ‘manager’ without any practical level of control and power to exert influence over others. For example, it is possible in a business for a person to have the title ‘manager’ while holding a relatively junior position and without having any employees that directly report to them.”¹⁹⁵ Proposed and final § 465.5(c) address “managers” soliciting or demanding consumer reviews from employees or agents. In this context, the Commission’s intent was for the term “manager” to be limited to those who supervise others. Thus, the Commission is adopting a definition for the term “manager” to make this clarification, which will ensure that § 465.5(c) is not interpreted as more restrictive than the Commission intended.¹⁹⁶

A business commenter that operates in the insurance-marketing space explained that independent-contractor insurance agents who build their own agencies are referred to as “managers” and asked that the definition of “managers” expressly carve out “managers in the insurance marketing space” or at least clarify that managers are those “who are employed by the company.”¹⁹⁷ As similar situations may arise in other contexts, the Commission is adopting the commenter’s latter recommendation, and clarifying that managers are employees of the businesses.

For the reasons explained in this section, the final rule adopts a definition for the term “manager.” The final rule defines the term “manager” as an employee of a business who supervises other employees or agents and who either holds the title of a “manager” or otherwise serves in a managerial role.

c. Relative

The term “relative” appeared in proposed § 465.5, Insider Consumer Reviews and Consumer Testimonials. It was undefined in the proposed rule.

Two commenters suggested that the Commission define the term “relative.” A comment from a review platform said that a plain reading of “relative” could cover “an extremely broad range of people” and “is likely to extend to persons who may not be biased since they are in reality not close to the

¹⁸⁷ As discussed below in Section IV.H. of this document, the Commission is adding definitions of two phrases in response to concerns raised by commenters: “fake indicators of social media influence” and “distribute fake indicators of social media influence.”

¹⁸⁸ NRF Cmt. at 3.

¹⁸⁹ *Id.* at 3–4. The Commission elsewhere addresses whether § 465.2 applies to a business allowing reviews to be posted or published on its web page or to retailers sharing reviews with third-party platforms. See *infra* Section IV.B.5 of this document.

¹⁹⁰ See, e.g., *Kouichi Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012); *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020) (“Without a statutory definition, we turn to the phrase’s plain meaning at the time of enactment.”); *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 715 (2018) (“Because the Bankruptcy Code does not define the words ‘statement,’ ‘financial condition,’ or ‘respecting,’ we look to their ordinary meanings.”).

¹⁹¹ *Disseminate*, Dictionary.com, LLC, <https://www.dictionary.com/browse/disseminate> (last visited July 5, 2024) (defining “disseminate” as “to scatter or spread widely, as though sowing seed; promulgate extensively; broadcast; disperse”); *Disseminate*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/disseminate> (last visited July 5, 2024) (defining “disseminate” as “to spread abroad as though sowing seed” or “to disperse throughout”); *Disseminate*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/disseminate> (last visited July 5, 2024) (defining “disseminate” as “to spread or give out something, especially news, information, ideas, etc., to a lot of people”).

¹⁹² Transparency Company Cmt. at 13.

¹⁹³ TechNet Cmt. at 3.

¹⁹⁴ Trustpilot Cmt. at 9.

¹⁹⁵ *Id.* at 12.

¹⁹⁶ If the term were only to appear in § 465.2(c), such a clarification would not be needed. This is because § 465.2(c) also covers employees and agents.

¹⁹⁷ Family First Life Cmt. at 13.

business.”¹⁹⁸ The commenter suggested that the prohibition in § 465.5(c) be limited to close relatives such as immediate family members.¹⁹⁹ A comment from a business organization said that the term “relative” is too vague and that “[i]t is unclear whether the rule applies to third cousins, the spouses of a stepbrother’s child from a previous marriage, or friends that are considered family.”²⁰⁰ The commenter continued that “[l]arge companies creating monitoring programs for testimonials need some clarity about what relatives will be captured under the Rule.”²⁰¹

As discussed below, the Commission believes that some rule provisions should be limited to “immediate relatives.”²⁰² The Commission is adding a definition of an “immediate relative,” which clarifies that the term refers to a spouse, parent, child, or sibling. In the final rule, the term “immediate relative” is used in §§ 465.2(c) and 465.5(c).

d. Purchase or Procure Fake Indicators

The phrase “purchase or procure fake indicators of social media influence” is used in proposed and final § 465.8, *Misuse of Fake Indicators of Social Media Influence*. The phrase was undefined in the proposed rule.

A consumer advocacy commenter stated that leaving the terms “purchase” and “procure” undefined “leaves ambiguity regarding which types of incentives are restricted,” and suggested defining the phrase “purchase or procure fake indicators of social media influence” to mean “to provide something of value, such as money, goods, or another indicator of social media influence (*i.e.*, a ‘like’), in exchange for a fake indicator of social media influence.”²⁰³ The Commission declines to adopt the commenter’s suggestion.²⁰⁴ The definition proposed by the commenter would unnecessarily narrow the types of actions that would be covered by the rule to an exchange. In the final rule, the Commission intends for the term “procure” to bear its ordinary, everyday meaning—that is,

to obtain something.²⁰⁵ Even if there is any ambiguity in the term “purchase,” any exchange of value in order to obtain fake indicators of social media influence would be “procuring” the fake indicators.

e. Review Hosting

A retailer submitted a comment suggesting that “review hosting” be defined and excluded from the scope of § 465.2.²⁰⁶ The commenter suggested the following definition:

Review hosting includes but is not limited to activity associated with maintaining a repository of consumer reviews and testimonials for display such as: offering review submission functionality, collecting and moderating reviews, organizing and displaying reviews, aggregating reviews into star ratings, and providing guidance to consumers about how to leave reviews where no incentive is offered.²⁰⁷

As discussed below, the Commission did not intend for its proposal to apply to simply hosting consumer reviews.²⁰⁸ The Commission is therefore, for the purpose of clarification, adopting a definition of the term “consumer review hosting” in order to exclude mere review hosting from certain provisions of the rule. The Commission is not adopting the commenter’s proposed definition because it included activities that go beyond the core of mere review hosting and because it begins with the phrase “include but is not limited to,” which would allow it to include an unknown, larger category of activities. The final rule defines “consumer review hosting” as providing the technological means by which a website or platform allows consumers to see or hear the consumer reviews that consumers have submitted to the website or platform. The exclusion of “consumer review hosting” from certain sections of the rule is discussed below.

B. § 465.2—Fake or False Consumer Reviews, Consumer Testimonials, or Celebrity Testimonials

Proposed § 465.2 addressed fake or false consumer reviews, consumer testimonials, and celebrity testimonials. Based on the following, the Commission has determined to finalize these

prohibitions, with a number of revisions. The following paragraphs discuss comments relating to (1) proposed § 465.2 generally, (2) common language in all three paragraphs, (3) the individual paragraphs, (4) the knowledge standard, and (5) other potential requirements.

Numerous individual commenters wrote about the importance of authentic reviews or testimonials and that fake or false ones should be prohibited.²⁰⁹ A technology company commenter wrote that it “would welcome rules to prohibit fake reviews and place stronger obligations on businesses who host them to better protect consumers.”²¹⁰

A celebrity commenter wrote that he had “received more than 100 emails from consumers who have been induced to purchase fake products through the mis-use of . . . [his] image and the images of other Shark Tank ‘sharks.’”²¹¹

A business commenter suggested explaining the “financial consequence of fake reviews,” such as whether it is “~\$50,000 per fake review.”²¹² The maximum civil penalty is currently \$51,744 per violation, but courts must take into account the statutory factors set forth in section 5(m)(1)(C) of the FTC Act and may impose much lower per-violation penalties.²¹³ Ultimately, courts will also decide how to calculate the number of violations in a given case.

1. Common Language in § 465.2(a), (b), and (c)

Proposed § 465.2 consisted of three paragraphs, each of which sought to address unfair or deceptive conduct by

²⁰⁹ See, e.g., William Hardy, Cmt. on NPRM (July 31, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0002>; Eric Beback, Cmt. on NPRM (Aug. 1, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0005> (“Beback Cmt.”); Hippensteel Cmt.; Anderson Cmt.; Nathan Wilson, Cmt. on NPRM (Aug. 2, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0008>; Fred Foreman, Cmt. on NPRM (Aug. 6, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0012>; Ravnitzky Cmt. at 1; Friance Cmt.; Ian Wolk, Cmt. on NPRM (Aug. 15, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0020>; Edborg Cmt.; Anonymous 5, Cmt. on NPRM (Aug. 18, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0030>; Anonymous 1 Cmt.; Steven Osburn, Cmt. on NPRM (Aug. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0033> (“Osburn Cmt.”); Ludlam Cmt.; Janette Ponticello, Cmt. on NPRM (Sept. 5, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0042>; Hannah Abbott, Cmt. on NPRM at 1 (Sept. 20, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0051> (Abbott Cmt.).

²¹⁰ Pasabi, Cmt. on NPRM at 2 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0103>.

²¹¹ Mark Cuban, Cmt. on NPRM (Sept. 25, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0066>.

²¹² Transparency Company Cmt. at 9.

²¹³ See 15 U.S.C. 45(m)(1)(C).

¹⁹⁸ Trustpilot Cmt. at 12.

¹⁹⁹ *Id.*

²⁰⁰ Chamber of Commerce Cmt. at 7.

²⁰¹ *Id.*

²⁰² See *infra* Section IV.E.2 of this document.

²⁰³ Consumer Reports Cmt. at 4.

²⁰⁴ Commenters also expressed concern about or sought guidance on the meaning of the term “procure” as used in proposed § 465.2(c), but they did not expressly suggest that the Commission define the term. The use of the term “procure” in § 465.2 is discussed below in the context of that substantive provision. See *infra* Section IV.B.4 of this document.

²⁰⁵ See *Procure* (def. 1), Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/procure> (last visited July 5, 2024)

(establishing that the word “procure” means, among other things, “to get possession of (something)” or “to obtain (something) by particular care and effort”).

²⁰⁶ Amazon Cmt. at 7. As discussed below, other commenters also argued that § 465.2 should not apply to merely hosting reviews. See *infra* section IV.B.5 of this document.

²⁰⁷ *Id.* at 7.

²⁰⁸ See *infra* section IV.B.5 of this document.

prohibiting specified types of reviews or testimonials: (1) by someone who “does not exist,” (2) by someone “who did not use or otherwise have experience with the product, service, or business that is the subject” of it, or (3) “that materially misrepresents, expressly or by implication, the [person’s] . . . experience with the product, service, or business.” For the purpose of the following discussion, references to “fake or false” reviews or testimonials cover these three types of reviews or testimonials.

A trade association asserted that the Commission lacked sufficient evidence of prevalence of reviews and testimonials that “materially misrepresent[] . . . the reviewer’s or testimonialist’s experience.”²¹⁴ The trade association asserted that some of the cases cited by the Commission also involved “actual fake reviews” and therefore should not count as evidence of prevalence.²¹⁵ The Commission disagrees: a fake or fabricated review misrepresents the purported reviewer’s experience (e.g., that the reviewer used the product and what their experience was). The commenter also asserted that five of the cases cited by the Commission to establish prevalence “provide no additional details about the unfair or deceptive act or practice at issue aside from bare allegations that the consumer testimonials in the case involved misrepresentations of the consumer’s experience,” and therefore are insufficient to establish prevalence.²¹⁶ However, the quoted representations in each of the Commission’s complaints makes clear the nature of the misrepresentations.²¹⁷ Furthermore, even if a Commission complaint does not provide all details about a specific misrepresentation, that does not mean that it cannot serve as evidence of prevalence. The Commission thus has a strong basis for its conclusion that reviews and testimonials misrepresenting the

experiences of the reviewers and testimonialists are prevalent.

The same trade association and another one expressed concern that the “prohibition on *all* reviews that are authored by individuals that [sic] ‘do not exist’ or have not used the product would prohibit a wide swath of non-deceptive speech, including for example, any satirical reviews that a business authors, creates, sells, purchases, disseminates, or procures.”²¹⁸ As discussed in the NPRM, the Commission’s intent was to prohibit misrepresentations resulting from reviews or testimonials by someone who does not exist or who did not use or otherwise have experience with the product, service, or business.²¹⁹ The Commission is unsure of the extent to which there are satirical reviews that could run afoul of the provision as proposed. Nonetheless, upon a review of the comments, the Commission now recognizes that absent an express reference to material misrepresentations, the provision could be interpreted to prohibit other potentially non-deceptive speech, such as the use of virtual influencers.²²⁰ To avoid this unintended consequence, the Commission is clarifying that § 465.2 is limited to prohibiting material misrepresentations. As finalized, the prohibitions in § 465.2 are expressly limited to reviews and testimonials “materially misrepresent[ing], expressly or by implication . . . that the reviewer or testimonialist exists; . . . that the reviewer or testimonialist used or had experience with the product, service, or business that is the subject of the review or testimonial; or . . . the reviewer’s or testimonialist’s experience with the product, service, or business that is the subject of the review or testimonial.”

A different trade association raised several concerns about the common language of proposed § 465.2. It asserted that the provision “would prohibit the use of a dead person’s endorsement because arguably that person does not exist.”²²¹ The Commission does not interpret a person who “does not exist” to include a person who died after making an endorsement, but that concern should be resolved by the new language regarding material

misrepresentations. The commenter went on to question “what constitutes an ‘actual experience,’” asking whether a person who saw a label had actual experience with it and whether a person who tasted an item purchased at a restaurant but did not visit the restaurant had actual experience.²²² The proposed provision did not use the term “actual experience,” and the persons in the commenter’s posited hypotheticals did have legitimate experience with the product or service but should not misrepresent that experience as more than it was. The commenter also said that “it is unclear if the . . . element—materially misrepresenting the experience with the product or service—relates to the experience or an opinion about the product or service.”²²³ It relates to the person’s “experience” with the product or service, that is, what actually happened when they used or otherwise experienced it and not simply their “opinion” of it. The same commenter asked whether “an actor portraying an actual reviewer” is misrepresenting their experience as long as it is “clear that it is an actor portrayal.”²²⁴ The provision does not prohibit using an actor to portray a real testimonialist.

An individual commenter who raised the same concern about whether actors could portray real testimonialists²²⁵ went on to express concerns that the actor “shouldn’t misrepresent who the original person was,” such as by misrepresenting “the effectiveness/health benefits of [a] product by hiring a very fit in shape person.”²²⁶ The Commission has issued guidance stating that “use of an endorsement with the image or likeness of a person other than the actual endorser is deceptive if it misrepresents a material attribute of the endorser.”²²⁷ Nevertheless, the Commission does not intend for § 465.2 to address such misrepresentations.

A consumer organization’s comment requested that the Commission “explicitly indicate that fake . . . ratings are an independent and separate violation from deceptive narrative reviews.”²²⁸ The Commission believes that making this distinction is unnecessary and declines to make this change.

²¹⁴ IAB Cmt. at 3.

²¹⁵ *Id.*

²¹⁶ *Id.* at 4 & n.12.

²¹⁷ Complaint at 8–11, 17–18, *FTC v. NextGen Nutritionals, LLC*, No. 8:17-cv-2807 (M.D. Fla. filed Nov. 20, 2017) (testimonials in ads made specific quantified claims of weight loss and blood pressure reduction); *In re Esrim Ve Sheva Holding Corp.*, 132 F.T.C. 736, 737 (2001) (testimonial made specific quantified claims about increased mileage and decreased harmful pollutants); *In re Computer Bus. Servs., Inc.*, 123 F.T.C. 75, 78 (1997) (endorsers made specific quantified earnings claims); *In re Twin Star Prods., Inc.*, 113 F.T.C. 847, 849–51, 853–54 (1990) (endorsements made regarding a weight-loss product, a baldness treatment, and an impotency treatment); *In re National Sys. Corp.*, 93 F.T.C. 58, 61–62 (1979) (testimonials about jobs obtained by graduates of respondents’ schools).

²¹⁸ IAB Cmt. at 6; NRF Cmt. at 6.

²¹⁹ NPRM, 88 FR 49373.

²²⁰ A virtual influencer is a computer-generated fictional character that can be used for a variety of marketing-related purposes, but most frequently for social media marketing, in lieu of human influencers. See, e.g., Koba Molenaar, *Discover the Top 12 Virtual Influencers for 2024—Listed and Ranked!*, Influencer MarketingHub (Mar. 29, 2024), <https://influencermarketinghub.com/virtual-influencers/>.

²²¹ ANA Cmt. at 12.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Beback Cmt.

²²⁶ *Id.*

²²⁷ See Endorsement Guides, 16 CFR 255.1(g).

²²⁸ TINA Cmt. at 8.

2. § 465.2(a)

Proposed § 465.2(a) would have made it a violation for a “business to write, create, or sell a consumer review, consumer testimonial, or celebrity testimonial” that is fake or false.

An individual commenter noted that the prohibition “is too specific and it would be easy for a business to find an alternative method not prohibited by the rule.”²²⁹ The commenter posited an example: “a business could have someone next to them tell them their review and someone could transcribe it, technically the business did not create, make, or sell anything and thus would not be in violation.”²³⁰ If a business is paying an individual to transcribe a fake or false review, it is creating or making the review, and would therefore have violated § 465.2(a). Accordingly, the Commission declines to modify the prohibition in response to the commenter’s concern.

A trade association submitted a comment asking the Commission to “confirm that when a real consumer authors the review, the business cannot be said to have written or created it, and thus . . . section [465.2(a)] could not apply.”²³¹ The Commission is unsure what the commenter means by a “real consumer authors the review.” The provision would apply if, for example, a business employs a “real consumer” to write fifty reviews of a product under different names.

A comment from a retailer that publishes reviews said that “review brokers and other bad actors . . . coordinate the high-volume writing, buying, and selling of fake reviews” and that the rule should apply to those “approaching customers, instructing them on how to create fake reviews and avoid detection, and connecting them with bad actors operating [fake] accounts.”²³² Brokers of fake reviews would generally fall under the provision’s prohibition against selling a consumer review, given that such brokers are generally being paid to provide fake reviews.

A trade association commenter suggested clarifying that “business” in § 465.2(a) “refers to a business that helps to create or sell reviews or testimonials.”²³³ Although the paragraph does apply to such businesses, it also applies to a business

that writes or creates fake reviews or testimonials for its own products or services. For this reason, the Commission declines to adopt the commenter’s suggestion.

An individual commenter asked whether the prohibition covers “people who leave reviews in good faith” if “they were getting paid for it.”²³⁴ Neither § 465.2(a) nor any section of the rule imposes liability on individual consumers who write honest reviews, even if they are paid for doing so.

Another individual commenter requested that civil penalties be imposed “on the company for soliciting the reviews, rather than on the reviewer, unless the reviewer knowingly is leaving fake reviews.”²³⁵ Under § 465.2(a), an individual who is in the business of writing, creating, selling, or brokering reviews could be liable for creating consumer reviews that are fake or false. That individual could only be subject to civil penalties if they did so with actual knowledge or knowledge fairly implied on the basis of objective circumstances that they were engaging in an act or practice that is unfair or deceptive and is prohibited by the rule.²³⁶

An individual commenter expressed concern that “competing parties could potentially create fake reviews on another party in order to give the impression that the party is in violation of the” rule.²³⁷ Although such misconduct is possible, the target of such misconduct would not be liable under § 465.2(a), based on how it is worded. For example, the target would not have been the one who created, wrote, or sold the review, nor would the target have purchased the review. The competitor who engaged in such misconduct might be liable for deceptive or unfair conduct under the FTC Act.

3. § 465.2(b)

Proposed § 465.2(b) would have made it a violation for a business to “purchase a consumer review” or “disseminate or cause the dissemination of a consumer testimonial or celebrity testimonial” about “the business or one of its products or services” which “the business knew or should have known” was fake or false.

A consumer organization commented that, by limiting § 465.2(b) to a business posting reviews or disseminating or causing the dissemination of testimonials about “the business or one of its products or services,” the Commission’s proposal limits liability to the business itself “instead of including other . . . creators or disseminators of deceptive reviews and testimonials.”²³⁸ In response to the commenter’s concern, the Commission notes that those creating or disseminating deceptive reviews and testimonials could be liable under § 465.2(a).

A trade association asked whether a business “‘disseminates’ reviews for its products merely by . . . placing them in advertising/marketing materials.”²³⁹ Section 465.2(b) applies only to the dissemination of testimonials, but if a business includes consumer reviews in its advertising or marketing materials, those reviews become “testimonials” and are covered.

Another commenter requested that the Commission “clarify the limited applicability of ‘to disseminate or cause the dissemination’ in proposed § 465.2(b) so the definition does not wrongly apply to third parties that host or license reviews.”²⁴⁰ The phrase “to disseminate or cause the dissemination” applies only to testimonials and not to consumer reviews, so it could not apply to third parties that host or license reviews. The only situation in which § 465.2(b) applies to consumer reviews is when a business purchases a consumer review.

4. § 465.2(c)

Proposed § 465.2(c) would have made it a violation for a business to “procure a consumer review for posting on a third-party platform or website, about the business or one of its products or services,” which “the business knew or should have known” was fake or false.

Several commenters questioned the scope and “vagueness” of the undefined term “procure” in proposed § 465.2(c).²⁴¹ A trade association wrote that “the Commission should explain that a retailer does not ‘procure a consumer review for posting on a third-party platform or website’ simply by requesting that previous customers submit reviews, and then allowing submitted reviews to be posted on the retailer’s own website or sharing customer reviews with Google.”²⁴² The

²²⁹ Albert Cmt. at 3.

²³⁰ *Id.*

²³¹ IAB Cmt. at 6.

²³² Amazon Cmt. at 6.

²³³ Computer & Communications Industry Association, Cmt. on NPRM at 3 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0110> (“CCIA Cmt.”).

²³⁴ Wilson Cmt.

²³⁵ Osburn Cmt.

²³⁶ See 15 U.S.C. 45(m)(1)(A) (establishing that the recovery of civil penalties requires a showing of “actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule”).

²³⁷ Slezak Cmt. at 1.

²³⁸ TINA Cmt. at 6 n.23.

²³⁹ NRF Cmt. at 5.

²⁴⁰ CCIA Cmt. at 3.

²⁴¹ NRF Cmt. at 4; ANA Cmt. at 12; IAB Cmt. at 4; Amazon Cmt. at 7.

²⁴² NRF Cmt. at 4.

Commission did not intend to cover such activities. Instead, the Commission intended to cover a much more limited set of activities: the procurement of fake and false reviews from company insiders. The Commission is therefore revising § 465.2(c) by limiting it to a business procuring consumer reviews “from its officers, managers, employees, or agents, or any of their immediate relatives.”

A trade association’s comment questioned the phrase “its products or services” in the context of what was proposed § 465.2(c).²⁴³ It asked whether the term would apply to all of the products sold by a department store, an online marketplace, or a consignment business.²⁴⁴ The Commission recognizes that the phrase “its products or services” was ambiguous. In order to address this inadvertent ambiguity, the Commission is making clarifying changes by replacing the phrase “its products or services” with the phrase “the products or services it sells” in § 465.2(b) and (c), as well as in other places where it appears in the rule.²⁴⁵ The revised language captures what the Commission originally intended and would apply to products sold by a department store, an online marketplace, or a consignment business.

5. § 465.2(d)

Upon consideration of the comments received, the Commission is adding paragraph (d) in § 465.2 to clarify the scope of § 465.2(b) and (c). The Commission recognizes that, when a business sends a broad solicitation to customers to post customer reviews, one or more recipients might also be employees of the business. If any such employee then posts reviews, one might consider those reviews to have been “procured” from the employee. Similarly, the Commission recognizes that broad, incentivized solicitations to the general public or past customers to post about a product on social media could be considered “causing the dissemination” of testimonials. It would not be reasonable to expect a business to know whether such resulting reviews or testimonials were fake or false, and the Commission did not intend to cover those reviews in this section of the proposed rule. Therefore, the Commission is adding § 465.2(d)(1), which clarifies that § 465.2(b) and (c) do not apply to “generalized solicitations to purchasers to post reviews or post testimonials about their experiences

with the product, service, or business that is the subject of the review or testimonial.” By “generalized solicitations,” the Commission means to exempt from § 465.2(b) and (c) solicitations sent to large groups of customers, such as those who purchased a particular item or who became customers during a given time period, where specific customers are not chosen based on the likelihood that they will express a particular sentiment. In contrast, solicitations made only to customers whom the business believes to be happy customers would not be “generalized solicitations” and would therefore be subject to § 465.2(b) and (c).

As the Commission said in the NPRM, § 465.2 does not “apply to any reviews that a platform simply publishes and that it did not purchase.” In other words, the Commission did not intend for § 465.2 to apply to platforms that simply host third-party content and does not believe that the section can be interpreted otherwise. Nonetheless, numerous commenters expressed concern over whether the section covered the mere hosting of third-party content.²⁴⁶ A number of industry commenters and an individual commenter asked the Commission to expressly exempt those who host consumer reviews created by a third party.²⁴⁷ Three industry comments asked the Commission to create a safe harbor for review hosting when the company has reasonable processes in place to identify and remove fake reviews.²⁴⁸ Consistent with its statement in the NPRM, the Commission is adding § 465.2(d)(2) to provide an explicit exemption for “merely engaging in consumer review hosting” from the scope of § 465.2(b) and (c).

A trade association noted that, in the “case of reviews being shared between retailers and third-party platforms,” “it would be unfair to immunize the search platform from liability for the review shared by the retailer, but not to immunize the retailer for the review created by the potential bad actor.”²⁴⁹ However, a retailer or other entity will

not be liable for sharing consumer reviews unless it would have been liable for displaying those same reviews on its own website.

Two comments raised the issue of hosting both reviews and testimonials. A trade association commenter expressed concern that the Commission should “avoid sweeping in companies such as online retailers that host consumer reviews and testimonials and engage in activities such as organizing, moderating, aggregating, and prompting the submission of reviews and testimonials.”²⁵⁰ Another trade association made a very similar comment and “urge[d] the FTC to confirm that liability under this section would require the company to do more than host reviews/testimonials.”²⁵¹ As for reviews, § 465.2 will not prohibit an online business that hosts reviews from prompting the submission of reviews from the general public or from organizing, moderating, or aggregating them. Nonetheless, certain unfair or deceptive conduct that involves prompting the submission of reviews or moderation could violate § 465.4 or § 465.7(b), respectively.²⁵² As for testimonials, it is unclear what hosting scenarios the commenters are contemplating. The Commission is not adding an exemption for “merely hosting testimonials” because there is no provision in the rule that applies to testimonial hosting because testimonials are, by definition, advertising or promotional messages. A business that puts testimonials on its own website is “disseminating” them and is not merely “hosting” them. When such testimonials are fake or false, the business should face potential liability under this paragraph. On the other hand, a business that has on its website a community forum in which consumers can comment about the business and the products or services it sells could be merely hosting the community forum. A comment in the community forum touting one of the business’s products, which was posted by a consumer who was not incentivized to do so and who has no other connection to the company, is not a testimonial in the first place, so it would not fall under § 465.2(b). The same analysis would apply to a business that hosted a section on its website

²⁵⁰ IAB Cmt. at 4.

²⁵¹ ANA Cmt. at 12–13.

²⁵² Prompting the submission of consumer reviews that must be positive in order to obtain an incentive could violate § 465.4. Moderation of consumer reviews that results in the suppression of some of them based upon their ratings or their negative sentiment could violate § 465.7(b).

²⁴³ *Id.* at 5.

²⁴⁴ *Id.* at 5–6.

²⁴⁵ See §§ 465.5(a), (b), and (c), 465.6, and 465.7(b) of the rule.

²⁴⁶ One industry commenter expressed a general concern that was not tied to a specific provision “that the Proposed Rule imposes liability on companies for the dissemination and/or display of fake reviews that clashes with Section 230 of the *Communications Decency Act*.” TechNet Cmt. at 3. As discussed below, the Commission is including exemptions for mere consumer review hosting in §§ 465.2 and 465.5. See *infra* section IV.B.5 of this document.

²⁴⁷ See, e.g., NRF Cmt. at 5–6; IAB Cmt. at 6; Amazon Cmt. at 7–9; CCIA Cmt. at 3; Abbott Cmt.

²⁴⁸ TechNet Cmt. at 2; IAB Cmt. at 5; NRF Cmt. at 7. A trade association also requested a “safe harbor” but did not tie it to any specific provision of the proposed rule. NADA Cmt. at 4.

²⁴⁹ NRF Cmt. at 6.

where consumers could answer questions posed by other consumers.

A business organization commenter said the Commission should “make clear [that] Section 465.2 does not apply to platforms or retailers that display ratings even if they prompt review submissions or aggregate star ratings of submitted reviews.”²⁵³ Paragraphs (b) and (c) of § 465.2 do not apply to mere consumer review hosting, even if the business prompts review submissions or aggregates star ratings.

The commenter continued by saying that “the Commission must clearly indicate that the Rule provision would not apply to any website displaying a consumer review or testimonial that they did not purchase or procure,” arguing that “Section 230 [of the Communications Decency Act] . . . broadly immunizes providers of an interactive computer service from liability for presenting third party content.”²⁵⁴ If a business creates fake or false reviews or testimonials and displays them on its website, it is not presenting third-party content. It could be liable for such reviews or testimonials under § 465.2(a). The commenter made a similar argument with respect to the applicability of § 465.2(b) to a website that displays a fake or false testimonial and thus causes its dissemination.²⁵⁵ Section 465.2(b) does apply if such testimonials are about the business or one of the products or services it sells. Such testimonials are advertising, not third-party content covered by section 230 of the Communications Decency Act (47 U.S.C. 230).

6. Knowledge Standard

Like proposed § 465.2(b) and (c), final § 465.2(b) and (c) are limited to situations in which businesses “knew or should have known” that they were engaging in the conduct that was prohibited. Commenters had varied reactions to this standard, with some finding it appropriate, others finding it too high, and others finding it too low.

A corporate commenter noted that, for the purpose of § 465.2(b) and (c), “[s]hould have known” needs to be the standard.”²⁵⁶ Similarly, an individual commenter recommended that the FTC adopt the “knew or should have known” standard for purposes of § 465.2(b) and (c):

because it: (1) sufficiently effectuates consumers’ shared interest in reducing the prevalence of unfair or deceptive online

consumer reviews and testimonials, (2) avoids unfairly imposing liability on unwitting, blameless business transgressors, and (3) conveniently aligns with the FTC’s existing “has good reason to believe” standard for similar purpose of application of FTC Act Section 5 to the use of endorsements and testimonials in advertising.²⁵⁷

However, several commenters objected to the imposition of civil penalties based upon a “should have known” standard, believing that standard would be too onerous.²⁵⁸ For example, an industry organization said that proposed § 465.2(b) and (c) are “problematic because [they] place[] the onus on the business to have knowledge of the author’s state of mind as to whether their actual experience was expressed. . . , an impossible task for anyone but the” author.²⁵⁹ The industry organization also claimed that the risk of a civil penalty will “likely . . . compel businesses to drastically limit the consumer reviews or testimonials they seek out or even allow on their websites.”²⁶⁰ Under section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A), however, the Commission can seek civil penalties for a rule violation only by showing that a defendant had “actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule” (hereinafter shortened to “actual knowledge or knowledge fairly implied”). A lower knowledge standard in a Commission rule—such as the “knew or should have known” standard found within certain sections of the proposed rule—does not override the higher standard found in section 5(m)(1)(A) of the FTC Act. The Commission has not suggested otherwise in the course of this rulemaking.

Other commenters objected similarly, saying that “knew or should have known” is too low as a knowledge threshold and that the standard should be actual knowledge, but did not tie their concerns to the imposition of civil penalties.²⁶¹ For example, some of the comments expressing concern about a “knew or should have known” standard appeared to focus primarily on the standard’s supposed applicability to, and harsh impact on, websites hosting reviews.²⁶² As another example, a trade

association commenter recommended “that the Commission define ‘knew,’ as used in . . . § 465.2, as ‘having actual knowledge,’ and remove the ‘should have known’ language.”²⁶³

Additionally, two commenters advocated for a standard higher than “should have known” but lower than actual knowledge. With respect to activities such as “purchasing” a review, they said that businesses should be held responsible for ensuring the reviews are authentic but recommended a “knew or consciously avoided” standard.²⁶⁴ One of the commenters asserted that the proposed “should have known” standard “is vague and does not provide adequate specificity about the sorts of actions businesses should take to ensure that they will not be held liable for not detecting that a review they purchased was fake.”²⁶⁵ The commenter said a “consciously avoided” knowing standard would allow for liability when a business takes no steps to respond to receiving repeated complaints raising red flags about the authenticity of a particular purchased review.²⁶⁶

As part of the NPRM, the Commission also inquired whether, instead of the “should have known” standard, the Commission should adopt a “knew or could have known” standard. Only two commenters addressed that proposed standard. An individual commenter said that such a standard would “ambiguously expand the proposed Rule’s prosecutorial scope and possibly open unsuspecting businesses to financial penalties for violations they had no inkling of having committed in the moment.”²⁶⁷ Another individual commenter, who incorrectly thought the proposed rule provided a private right of action, said that such a standard “provides scienter never used in consumer law” and the “courts could potentially become overwhelmed with an influx of claims.”²⁶⁸

Other commenters advocated for a lower standard than “knew or should have known.” An individual commenter did not think that “knew or should have known” was appropriate because it would make it “very difficult to prove” violations and recommended that the Commission require “businesses to be able to show they used reasonable

²⁵⁷ Poole Cmt. at 2.

²⁵⁸ IAB Cmt. at 5–6; NRF Cmt. at 2–5; NADA Cmt. at 3–4; Chamber of Commerce Cmt. at 2–3; TechNet Cmt. at 2.

²⁵⁹ TechNet Cmt. at 2.

²⁶⁰ *Id.*

²⁶¹ Amazon Cmt. at 8; ANA Cmt. at 13; Trustpilot Cmt. at 5, 8; NRF Cmt. at 3; Family First Life Cmt. at 5–8.

²⁶² Amazon Cmt. at 7–8; ANA Cmt. at 12–13; NRF Cmt. at 2–5. One trade association commenter

disagreed, asserting that the “knew or should have known” standard the Commission proposed for § 465.2 will “not unduly burden review platforms.” Travel Tech Cmt. at 4.

²⁶³ NRF Cmt. at 3.

²⁶⁴ Amazon Cmt. at 9; IAB Cmt. at 5.

²⁶⁵ Amazon Cmt. at 9.

²⁶⁶ *Id.*

²⁶⁷ Poole Cmt. on at 1.

²⁶⁸ Albert Cmt. at 3.

²⁵³ Chamber of Commerce Cmt. at 4.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ Transparency Company Cmt. at 11.

diligence through policies and procedures to prove that the[] reviews are legitimate.”²⁶⁹ A consumer organization said in its comment that “there is no need for a knowledge or intent requirement under this Rule” as “Section 5 of the FTC Act does not otherwise require the Commission to prove knowledge or intent when enforcing against entities engaging in deceptive practices.”²⁷⁰ It continued that “the Commission can and should consider knowledge and intent in deciding the equities of bringing any enforcement action.”²⁷¹

After reviewing and considering the comments received, the Commission believes that the most appropriate standard for imposing liability under § 465.2(b) and (c) is the “knew or should have known standard.” As discussed above,²⁷² those paragraphs were not intended to apply to consumer review hosting and § 465.2(d)(2) now contains an explicit exemption for consumer review hosting.²⁷³ Thus, the “knew or should have known” language in § 465.2(b) and (c) will not have a harsh impact on review platforms, as some of the commenters suggested. Eliminating the knowledge standard altogether, however, may indeed have an overly harsh impact on businesses in some circumstances, and the idea garnered almost no public support. For example, it would be unreasonable to hold a company liable for publishing a testimonial when it had no reason to know that the testimonial misrepresented the testimonialist’s experience. The Commission sees no reason why the standard should be higher than “knew or should have known.” The “knew or should have known” standard—which the Commission has used in other rules²⁷⁴—thus best achieves the

appropriate, equitable balance between protecting consumers and holding marketers accountable for deceptive conduct while not overly burdening marketers that engage in the responsible use of reviews and testimonials.

Two trade associations’ comments said that if “the Commission . . . imposes a ‘should have known’ standard, the Commission must provide greater clarity about what sorts of indicators of inauthenticity would provide companies with sufficient notice to trigger liability.”²⁷⁵ They both said, “Without that guidance and faced with the risk of significant civil penalty exposure for failing to stop the actions of undiscovered third parties, many businesses would likely be deterred from using consumer reviews or testimonials at all.”²⁷⁶ The Commission has already addressed the knowledge standard found in section 5(m)(1)(A), which applies to the imposition of civil penalties. In the discussion of § 465.2(b) and (c) below, the Commission provides further guidance as to what is intended by “knew or should have known.”

Several other commenters discussed general views about the application of the “knew or should have known” standard. For example, an individual commenter said that “[a] business cannot always reasonably know that a testimonial contains testimony that is fake or false, if the influencer expresses to them that it is true.”²⁷⁷ The Commission agrees with this assertion.

A comment from a public interest research center said that the “lack of an adequate endorser oversight program should be a per se violation of the ‘know or should have known’ standard as that is tantamount to the company deliberately avoiding knowing.”²⁷⁸ A consumer organization commenter said

should know that the manufacturer does not have a reasonable basis for the claim”); 16 CFR 436.7(d) (franchise sellers must notify prospective franchisees of any material changes “that the seller knows or should have known occurred”).

²⁷⁵ IAB Cmt. at 5–6; ANA Cmt. at 13. An individual commenter said that the Commission should “provide some clear and objective criteria or indicators for identifying fake reviews, such as the use of bots, scripts, templates, or multiple accounts, or the lack of verifiable purchase or experience, or the inconsistency with other reviews or information” and this “would help businesses and consumers to distinguish between genuine and fake reviews.” Ravnitzky Cmt. at 1.

²⁷⁶ IAB Cmt. at 5–6; ANA Cmt. at 13. As explained above, these concerns are unwarranted given that the “should have known” standard has no bearing here on the imposition of civil penalties, for which the Commission must prove that a defendant met the higher knowledge standard of section 5(m)(1)(A) of the FTC Act.

²⁷⁷ Taylor V, Cmt. on NPRM at 2 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0062> (“Taylor V. Cmt.”).

²⁷⁸ EPIC Cmt. at 3.

that the following actions should be considered knowledge that a review is fake or false: “failure to meaningfully police” for suspicious review activity, “inducements to provide reviews without clearly instructing the reviewer to clearly disclose material conflicts,” “materially incentivizing reviews where it’s impossible to convey material conflicts (e.g., providing a five-star review with no accompanying narrative on TripAdvisor),” and “failure to take meaningful steps to confirm the existence of the purported celebrity or meaningfully document the celebrity’s purported experience with the product or service.”²⁷⁹ The Commission encourages businesses to have endorser oversight programs, and whether a company has and follows such a program could impact the exercise of prosecutorial discretion. The Commission does not intend, however, for companies to be liable under this section of the rule based merely on the absence of an oversight program or on these other suggested bases.

A corporate commenter said that “how a business ‘should have known’ that a reviewer does not exist is not apparent,” and posited that, under a “should have known” standard, “perhaps [a] business may be under a duty to reach out to the reviewer, but it is unclear how many resources the business must expend to attempt to contact the reviewer.”²⁸⁰ First, as noted, § 465.2(d)(2) exempts businesses merely engaging in consumer review hosting from § 465.2(b) and (c). Another key limitation here is the exemption for generalized solicitations under § 465.2(d)(1). That exemption means that businesses can send such solicitations to their customers without creating any investigative obligation for resulting reviews under § 465.2(b) or (c), even if such reviews have been “purchased.”²⁸¹

With respect to “purchased” reviews under § 465.2(b) the rule’s “knew or should have known” standard does not impose a general duty to reach out to the reviewers or investigate whether each resulting review is fake or false. While each case will depend on its specific facts, it is possible that a business may possess clear indications that purchased reviews are likely to be fake or false, in which case a failure to investigate further may trigger liability under the “should have known”

²⁷⁹ Consumer Reports Cmt. at 5.

²⁸⁰ Family First Life Cmt. at 6.

²⁸¹ Paying for or giving other incentives in exchange for consumer reviews expressing a particular sentiment regarding the product, service, or business that is the subject of the review would violate § 465.4 of the rule.

²⁶⁹ Annie Horgan, Cmt. on NPRM at 1–2 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0058>.

²⁷⁰ Consumer Reports Cmt. at 4.

²⁷¹ *Id.* at 4–5. An individual commenter disagreed, stating that “the complete removal of a knowledge requirement in favor of a strict liability approach would almost guarantee situations of unwarranted punishment under the proposed rule.” Poole Cmt. at 3.

²⁷² See *supra* section IV.B.5. of this document.

²⁷³ The final rule would therefore not require a business that is merely hosting consumer reviews on its platform to prove that the reviews it is hosting are legitimate.

²⁷⁴ Other Commission rule provisions with a “knew or had reason to know” requirement include § 460.8 of Labeling and Advertising of Home Insulation (commonly known as the R-Value Rule), which prohibits non-manufacturers of home insulation from relying on R-value data provided by the manufacturer if they “know or should know” the data is false or not based on proper tests. 16 CFR 460.8; see also 16 CFR 460.19(e) (non-manufacturers are liable only if they “know or

standard. For example, a business that hires a third party to provide free samples of its products to consumers in order to generate reviews, without more, may have no reason to investigate the resulting reviews. However, a business may be on notice that the resulting reviews are likely fake or false if they are submitted too quickly after purchase or many of them are submitted in a very short period of time or refer to the wrong product. As for § 465.2(c), which applies only to reviews by insiders, a possible reason for knowing that such reviews are likely fake or false could be that an insider sent emails to a manager over time that together showed that the insider was using multiple accounts to submit reviews to the same website.

A company that is in the business of identifying fake consumer reviews described ways that a business purchasing or procuring a consumer review should know that the review is fake or false. These indications include the named reviewer not being a customer, the content of the review being vague or odd, many reviews arriving at once, and the use of unnatural language or “keyword stuffing.”²⁸² A review platform commenter gave similar ways that a business could identify fake reviews, such as “the review text describes a product or service that is not offered by the business, the review clearly references the wrong business name, or perhaps if a review . . . acknowledges that the reviewer has never shopped there.”²⁸³ Although, as previously stated, each case depends on its specific facts, these various indications may indeed suggest that one or more purchased or insider reviews are likely fake or false, in which case a failure to reasonably investigate them may trigger liability under the “should have known” standard.

With respect to testimonials, there may be red flags that should indicate to a business that a testimonial is likely fake or false, and, thereby, would serve as indicia of the fact that the business should have known that the testimonials that it disseminated were fake or false. For example, the Commission alleged that Google asked iHeartMedia, Inc. radio personalities to record product testimonials for a smartphone using a standard script written for Google and refused to provide the radio personalities with the product when requested.²⁸⁴ If a business provides the text for a testimonial, it

should have a reasonable basis to conclude, based on inquiry or otherwise, that the text is truthful for the testimonialist. A testimonialist asking for the product should cause a business to question whether the testimonialist used the product. If a business knows that a testimonialist is using a competing product, it should inquire into whether a testimonial for its own product is truthful. For example, a business should investigate whether a celebrity testimonial for its new smartphone is false if the testimonial claims the celebrity exclusively uses the smartphone, but the social media post containing the testimonial indicates that the celebrity posted it using a competing smartphone brand.

A review platform said in its comment that, “if procuring fake reviews is the action of a single, rogue employee trying to help the business they work for, on a practical level it may be difficult for a business to have knowledge of” it.²⁸⁵ The commenter suggested that the Commission consider “whether it is in fact disproportionate for knowledge and liability to be attributed to a business because of the actions of a well-intentioned rogue employee.”²⁸⁶ Whether a business will be held responsible under the rule for a rogue employee under a “knew or should have known” standard will be a fact-intensive inquiry. While a business may not be aware of every employee’s activities, it should be pay attention to red flags. Assuming that the facts are such that the business should have known of the rogue employee’s actions, whether the business would also be subject to civil penalties would depend on whether a court finds that the business met the actual knowledge or knowledge fairly implied standard of section 5(m)(1)(A) of the FTC Act.

7. Other Proposals

Some commenters suggested that the Commission impose additional requirements. Many commenters suggested that third-party platforms featuring reviews should be held responsible for certain conduct, such as for: failing to report businesses that they suspect are posting fake reviews,²⁸⁷ the “lack of identification verifications,”²⁸⁸ not posting notices reminding consumers that there is no guarantee of the veracity or accuracy of customer reviews,²⁸⁹ engaging in review

“manipulation” for advertising purposes,²⁹⁰ failing to disclose publicly certain information about posted reviews,²⁹¹ or failing to employ reasonable measures to root out fraud and deceptive reviews.²⁹² A review platform suggested imposing requirements on social media companies and internet service providers to address the sale of fake reviews,²⁹³ and a trade association proposed that the Commission require reviewers to identify themselves and that social media sites hosting reviews verify reviewers’ identities.²⁹⁴ As explained above, the Commission’s intent from the outset of this rulemaking was to focus on clearly unfair or deceptive conduct involving reviews and testimonials. This intent is reflected in, as explained above, the addition of a definition of the term “consumer review hosting” and the explicit exclusion of such mere hosting from the coverage of certain rule provisions. This focus should not be taken to signal that third-party platforms do not bear significant responsibility for combatting fake reviews.

An individual commenter recommended “requir[ing] proof of purchase of [a] product for a consumer to leave a review.”²⁹⁵ Another individual commenter would have the Commission hold businesses that recruit, direct, and compensate influencers responsible for the influencers’ false or fake testimonials.²⁹⁶ A third commenter asked that the Commission “ensure there is a way for anyone who is believed to have violated reviewing policies [to have] a chance to reinstate their ability to leave

www.regulations.gov/comment/FTC-2023-0047-0082.

²⁹⁰ Wilhelmina Randtke, Cmt. on NPRM at 1 (Sept. 26, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0068>.

²⁹¹ Fake Review Watch Cmt. at 2–3.

²⁹² Consumer Reports Cmt. at 3.

²⁹³ Trustpilot Cmt. at 3, 7.

²⁹⁴ ADA Cmt. at 2.

²⁹⁵ Albert Cmt. at 4; *see also* Yanni Kakouris, Cmt. on NPRM at 1, 3 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0055>. The commenter also expressed concerns that “violators are too difficult to track,” asserted that civil penalties would somehow deter consumers from posting honest, negative comments about a business, and misunderstood the purpose and use of civil penalties, thinking that a large portion of civil penalties would go to businesses maligned by fake comments. *Id.* at 1–2. A review platform commenter said that the proposed rule “upholds legitimate consumer speech by ensuring that, ‘proposed § 465.2 does not limit legitimate reviews to reviews by purchasers or verified purchasers’ ” and “by preserving anonymous reviews.” TripAdvisor LLC, Cmt. on NPRM at 4–5 (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0092> (“Tripadvisor Cmt.”).

²⁹⁶ Taylor V. Cmt. at 2.

²⁸² Transparency Company Cmt. at 11.

²⁸³ Trustpilot Cmt. at 10.

²⁸⁴ Complaint at 2–5, *In re Google, LLC*, Nos. C–4783 and C–4784 (F.T.C. Feb. 8, 2023).

²⁸⁵ Trustpilot Cmt. at 9–10.

²⁸⁶ *Id.*

²⁸⁷ Anonymous 3 Cmt.

²⁸⁸ Foster Cmt. at 2.

²⁸⁹ Frieling Cmt. at 2; *see also* Anonymous 6, Cmt. on NPRM (Sept. 29, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0092>.

reviews.”²⁹⁷ A consumer organization recommended making clear that “it is a deceptive practice to aggregate fake reviews in a product’s consumer rating” and that “reviews requiring a disclosure should not be included in a product’s rating.”²⁹⁸ The Commission appreciates these additional suggestions but declines to add any of them to the rule. The suggestions are beyond the scope of the rulemaking, which focuses instead on those responsible for clearly unfair or deceptive acts or practices regarding reviews and testimonials, and which is limited to those acts or practices for which the Commission has evidence of prevalence.

In response to other commenters suggesting that the Commission impose liability on review sites and online retailers, a trade association asked the Commission to make clear that sections 5 and 18 of the FTC Act contain no express authorization for assisting-and-facilitating liability.²⁹⁹ As this legal issue goes beyond the context of this rulemaking, the Commission declines to address it here.

C. § 465.3—Consumer Review or Testimonial Reuse or Repurposing

Proposed § 465.3 sought to address a business using or repurposing a consumer review written or created for one product so that it appears to have been written or created for a substantially different product. It also sought to cover businesses that caused such use or repurposing.

The Commission received varied comments, both supportive and critical, about this provision.³⁰⁰ As described above, some commenters also raised concerns about the definition of “substantially different product,” a term that appeared only in this provision and is key to determining the circumstances in which the provision would apply; one of those commenters proposed a disputed issue of material fact related to that definition.³⁰¹ The Commission would need to address those concerns before finalizing the provision. As it is not able to resolve those concerns on the current rulemaking record, the Commission has decided not to finalize the provision. If the Commission chooses later to engage in further

rulemaking regarding the provision, it will address the comments at that time.

D. § 465.4—Buying Positive or Negative Consumer Reviews

Proposed § 465.4 sought to address businesses providing “compensation or other incentives in exchange for, or conditioned on, the writing or creation of consumer reviews expressing a particular sentiment, whether positive or negative, regarding the product, service, or business that is the subject of the review.” Based on the following, the Commission has decided to finalize this provision with two modifications.³⁰²

Comments from a retailer and a trade association expressed that they found the section important and useful. The retailer said, “This section is important to ensure that the rule covers bad actors that seek inauthentic reviews reflecting a particular predetermined sentiment.”³⁰³ The trade association wrote, “Providing compensation in exchange for reviews that must reflect a particular sentiment is a deceptive practice,” and expressed support for “the Commission’s goal of targeting and eliminating this practice.”³⁰⁴

Three individual commenters mistakenly thought that proposed § 465.4 banned paid or incentivized customer reviews and were opposed to such a ban. One of them said the proposed provision would “ban reviews which are made by those who have been provided an item,” that “[g]enerally the writer includes a list of sponsors on, or within, their blog/website,” and that “[i]f such sponsorship relationships are eliminated . . . , the ability of writers to review a variety of items will disappear.”³⁰⁵ The second one wrote, “Section 465.4 of the proposed rule prohibits the incentivization of or compensation on for the creation of consumer reviews or testimonials. . . . [I]t is unnecessarily restrictive.”³⁰⁶ The third commenter did not support the provision “forbidding paying for reviews” because the practice “does not . . . deceive the public unless the paid review service dictates that the review must be positive.”³⁰⁷ These commenters misunderstand the nature of § 465.4. First, § 465.4 does not apply to testimonials, only to consumer

reviews, and then only to reviews that appear on a website or portion of a website dedicated to receiving and displaying such reviews. A blogger’s “review” is not considered a consumer review for purposes of the rule; if such a review was incentivized, it would be considered a testimonial. Second, § 465.4 does not prohibit paid or incentivized consumer reviews. It only prohibits paid or incentivized consumer reviews when the business soliciting the review provides compensation or an incentive in exchange for a review expressing a particular sentiment.

In Question 12 of the NPRM, the Commission asked whether the prohibition in § 465.4 should “distinguish in any way between an explicit and implied condition that a consumer review express a particular sentiment.”³⁰⁸

A business commenter responded, “Real consumers’ reviews often contain multiple sentiments on what businesses did right and what they did wrong. This is helpful.”³⁰⁹ The meaning of this comment is unclear.

Another business commenter responded to Question 12 of the NPRM by stating that § 465.4 “should unequivocally prohibit explicit conditions only,” because this would “provide[] a clear standard for businesses and reviewers to follow,” and “the lack of clarity in how the Proposed Rule would prohibit ‘implied conditions’ [would] stifle[] businesses’ ability to encourage and to entice reviews in a legitimate manner.”³¹⁰ The Commission disagrees and believes that businesses are capable of soliciting and encouraging reviews without suggesting that the reviews must be positive to obtain an incentive. The commenter also asserted that the Commission “has no experience bringing enforcement actions against a business for allegedly creating an implied condition that a review or endorsement be positive,” referencing the cases the Commission cited in the NPRM.³¹¹ That assertion is incorrect. The respondent in *AmeriFreight, Inc.* did not expressly state that the reviews needed to be positive but only implied it, encouraging past customers to submit reviews in order to be eligible for a \$100 “Best Monthly Review Award” given to “the review with the most captivating subject line and best content.”³¹² The respondent also told past customers that

²⁹⁷ Osburn Cmt.

²⁹⁸ TINA Cmt. at 6.

²⁹⁹ Chamber of Commerce Cmt. at 2.

³⁰⁰ See, e.g., IAB Cmt. at 7–8; ANA Cmt. at 14; Chamber of Commerce Cmt. at 5–6; Trustpilot Cmt. at 10; Consumer Reports Cmt. at 5–6; Amazon Cmt. at 10; CCLA Cmt. at 3; NRF Cmt. at 7–8; Ravnitzky Cmt. at 2.

³⁰¹ See *supra* sections I.C. and IV.A.2.j of this document.

³⁰² One minor modification is changing “Rule” to “part.”

³⁰³ Amazon Cmt. at 6.

³⁰⁴ IAB Cmt. at 8.

³⁰⁵ Alex Rooker, Cmt. on NPRM (Aug. 15, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0019>.

³⁰⁶ Frieling Cmt. at 2.

³⁰⁷ Anonymous 7, Cmt. on NPRM (Aug. 15, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0021>.

³⁰⁸ NPRM, 87 FR 49389.

³⁰⁹ Transparency Company Cmt. at 12.

³¹⁰ Family First Life Cmt. at 8–9.

³¹¹ *Id.* at 10–11.

³¹² *In re AmeriFreight, Inc.*, 159 F.T.C. 1626, 1627–30 (2015).

they should “be creative and try to make your review stand out for viewers to read.”³¹³

Two trade associations gave examples of what they asserted were innocuous requests for reviews that could be considered as implying that reviews need to be positive in order to receive an incentive. One said that its members will sometimes automatically contact customers saying, “Tell us how much you loved [product] for 10% off your next purchase!” and that such a request could “be read to violate this Section of the Proposed Rule—even if a negative review would still entitle the consumer to the incentive or bonus.”³¹⁴ The other commenter wrote that, if the Commission says that “a business may not implicitly seek positive reviews in exchange for incentives, then the rule could apply to such offers as, ‘Tell us how much you loved your visit to John’s Steakhouse and get a \$5 coupon’ or ‘Tell your friends about all the fun you had at Jane’s Arcade for a chance to win prizes,’” and asserted that such requests are justified because businesses “prefer to use these enthusiastic and positive messages when seeking reviews, as opposed to less inspiring messages like, ‘Write a review and save 10% next time.’”³¹⁵ The problem with the enthusiastic and positive messages suggested by these commenters is that consumers receiving them could reasonably take the message that their reviews must be positive and enthusiastic in order to obtain the reward. As the second commenter noted, there are perfectly acceptable, albeit less “inspiring,” alternatives. The second commenter also said that “a reasonable consumer would infer that a business prefers positive reviews, and so even a neutral request such as, ‘Write a review and receive a discount off your next purchase,’ might be construed as impliedly requesting a positive review.”³¹⁶ The Commission disagrees. The fact that businesses prefer positive reviews is not a basis on which to conclude that consumers would interpret any such “neutral request” as containing an implied condition that reviews must be positive to receive the offered discount.

A consumer organization said in its comment that, “[w]hen a reviewer feels pressured to express a certain sentiment, regardless of how that pressure was generated, the net result is a deceptive review,” and that there should be “no distinction made between

explicitly and implicit conditioning of compensation or other incentives.”³¹⁷ A second consumer organization commenter said that “[i]mplied conditions may be just as salient as express conditions” and quoting *Aronberg v. FTC*, 132 F.2d 165, 167 (7th Cir. 1942), said that, “[i]n interacting with businesses, [t]he ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied.”³¹⁸ The Commission agrees with both of these commenters.

Advocating for limiting the provision to express conditions, a trade association acknowledged that the NPRM clarified that the provision does not cover review gating,³¹⁹ the mere solicitation of positive reviews, or incentivized reviews (except for those required to express a particular sentiment), but argued that, “[r]egardless, the Proposed Rule still could be read to prohibit such behavior—i.e., when a Company solicits a review that it has reason to believe will be positive.”³²⁰ The Commission does not consider this statement to be a fair reading of the provision. Just because a business engages in review gating or otherwise expects reviews to be positive does not mean there is either an express or implied requirement that reviews need be positive to obtain an incentive. The Commission notes that, although § 465.4 does not cover “review gating,” review gating can nonetheless violate section 5 of the FTC Act.³²¹

A review platform commenter said that prohibiting an “implied condition to express a particular sentiment could create a number of gray areas” and “encouraged the FTC to provide guidance and examples to businesses.”³²² The examples,

discussed above, by the trade association asking consumers to say how much they “love” something or how much fun they had are excellent examples of implied conditions.

The Commission has decided to clarify that the rule prohibits businesses from providing incentives conditioned on the writing or creation of consumer reviews expressing a particular sentiment, regardless of whether the conditional nature of the incentive is express or implicit. For this purpose, the Commission is adding the phrase “expressly or by implication” in § 465.4 to clarify that, although the incentive needs to be conditioned on the writing or creation of consumer reviews expressing a particular sentiment in order for conduct to violate § 465.4, the condition may be implicit.

Three commenters argued that the Commission should allow the compensation or incentives addressed in § 465.4 as long as they are disclosed in the resulting reviews. For example, the first commenter wrote, “A reasonable consumer can easily understand that when a reviewer is incentivized or compensated, the content they produce may be skewed in a more positive light. A mere disclaimer is sufficient to stave off misrepresentation.”³²³ This statement may be correct for some incentivized reviews when there is no express or implied condition for those reviews to express a particular sentiment. For such reviews, an adequate disclosure that incentives were provided in exchange for the review may be able to cure a misleading impression that the reviews were independent and unbiased. However, such a disclosure does not reveal to consumers the requirement that reviews be positive. In addition, even if an individual review disclosed that it resulted from incentives requiring the review to be positive, such a disclosure would not be effective in instances where a consumer relies on the overall average star rating and does not read all individual reviews. Furthermore, the Commission believes that, if incentives are conditioned on reviews expressing a particular sentiment, many resulting reviews will not be merely misleading but false. For example, the offer of an incentive in exchange for a positive review may lead some reviewers to create positive reviews even when they had a negative experience with the product, service, or business. No disclosure can adequately cure a false review.³²⁴

³¹⁷ Consumer Reports Cmt. at 6.

³¹⁸ TINA Cmt. at 10. An individual commenter described the pressure they felt to leave a positive review of a car dealership in order to receive a gift card and said that proposed “§ 465.4 should . . . address both explicit and implied conditions of incentivization.” Anonymous 8, Cmt. on NPRM at 3–5 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0061>.

³¹⁹ As the Commission explained in the NPRM, “Review gating occurs when a business asks past purchasers to provide feedback on a product and then invites only those who provide positive feedback to post online reviews on one or more websites.” See NPRM, 88 FR 49379.

³²⁰ NRF Cmt. at 9. The commenter went on to ask that “the Rule be revised to only prohibit companies from ‘. . . provid[ing] compensation or other incentives in exchange for . . . consumer reviews explicitly required to express a particular sentiment, whether positive or negative. . . .’” (emphasis in original). *Id.*

³²¹ See Endorsement Guides, 16 CFR 255.2(d) and (e)(11).

³²² Trustpilot Cmt. at 11.

³²³ Frieling Cmt. at 3.

³²⁴ See FTC Policy Statement on Deception, 103 F.T.C. at 180 (“[P]ro forma statements or

³¹³ *Id.* at 1628.

³¹⁴ NRF Cmt. at 8.

³¹⁵ ANA Cmt. at 8.

³¹⁶ *Id.*

The second commenter taking this position pointed to examples in the Endorsement Guides,³²⁵ claiming inaccurately that they stand for the proposition that businesses are allowed to offer incentives in exchange for positive reviews.³²⁶ The Endorsement Guides do contain an example involving incentives for reviews conditioned on the reviews being positive: “[a] manufacturer offer[ing] to pay genuine purchasers \$20 each to write positive reviews of its products on third-party review websites.”³²⁷ However, consistent with the Commission’s approach in this section, the Guides provide that “[s]uch reviews are deceptive *even if the payment is disclosed* because their positive nature is required by, rather than being merely influenced by, the payment.”³²⁸

The third commenter taking this position suggested that it should be acceptable to use a disclosure like, “We asked customers to tell us how much they loved their visit to John’s Steakhouse, and here’s what some of them said! (customers who submitted reviews received a \$5 coupon).”³²⁹ The scenario the commenter describes does not involve consumer reviews. It involves consumer testimonials, which are not covered by § 465.4. Further, it is unlikely that one could make such a disclosure in the context of consumer reviews, given how reviews are usually presented on a business’s own website and the lack of control over the way they are presented on a third-party website. In addition, the disclosure does not communicate that the customers had to “tell how much they loved their visit *in order to* receive a \$5 coupon.” Furthermore, as discussed above, many

disclaimers may not cure otherwise deceptive messages”); *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989) (“Disclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression. Anything less is only likely to cause confusion by creating contradictory double meanings.”); Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers (Mar. 1, 2000), https://www.ftc.gov/system/files/documents/public_statements/297751/000307jpsdeceptoveads.pdf (“If a claim is false, a disclosure that provides contradictory information is unlikely to cure the deception.”); *FTC v. Direct Marketing Concepts, Inc.*, 624 F.3d 1, 12 n.9 (1st Cir. 2010) (“A statement that studies prove a product cures a certain disease, followed by a disclaimer that the statement is opinion and the product actually does not cure the disease, leaves an overall impression of nonsense, not clarity.”).

³²⁵ Endorsement Guides, 16 CFR 255.5(b)(2), (3), (7), (8), (9), and (11).

³²⁶ Hammacher Schlemmer Cmt. at 3–4.

³²⁷ Endorsement Guides, 16 CFR 255.2(e)(9).

³²⁸ *Id.* (emphasis added).

³²⁹ ANA Cmt. at 8.

incentivized reviews conditioned on consumers saying how much they “loved their visit” are likely false regardless of such a disclosure.

Two commenters, an individual and a review platform, requested that § 465.4 go further and prohibit all incentives given in exchange for reviews regardless of any requirement to express a particular sentiment.³³⁰ An individual commenter would have the Commission “require businesses to disclose any form of incentive that they provide or arrange for reviewers.”³³¹ These requests are beyond the scope of this rulemaking but are addressed in the Endorsement Guides, which provide that unexpected material connections such as incentives given in exchange for customer reviews without any requirement as to the sentiment of the reviews must be disclosed clearly and conspicuously.³³² The Commission continues to believe that this principle from the Endorsement Guides is an appropriate expression of what incentivized review practices would or would not violate section 5 of the FTC Act. In any event, there is no basis on the current rulemaking record for the Commission to conclude that *all* incentivized reviews should be prohibited or that *all* incentivized reviews should require a disclosure.

Two commenters, an individual and a review platform, recommended that § 465.4 also prohibit offering compensation to remove or change consumer reviews.³³³ Another individual commenter inquired about paid review removal without stating a position on the topic.³³⁴ The Commission previously noted that, “[i]n procuring [or] suppressing . . . consumer reviews of their products, advertisers should not take actions that have the effect of distorting or otherwise misrepresenting what consumers think of their products.”³³⁵ A product marketer paying consumers to change or remove truthful negative reviews may be engaging in an unfair or deceptive act or practice that has the effect of distorting or otherwise misrepresenting what consumers think of a marketer’s products. Nevertheless, that act or practice is beyond the scope of this rulemaking.

³³⁰ Anonymous 3 Cmt; Yelp Cmt. at 5–6.

³³¹ Ravnitzky Cmt. at 1.

³³² Endorsement Guides, 16 CFR 255.5(a) & (b)(6)(ii).

³³³ Camp-Martin Cmt. at 4–5; Yelp Cmt. at 7.

³³⁴ Anonymous 4 Cmt.

³³⁵ Endorsement Guides, 16 CFR 255.2(d).

E. § 465.5—Insider Consumer Reviews and Consumer Testimonials

Proposed § 465.5 sought to prohibit certain undisclosed insider reviews and testimonials. It had three subparts. Proposed § 465.5(a) would have prohibited an officer or manager of a business from writing or creating a consumer review or consumer testimonial about the business or one of its products or services that failed to have a clear and conspicuous disclosure of the officer’s or manager’s relationship to the business.³³⁶ Proposed § 465.5(b) would have applied to testimonials, but not consumer reviews. It would have prohibited a business from disseminating or causing the dissemination of a consumer testimonial about the business or one of the products or services by one of its officers, managers, employees, or agents, or any of their relatives, if that testimonial failed to have a clear and conspicuous disclosure of the testimonialist’s relationship to the business or to the officer, manager, employee, or agent, and if the business knew or should have known of that relationship. Proposed § 465.5(c) would have applied to consumer reviews, but not testimonials, and would have been limited to when an officer or manager of a business solicits or demands a consumer review about the business or one of its products or services from an employee, an agent, or a relative of any such officer, manager, employee, or agent. Proposed § 465.5(c) would have prohibited that conduct when (1) the person requesting the review knew or should have known the prospective reviewer’s relationship to the business (or to one of its officers, managers, employees, or agents), (2) the request resulted in a consumer review without a disclosure, and (3) the person requesting the review (a) did not instruct the prospective reviewer to disclose clearly and conspicuously that relationship, (b) knew or should have known that such a review appeared without such a disclosure and failed to take remedial steps, or (c) encouraged

³³⁶ Due to an inadvertent drafting error, the regulatory text of proposed § 465.5(a), which addressed an officer or manager of a business writing or creating a consumer review or consumer testimonial about the business or its products or services, only referenced disclosure of the officer’s but not the manager’s relationship to the business. The Commission clearly intended that proposed § 465.5(a) require disclosure of the manager’s relationship as well. See NPRM, 88 FR 49379 (“Proposed § 465.5(a) would prohibit an officer or manager of a business from writing or creating a consumer review or consumer testimonial about the business or its products or services if the consumer review or consumer testimonial does not have a clear and conspicuous disclosure of the officer’s or manager’s relationship to the business.”).

the prospective reviewer not to make such a disclosure. The Commission has determined to finalize proposed § 465.5 with a number of modifications.³³⁷

Two individual commenters shared their experiences with insider reviews. One individual commenter “made a purchase based on a glowing review” but “later discovered that the person who wrote the review was, in fact, a salesperson for the same company, receiving a commission based on my purchase,” and the purchase turned out to be “a fraudulent service.”³³⁸ Another individual commenter shared their experience as an employee: “I was asked to leave positive reviews in Amazon . . . and in other sites to boost the number of positive reviews for our products. The CEO asked employees to do this and include family members. In fact, I found the immediate family and friends of the CEO leaving glowing reviews of the product.”³³⁹

A business commenter said, “If you allow insider reviews, disclosure [of the reviewers’ relationship to the business] should be mandatory.”³⁴⁰ Another business commenter wrote that “limiting . . . § 465.5(a)–(c) to circumstances in which the requisite disclosure is absent is a fair restriction on businesses that would simultaneously protect consumers all while allowing businesses to effectively advertise.”³⁴¹ The commenter noted that the “requirement for clear-and-conspicuous disclosure is used widely throughout federal and state consumer protection laws.”³⁴² The commenter was also concerned that a rule might “infringe on the ability of employees and independent contractor agents . . . to inform others of their experiences with an employer or principal.”³⁴³ To the extent that the commenter is referring to review websites that specialize in reviewing employers from the perspective of employees, it is obvious that the reviewers are employees or former employees, and no further disclosure appears necessary.

A trade association commented that it “understands the Commission’s concern that in some cases, employees may have an incentive to post positive reviews on behalf of their company’s products,” but the concern “is already addressed through Section 5 and the Endorsement

Guides.”³⁴⁴ The Commission continues to believe that certain conduct should be addressed by a trade regulation rule even if it can also be addressed through section 5 enforcement actions. Having specific conduct addressed by a rule provides the general public with further clarity as to what steps are necessary to conform its conduct to the requirements of the law, deters prevalent unlawful conduct, and allows the Commission to bring enforcement actions more efficiently and effectively.

A retailer recommended that the provision “be revised to further incorporate a requirement that the ‘insider’ review/testimonial be ‘fake’ or ‘false,’ in order to better target the deceptive acts of bad actors that use their employees to generate fake reviews and testimonials that purport to be from actual customers.”³⁴⁵ The Commission rejects that suggestion, as the intention of § 465.5 is to address certain inherently biased reviews and testimonials. Fake and false reviews are already addressed by § 465.2.

1. Material Connections

Commenters pointed out what they saw as inconsistencies between proposed § 465.5 and section 5 of the FTC Act. A retailer commenter wrote that proposed § 465.5 was “inconsistent with the longstanding principles in the Endorsement Guides . . . that disclosures must be made when the connection between a reviewer and the sponsoring advertiser is material, meaning it would affect the weight or credibility that consumers give to the endorsement.”³⁴⁶ A trade association noted in its comment that the section “seeks to impose liability for reviews and testimonials authored by certain employees or their relatives that lack disclosures regardless of context, and whether that connection is material under the circumstances” and “would impose civil penalties for reviews or testimonials that are not even deceptive.”³⁴⁷ Another trade association opined “that a reviewer’s out-of-state second cousin [who] works a minimum-wage job at a retailer would (hopefully) not be a ‘material connection’ requiring disclosure under the Endorsement Guides, because such connection would not bias the reviewer’s review, and therefore would not make the review misleading.”³⁴⁸ The same trade association and a business organization also commented

that the provision poses concerns under the First Amendment by “broadly prohibiting certain reviews or testimonials by ‘insiders’ regardless of whether that speech is deceptive in context.”³⁴⁹ The Commission intended for § 465.5 to be limited to unfair or deceptive failures to disclose material connections, and is now clarifying this intent. Specifically, in paragraphs (a) through (c) of § 465.5, the Commission is limiting the covered relationships to “material” relationships. In § 465.5(a) and (b), the Commission is also clarifying that, under certain circumstances, the relationship of a consumer testimonialist may be clear to the audience without disclosure. For example, the audience may already be aware that an executive is associated with a particular company, or the context of an ad may otherwise communicate a relationship with a particular company. Specifically, in § 465.5(b), which applies only to consumer testimonials, the Commission is adding the requirement that “the relationship is not otherwise clear to the audience,” and in § 465.5(a), which involves both consumer reviews and testimonials, it is adding, “unless, in the case of a consumer testimonial, the relationship is otherwise clear to the audience.” The Commission does not believe that, absent a disclosure, a relationship will ever be clear to consumers in the context of an ordinary consumer review.

2. Relatives

Proposed § 465.5(b) and (c) would have required disclosures in some circumstances involving consumer testimonials or reviews from “relatives” of a company’s officers, managers, employees, or agents. Some commenters voiced concerns pertaining to these requirements.

For example, a review platform, explaining that it prohibits reviews about a business or its products by someone whose immediate family owns or works for the business, asked how businesses would “know whether reviews have been submitted by the extended family (such as the second cousins) of their officers, managers, employees, or agents,” questioned whether it would be proportional to seek penalties when extended family are involved, and suggested “narrowing the scope of the family requirement” to “immediate family.”³⁵⁰ A trade association said that “relatives can include cousins, nieces/nephews, and other more distant familial

³³⁷ Proposed § 465.5(b) and (c) are being renumbered as final § 465.5(b)(1) and (c)(1).

³³⁸ Anonymous 9, Cmt. on NPRM (Aug. 16, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0023>.

³³⁹ Anonymous 5 Cmt.

³⁴⁰ Transparency Company Cmt. at 13.

³⁴¹ Family First Life Cmt. at 13.

³⁴² *Id.*

³⁴³ *Id.* at 3.

³⁴⁴ NRF Cmt. at 9.

³⁴⁵ Amazon Cmt. at 11.

³⁴⁶ *Id.*

³⁴⁷ IAB Cmt. at 9.

³⁴⁸ NRF Cmt. at 9.

³⁴⁹ *Id.* at 11; TechNet Cmt. at 3.

³⁵⁰ Trustpilot Cmt. at 5–6.

relationships,” that “even immediate family relationships (parents, children, siblings) are not always closely held” because “adult siblings are not necessarily in each other’s day-today lives,” and that “it would be more appropriate to substitute the term . . . ‘members of the same household’ as that would suggest individuals that have regular contact with an employee.”³⁵¹ A business organization wrote in its comment that the term “relative” is too vague and that “[i]t is unclear whether the rule applies to third cousins, the spouses of a stepbrother’s child from a previous marriage, or friends that are considered family,” concluding that “[l]arge companies creating monitoring programs for testimonials need some clarity about what relatives will be captured under the Rule.”³⁵² A second trade association said in its comment that “relatives” of “any company employee should not be considered ‘insiders’” because “[i]n most cases, such family members would have no incentive to post a fake review.”³⁵³ However, the Commission intended for § 465.5 to address biased reviews and testimonials by insiders or their relatives, not the writing of “fake [or false] reviews,” which is addressed in § 465.2.

To reduce the compliance burden, the Commission is removing relatives from § 465.5(b) and limiting what was originally proposed as § 465.5(c)(1), which is now split into three separate prohibitions. One prohibition addresses officers or managers soliciting or demanding a consumer review from “any of their [own] immediate relatives.” A second prohibition addresses officers or managers soliciting or demanding reviews from employees or agents. A third prohibition addresses solicitations or demands by officers or managers that “employees or agents seek such [consumer] reviews from their relatives.” In such instances the request will likely be a general one (such as “Ask your relatives to review us” or “Get three family members to review us”), although it could also be more specific (such as “Get your spouse to write us a review”). As set forth in § 465.5(c)(1)(i), any reviews resulting from demands that employees or agents solicit their relatives would only be violations if the resulting reviews were written by immediate relatives of the employees or agents.

3. Agents

A trade association objected to the inclusion of the undefined term “agents” in proposed § 465.5(b) and suggested its removal. The commenter said that “it is not clear what individuals would be considered ‘agents’ of the business” and the meaning of the term “agent” could “dramatically expand the scope of the compliance programs that businesses will likely need to create in order to mitigate their risks under this section” which “would be particularly important for small businesses.”³⁵⁴ The Commission intends for the term “agents” in this rule to apply only to those agents that promote the company or its products, such as representatives of advertising agencies, public relations firms, and review management firms. As discussed below, given the clarifications of and limitations to § 465.5(b)(1) and (c)(1), the Commission has no reason to believe that the inclusion of “agents” will “dramatically expand the scope of the compliance programs.”³⁵⁵

4. Scope

Several comments addressed the scope of proposed § 465.5, including the scope of liability of businesses in the context of insider reviews and testimonials. For example, a trade association asserted that § 465.5 should “be limited to the extent it references employees (or agents) who are not officers or managers, and who were not instructed by their superiors to post reviews.”³⁵⁶ A retailer asked for a safe harbor that would apply to employee reviews and testimonials “if businesses are not encouraging insider reviews and testimonials.”³⁵⁷ The Commission intended for the provision to apply to reviews or testimonials by employees or agents who are not officers or managers only when (1) the reviews are requested or solicited by an officer or manager of the business or (2) the testimonials appear in advertising or promotional messages actively disseminated by the business. As discussed in this section, the Commission’s clarifications and limitations should resolve any concerns arising from any broader interpretation.

Two trade associations and another industry organization asserted in their comments that § 465.5 “appears to impose liability on businesses for distributing the content of third parties, even when they had no knowledge that the content violated the proposed

rule.”³⁵⁸ As the commenters used the word “distributing,” the Commission assumes that these comments pertain to the liability of businesses under § 465.5(b), which prohibits businesses from “disseminating or causing the dissemination of consumer testimonials” by insiders without disclosures. The testimonials covered by § 465.5 are, by definition, a business’s advertising or promotional messages, so the Commission does not consider them to be third-party content. The section covers such testimonials when disseminated by the business itself, by its officers or managers, or in response to solicitations or demands from its officers or managers. With respect to the commenters’ concern that businesses will be liable even when they had no knowledge that the content violated the rule, the Commission discusses below the appropriate application of the “knew or should have known” standard.

A retailer’s comment expressed “significant concerns with this section if the FTC intends to apply it to marketplace service providers with hundreds of thousands of employees.”³⁵⁹ A trade association said in its comment that, “to the extent the Commission intends for this language to apply to reviews or testimonials written by employees of online retailers with hundreds of thousands of employees, the Commission has failed to demonstrate that this is an unfair or deceptive act or practice that is prevalent” as “[n]one of the cases cited in the NPRM involved this type of company.”³⁶⁰ With respect to employees, the section applies only to (1) testimonials by employees that the company chooses to disseminate and (2) reviews that are solicited or demanded by company officers or managers. Further, the Commission has sufficient evidence of prevalence as to the use of insider reviews and testimonials,³⁶¹ and that evidence need not specifically include examples of companies of every size, such as those “with hundreds of thousands of employees.”

A trade association’s comment “urge[d] the Commission to add a safe harbor . . . that will assure businesses acting in good faith that they will not face civil penalty liability for the actions of rogue individuals.”³⁶² Again, whether a business will be subject to civil penalties will depend on whether

³⁵⁴ IAB Cmt. at 10.

³⁵⁵ See *infra* section IV.E.4 and 5 of this document.

³⁵⁶ NRF Cmt. at 10.

³⁵⁷ Amazon Cmt. at 11.

³⁵⁸ NRF Cmt. at 11; IAB Cmt. at 10; TechNet Cmt. at 3.

³⁵⁹ Amazon Cmt. at 11.

³⁶⁰ IAB Cmt. at 9.

³⁶¹ See NPRM, 88 FR 49374–75.

³⁶² IAB Cmt. at 10.

³⁵¹ RILA Cmt. at 6.

³⁵² Chamber of Commerce Cmt. at 7.

³⁵³ NRF Cmt. at 9.

the facts show that the business had actual knowledge or knowledge fairly implied of the violation. A business will not violate the rule—much less be subject to civil penalties—merely because employees write consumer reviews without disclosing their relationship to the business, but it may violate the rule when an officer or manager of the company solicited or demanded such reviews. A business will also not be liable under § 465.5 simply because one of its employees (other than an officer or manager) or agents makes an unsolicited social media post. However, as discussed above, a business might be liable under § 465.2(a) for an employee posting fake testimonials to social media on behalf of the company.³⁶³

Two commenters addressed general review solicitations from businesses to their customers. A trade association said that “[b]usinesses which seek reviews from their customers generally seek reviews from all customers, and again, do not currently monitor or screen for potential relatives or agency relationships.”³⁶⁴ A review platform operator wrote in its comment, “An automated review invitation system can operate via integration with, for example, a C[ustomer] R[elationship] M[anagement] platform where customer details are automatically fed through to generate review invitations following on from purchases or experiences. The information within the system could be as minimal as a name and email address. . . . It could therefore be possible for businesses to inadvertently invite persons that are related to an officer, manager, employee, or agent In practice, it will be difficult to check whether any invitation recipients could fall within the very wide group of persons outlined at [§] 465.5(c), and it will also be difficult to draw a firm line between what types of indicators are sufficient to warrant imputing constructive knowledge.”³⁶⁵ The Commission did not intend for § 465.5(c) to cover such generalized invitations to past purchasers to write reviews. The Commission is therefore adding language in § 465.5(c)(2) to clarify that § 465.5(c)(1) “does not apply to generalized review solicitations to purchasers for them to post reviews about their experiences with the product, service, or business.” The Commission is making a similar clarification in § 465.5(b)(2)(i); specifically, that § 465.5(b)(1) “does not apply to generalized review solicitations

to purchasers for them to post testimonials about their experiences with the product, service, or business.”

The Commission has also added § 465.5(b)(2)(ii), which exempts “merely engaging in consumer review hosting” from § 465.5(b)(1). Thus, an unsolicited employee review merely appearing on the business’s website cannot violate the provision against disseminating insider testimonials.

A trade association noted that “[l]arge national retail chains collectively employ millions of workers who are also their customers” and “[w]hile a retailer may provide guidance on disclosing their relationship, it should not be liable for policing their customer reviews for posts that may have been submitted by any one of their thousands or millions of employees—who in many cases may be using ambiguous screennames or not be readily identifiable.”³⁶⁶ The Commission points out that only § 465.5(c) applies to customer reviews by employees, and that provision only applies to employee reviews that an officer or manager has solicited or demanded. If there are no such solicitations or demands, then § 465.5 does not apply to employee reviews. When an officer or manager does solicit or demand a review, the business would only be liable if the officer or manager (1) “encouraged the prospective reviewer not to make . . . a disclosure,” (2) “did not instruct that prospective reviewers disclose clearly and conspicuously their relationship to the business,”³⁶⁷ or (3) “knew or should have known that such a review appeared without such a disclosure and failed to take remedial steps.” It is only under the last of the three clauses that a business might be liable for any “policing” of reviews, and, as discussed below, any such obligations should not be unduly burdensome.³⁶⁸

An industry organization commenter expressed concern that § 465.5 “would require the disclosure of personally identifying information” and impact employees’ privacy.³⁶⁹ The Commission does not see how the provision requires the disclosure of personally identifying information. Section 465.5 requires the disclosure of unexpected material connections but does not require that employees identify themselves by name. Testimonialists and reviewers could be

anonymous, or use pseudonyms, and include general phrases indicating their relationship to the business, such as “my employer’s product,” “my company’s,” or “my spouse’s company.”

5. Knowledge Standard

A number of commenters discussed the “knew or should have known” standard contained in § 465.5(b) and (c). A trade association said that a “‘knew or should have known’ standard . . . [in] § 465.5 aptly reflects that the rule is targeting bad actors that intend to commit fraud through fake reviews.”³⁷⁰ A consumer organization “advise[d] the Commission against relying on knowledge standards that will introduce unnecessary evidentiary burdens in the enforcement process” and against making it “a condition of liability,” noting that instead “the Commission can and should consider knowledge and intent in deciding the equities of bringing any enforcement action.”³⁷¹ A review platform said “that ‘should have known’ is too low as a knowledge threshold and this should therefore be limited to ‘knew’, i.e., actual knowledge.”³⁷² A trade association called the “should have known” standard “vague.”³⁷³ A business commenter also described “should have known” as vague and suggested limiting the knowledge standard to actual knowledge.³⁷⁴ A trade association and a retailer said that civil penalties should not be based upon a “should have known” standard.³⁷⁵ The retailer continued, “In the alternative, if the Commission refuses to elevate the knowledge standard for this section, the final rule must provide greater guidance on the sorts of scenarios that would give rise to liability.”³⁷⁶ Specifically, the retailer asserted that the Commission would have to provide “additional information about when a company or officer/manager ‘should’ know that an ‘insider’ review or testimonial violates the rule.”³⁷⁷ A trade association wrote in its comment that “the Commission should raise the knowledge standard for this section to actual knowledge,” which “would ensure that companies that are actually complicit in the proliferation of deceptive insider reviews and testimonials are the targets of this section, rather than well-meaning

³⁶⁶ RILA Cmt. at 6.

³⁶⁷ The Commission has slightly modified this clause, changing “did not instruct the prospective reviewer to disclose clearly and conspicuously that relationship” to “did not instruct that prospective reviewers disclose clearly and conspicuously their relationship to the business” for purposes of clarity.

³⁶⁸ See *infra* section IV.E.5 of this document.

³⁶⁹ TechNet Cmt. at 3.

³⁷⁰ Travel Tech Cmt. at 4.

³⁷¹ Consumer Reports Cmt. at 8.

³⁷² Trustpilot Cmt. at 5, 8.

³⁷³ NRF Cmt. at 9.

³⁷⁴ Family First Life Cmt. at 15.

³⁷⁵ NADA Cmt. at 3; Amazon Cmt. at 11.

³⁷⁶ Amazon Cmt. at 11.

³⁷⁷ *Id.*

³⁶³ See *supra* section IV.B.2 of this document.

³⁶⁴ NADA Cmt. at 6.

³⁶⁵ Trustpilot Cmt. at 13.

businesses that fail to discover and remedy reviews or testimonials by employees, managers, officers, agents, or any of those individuals' relatives that lack disclosures.”³⁷⁸ The commenter continued, “[r]egardless of the knowledge standard the Commission imposes, the final rule must provide greater guidance on what sorts of scenarios would give rise to liability under this section.”³⁷⁹

The Commission chooses to retain the proposed “knew or should have known” standard in § 465.5(b)(1) and (c)(1)(ii)(c). First, the Commission notes again that it cannot obtain civil penalties under section 5(m)(1)(A) of the FTC Act for a rule violation unless it proves that a defendant had actual knowledge or knowledge fairly implied that the act or practice is unfair or deceptive and is prohibited by the rule. With respect to § 465.5(b)(1), the provision applies only to testimonials that the business disseminates or causes to be disseminated, *i.e.*, it applies to the business's own advertising and promotional activities. As noted above, § 465.5(b)(1) does not apply to unsolicited social media posts by employees or to social media posts that result from generalized solicitations. The Commission does not expect that a business will ask every potential testimonialist whether they are an agent of the business. There may be red flags, however, that should cause a business to realize that a prospective testimonialist is likely an insider, such as the testimonial featuring an image of that person standing in front of the company's headquarters. If a business routinely asks prospective testimonialists how they became interested in the business or its products, it should not avoid looking at answers that might indicate a covered connection.

With respect to § 465.5(c)(1)(ii)(c), the Commission believes that, if officers and managers of a business request or demand that the business's employees or agents write consumer reviews or solicit or demand that such employees or agents seek such reviews from their relatives, it is more than reasonable to have those officers and managers take on certain responsibilities with respect to those reviews. The employees, agents, and relatives on the receiving end of such requests or demands are likely to assume that their reviews should be positive, which gives such reviews an inherent bias. Therefore, officers and managers should instruct that prospective reviewers make disclosures.

When they demand that employees or agents seek reviews from their relatives, the officers or managers should instruct the employees or agents to ask their immediate relatives to make disclosures. The officers and managers should also take remedial steps when they know or should know that resulting insider reviews appeared without a disclosure. The Commission does not expect an officer or manager to scour every review of the business for possible insider reviews appearing without a disclosure. There may be red flags, however, that should cause officers or managers to inquire further. An example that is at least applicable to smaller companies is a review without a disclosure by someone the soliciting officer or manager recognizes as having the same last name as an employee whom the officer or manager told to obtain reviews from relatives. Another example is an employee sending a soliciting officer or manager a link to the resulting review, in which case the officer or manager should take the time to see if that review has a disclosure. By taking “remedial steps,” the Commission means that the officer or manager should request that the reviewer delete the review or add a clear and conspicuous disclosure to it.

6. Other Suggestions

Commenters recommended that the Commission adopt a number of additional requirements or prohibitions. An individual commenter said that insider reviews should be banned and that disclosures are insufficient to cure them.³⁸⁰ One consumer group proposed that (1) “non-disclosed insider ratings” should be “independent and separate violation[s] from deceptive narrative reviews;” (2) “symbolic ratings—both independently and when aggregated—should feature a clear and conspicuous disclosure of necessary material connections;” and (3) “reviews requiring a disclosure should not be included in a product's aggregate rating without a disclosure.”³⁸¹ Another consumer group suggested the following: (1) § “465.5(a) and (c) should apply to all employees and board members of a business;” (2) § 465.5(b) and (c) be extended “to employees or board members of other companies with a material business relationship with the first business;” (3) § 465.5(c) should be extended “to include solicitations or demands of employees of companies with which the business conducts material business;” (4) § 465.5(c) should prohibit “any employee or board member of a business to solicit or

demand from another employee or board member (or relative of an employee or board member) a consumer review about the business or one of its products or services;” and (5) “employees of a business should not be permitted to provide star or numerical reviews that count toward an aggregate or average rating, even if their conflict of interest is otherwise disclosed in an accompanying narrative review.”³⁸² Some of these proposals go beyond the scope of this rulemaking. Based on its policy expertise, the Commission declines to make any of these changes at this time. The Commission notes, however, that some may, in certain situations, involve unfair or deceptive acts or practices that violate section 5 of the FTC Act.

F. § 465.6—Company-Controlled Review Websites or Entities

Proposed § 465.6 sought to prohibit a business from representing, expressly or by implication, that a website, organization, or entity that it controls, owns, or operates provides independent reviews or opinions about a category of businesses, products, or services including the business or one or more of its products or services. Based on the following, the Commission has determined to finalize this provision with two limiting modifications.³⁸³

A business organization, a retailer, and a review platform submitted comments supporting the intent of proposed § 465.6.³⁸⁴ For example, the business organization noted that it “was supportive of a . . . rule aimed at addressing the practice of marketers setting up purportedly independent websites, organizations, or entities to review or endorse their own product.”³⁸⁵

Some commenters argued that, as drafted, the provision was overly broad and would prohibit conduct that was not deceptive or unfair. A business organization said that, as drafted, proposed § 465.6 “. . . could capture retailers that sell their own house brands” and “prevent media companies from operating general review websites that publish reviews by independent critics and consumers about films or television produced by affiliated studios or divisions.”³⁸⁶ A consumer

³⁷⁸ Consumer Reports Cmt. at 7–8.

³⁸³ Two modifications are changing “Rule” to “part” and, as discussed above, changing “its products or services” to “the products and services it sells.” See *supra* section IV.B.4. of this document.

³⁸⁴ Chamber of Commerce Cmt. at 6; Amazon Cmt. at 12; Trustpilot Cmt. at 4–5.

³⁸⁵ Chamber of Commerce Cmt. at 6.

³⁸⁶ *Id.*

³⁷⁸ IAB Cmt. at 9.

³⁷⁹ *Id.* at 10.

³⁸⁰ Anonymous 3 Cmt.

³⁸¹ TINA Cmt. at 6 and 8.

organization similarly said that, “as written, . . . [proposed § 465.6] would make it illegal for companies to host any reviews whatsoever so long as some of the reviews touch on a category of business, products, or services the company provides” and would prohibit “customer review forums on sites such as Home Depot and Amazon.”³⁸⁷ A retailer said that “the plain text of . . . [proposed § 465.6 would] sweep[] in more conduct that is neither deceptive nor unfair—for example, where Company A provides customer reviews authored by others to Company B, without disclosing an ownership relationship.”³⁸⁸ A trade association wrote that proposed § 465.6 “could be applied to prohibit retailers from representing that any consumer reviews or opinions featured on their own websites are independent, even if they are.”³⁸⁹ A retailer commented that proposed § 465.6 is “overly broad and would prohibit a business from using a related entity from [sic] testing or comparing products in good faith and publishing those results, even if the company clearly disclosed that the test or comparison was done by an affiliate.”³⁹⁰ A review platform asked in its comment that the Commission clarify that the section would not “unintentionally lead[] to review sites being unable to host reviews of their own company or sector.”³⁹¹ The Commission recognizes and agrees with the above concerns and is making two responsive modifications to narrow final § 465.6 in a way that better reflects the Commission’s intent. The Commission is excluding “consumer reviews” from the scope of final § 465.6 and changing the prohibition against “represent[ing]” to a prohibition against “materially misrepresent[ing].”

A trade association commented that “many retailers host product reviews on their online shopping websites and make no direct claims that the reviews are independent” and asked the Commission to “make clear that it is permissible for retailers to host product reviews on a site they control and

operate.”³⁹² Assuming that the commenter is referring to retailers hosting independent consumer reviews on a site they operate or control, then this is permissible under § 465.6. If the retailer’s website misrepresents that it provides independent reviews or opinions by experts or organizations, then the retailer could be liable under § 465.6.

Two commenters asked the Commission to adopt a safe harbor provision for disclosures of the relationship between the business and the provider of the purportedly independent reviews or opinions.³⁹³ The Commission’s modifications address this request effectively by providing that businesses do not violate § 465.6 if they are not materially misrepresenting independence. The Commission believes that contradictory disclosures cannot cure a false express claim, such as a false express claim of independence. If a false claim of independence is merely implied, whether a disclosure is adequate to cure it will depend on the net impression of the website or advertisement, *i.e.*, whether it materially misrepresents independence even with the disclosure.

A trade association commented that “[i]t would be helpful to make it clear that . . . § 465.6 only applies to websites or entities whose core service is providing reviews or opinions.”³⁹⁴ The term “core service” is ambiguous, and it is not clear how one would determine whether it applies to reviews or opinions provided by a given website or other entity. False material claims that a website or entity provides independent reviews or opinions would still be deceptive even if such reviews or opinions are not the website’s or entity’s core service. The NPRM cited a number of cases in which businesses created purportedly independent seals or badges that they then awarded to their own products; the awarding of such seals or badges was clearly not their core business.³⁹⁵ The NPRM also cited cases involving purportedly independent review websites, and, although such review websites might have appeared to be a “core service,”

the true core business was selling the respondent’s or defendant’s own products.³⁹⁶ Focusing on the ambiguous term “core services” would likely open the door to manipulation and evasion of the prohibition. The commenter further noted that it would also be “useful to clarify what ‘independent reviews or opinions’ means.”³⁹⁷ In this context, the term “independent” merely refers to explicit or implicit claims that reviews or opinions are not coming from a business that offers any of the products or services being reviewed or evaluated.

A business organization commenter suggested that the Commission not finalize § 465.6 because “the fraudulent nature of reviews on purportedly independent websites would likely be covered by . . . [§§] 465.2 and 465.5 of the . . . Rule.”³⁹⁸ Those sections are limited to consumer reviews and consumer or celebrity testimonials and do not apply to reviews, seals, or other opinions by purportedly independent experts, organizations³⁹⁹ or other entities. Therefore, § 465.6 is not duplicative of either § 465.2 or § 465.5.

G. § 465.7—Review Suppression

Proposed § 465.7 sought to prohibit two different types of consumer review suppression.

1. § 465.7(a)

Proposed § 465.7(a) sought to prohibit anyone from using an unjustified legal threat or a physical threat, intimidation, or false accusation in an attempt to prevent a consumer review or any portion thereof from being written or created or to cause a consumer review or any portion thereof to be removed. Based on the following, the Commission is finalizing § 465.7(a) with several revisions for the purpose of clarity.⁴⁰⁰

A number of commenters supported the provision.⁴⁰¹ The NPRM asked whether it is “appropriate that . . . § 465.7(a) focuses on the specific types of listed threats or activities,” and two

³⁹⁶ *Id.*

³⁹⁷ CCIA Cmt. at 3.

³⁹⁸ Chamber of Commerce Cmt. at 6.

³⁹⁹ “Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member.” Endorsement Guides, 16 CFR 255.4(a).

⁴⁰⁰ One modification is changing “Rule” to “part.”

⁴⁰¹ Anonymous 10, Cmt. on NPRM (Aug. 3, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0009>; TT in PA, Cmt. on NPRM (Aug. 9, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0016> (“TT in PA Cmt.”); Kurt Braun, Cmt. on NPRM (Aug. 17, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0026>; Superguest Cmt.; Tripadvisor Cmt. at 5–6; Consumer Reports Cmt. at 9–10; State AGs Cmt. at 2.

³⁸⁷ Consumer Reports Cmt. at 9.

³⁸⁸ Amazon Cmt. at 12. The commenter suggested that the Commission “clarify the regulatory language to make clear that it covers only reviews authored by the owner company or its agents.” *Id.* The Commission is not adopting this approach because § 465.6 is not limited to websites with reviews. It also applies to organizations or entities that misrepresent that they provide independent reviews or opinions (*e.g.*, seals) about a category of businesses, products, or services including the business or one or more of the products or services it sells.

³⁸⁹ NRF Cmt. at 11–12.

³⁹⁰ Hammacher Schlemmer Cmt. at 5.

³⁹¹ Trustpilot Cmt. at 5.

³⁹² RILA Cmt. at 7.

³⁹³ Hammacher Schlemmer Cmt. at 6–7 (proposing that the Commission adopt § 465.6 with the addition of the following clause: “unless the business discloses that there is a relationship or affiliation between the business and the website, organization, or entity that it controls, owns, or operates and why the reviews or opinions are ‘independent’, including the steps that the business takes to ensure objectivity or independence in obtaining such reviews or opinions.” (emphasis omitted)); Frieling Cmt. at 4.

³⁹⁴ CCIA Cmt. at 3.

³⁹⁵ NPRM, 88 FR 49375.

business commenters responded that it is.⁴⁰² One of the commenters said that “[t]his narrow approach protects consumers, all while ensuring clarity for businesses and avoiding the pitfall of ambiguity in the . . . Rule.”⁴⁰³ However, as already noted above, based on the comments and on the proposed definition for the phrase “unjustified legal threat,” the Commission is adopting a definition for the phrase “unfounded or groundless legal threat,” instead of a definition of the phrase “unjustified legal threat,” as originally proposed.⁴⁰⁴

A trade association commenter noted that “‘intimidation’ means threat of the use of force” so it “duplicates ‘physical threat’” and should be deleted.⁴⁰⁵ A review platform commenter questioned why the “proposed text is limited to ‘physical threats’” and said that non-physical threats, such as verbal threats in the form of abusive or coercive language, should not be tolerated and should be acted against.⁴⁰⁶ A consumer group’s comment said that “[t]he term ‘intimidation’ seems sufficiently broad to cover most types of threats not otherwise covered by ‘legal’ or ‘physical’ threats.”⁴⁰⁷ The Commission disagrees with the first commenter because, in this context, “intimidation” means things other than legal or physical threats. Intimidation can include abusive communications, stalking, character assassination, and sexual harassment when those things are used to intimidate, that is to force someone into or deter someone from taking some action by inducing fear.⁴⁰⁸

Three commenters voiced concerns about the fact that proposed § 465.7(a) included “false accusation[s]” as a type of conduct that could amount to review suppression. A review platform noted that the determination of whether an accusation is false “introduces an element of subjectivity,” and that it would “be preferable to ground this in a legal basis, such as defamation.”⁴⁰⁹ A trade association wrote that “a statement by a business about a consumer review or the consumer making a review may sometimes be in order,” and a prohibition on false

accusations should “allow breathing room for First Amendment free speech concerns, such as requiring a guilty mental state from the maker of an accusation before culpability attaches.”⁴¹⁰ It recommended adding “knowing that it is false or with reckless disregard as to its truth or falsity.”⁴¹¹ A second trade association asserted that proposed § 465.7(a) was “not narrowly tailored to serve a compelling state interest because it applies regardless of the magnitude of the alleged error or intent or state of mind of the business that makes the false statement.”⁴¹² In order to illustrate its point, the second trade association also posited a scenario involving false accusations by a restaurant owner in a private conversation with a disgruntled patron.⁴¹³ The owner in the hypothetical did not know the accusations were false and did not act recklessly. In response to these comments, final § 465.7(a) adopts the phrase “a public false accusation in response to a consumer review that is made with the knowledge that the accusation was false or made with reckless disregard as to its truth or falsity,” rather than the phrase “false accusation,” as originally proposed. This change resolves the commenters’ concerns regarding the accuser’s state of mind, clarifies the Commission’s intent that the provision applies only to public accusations, and provides greater clarity, thereby making compliance less burdensome. In response to the concern about subjectivity, the Commission notes that courts can make objective determinations of whether a given accusation is false. One of these commenters also asserted broadly that § 465.7(a) “regulates ‘pure speech,’ not conduct, because it applies to the use of words to convey a message” and that speech is not commercial speech if it does not propose a commercial transaction.⁴¹⁴ This assertion has no basis in First Amendment law and is an overly limited articulation of what counts as commercial speech. When a business makes a public false accusation in response to a consumer review in an attempt to cause the review to be removed, the speech at issue is clearly commercial speech because it is intended to promote the product, service, or business that was the subject of the negative consumer review.

Two commenters, a review platform and a trade association, said that the

provision should be strengthened by also covering attempts to force a consumer review or a portion thereof to be changed or edited.⁴¹⁵ Proposed § 465.7(a) would have prohibited certain acts made in an attempt to, among other things, “cause a consumer review or any portion thereof to be removed.” The Commission believes that, in most cases, changing or editing a review would necessarily require removing a portion of it. Accordingly, the Commission is clarifying that final § 465.7 applies to such modifications of reviews by adding “whether or not that review or a portion thereof is replaced with other content,” immediately after “cause a consumer review or any portion thereof to be removed.”

A trade association’s comment asked that the “Rule be clarified to emphasize that it does not prohibit companies from contacting customers who post negative reviews to resolve the reported issues.”⁴¹⁶ The commenter was concerned that “sensitive customers could argue that such communication from the Company (no matter how innocuous) amounts to intimidation.”⁴¹⁷ The Commission does not believe that a company engages in intimidation by merely contacting customers to resolve reported issues or simply asking satisfied customers to update their reviews. Specifying that a consumer’s concerns will be addressed only if the consumer changes or removes a truthful negative review may be an unfair or deceptive act or practice that has the effect of distorting or otherwise misrepresenting what consumers think of a marketer’s products,⁴¹⁸ but that issue is beyond the scope of this rulemaking.

A consumer organization’s comment said that, “[l]ust as businesses may use threats or intimidation to prevent a consumer from leaving a negative review, they may use similar tactics to ensure receipt of a positive review,” thus concluding that § 465.7(a)’s “prohibitions . . . should also apply to compelled creation of positive reviews.”⁴¹⁹ Although compelling the creation of positive reviews through threats or intimidation may be an unfair or deceptive act or practice, the

⁴⁰² Transparency Company Cmt. at 14; Family First Life Cmt. at 15.

⁴⁰³ Family First Life Cmt. at 15.

⁴⁰⁴ See *supra* section IV.A.2.1 of this document.

⁴⁰⁵ NFIB Cmt. at 4.

⁴⁰⁶ Trustpilot Cmt. at 17.

⁴⁰⁷ Consumer Reports Cmt. at 10.

⁴⁰⁸ See *Intimidate* (def. 3), *Dictionary.com*, LLC, <https://www.dictionary.com/browse/intimidate> (last visited July 5, 2024) (establishing that the word “intimidate” means, among other things, “to force into or deter from some action by inducing fear”).

⁴⁰⁹ Trustpilot Cmt. at 17.

⁴¹⁰ NFIB Cmt. at 4.

⁴¹¹ *Id.* at 5.

⁴¹² ANA Cmt. at 10.

⁴¹³ *Id.* at 9–10.

⁴¹⁴ *Id.*

⁴¹⁵ Yelp Cmt. at 7; CCIA Cmt. at 4.

⁴¹⁶ NRF Cmt. at 12.

⁴¹⁷ *Id.*

⁴¹⁸ See Endorsement Guides, 16 CFR 255.2(d).

⁴¹⁹ Consumer Reports Cmt. at 9. Although it does not involve § 465.7(a), a business urged the Commission to “deter meritless legal threats by platforms against providers and users of pro-consumer tools.” Mozilla Cmt. at 6. Such threats are beyond the scope of this rulemaking.

Commission declines to address that practice in this rulemaking at this time.

A dental trade association expressed that, because Federal and State privacy laws prohibit dentists and other health care providers from disclosing patient information, their ability to correct the record when they are themselves a target of deceptive or unfair reviews is limited.⁴²⁰ The commenter asked the Commission to permit dentists and other health care providers to disclose patient information in response to a review (limited to the scope of the topics addressed in the review) without violating any FTC privacy-based prohibitions.⁴²¹ This request is beyond the scope of this rulemaking.

2. § 465.7(b)

Proposed § 465.7(b) sought to prohibit a business from misrepresenting, “expressly or by implication, that the consumer reviews of one or more of its products or services displayed on its website or platform represent most or all the reviews submitted to the website or platform when reviews are being suppressed (*i.e.*, not displayed) based upon their ratings or their negativity.” Proposed § 465.7(b) enumerated reasons for suppressing reviews that would not be considered suppression based upon their ratings or their negativity, so long as the criteria for withholding reviews are applied to all reviews submitted without regard to the favorability of the review. Proposed § 465.7(b) listed the following valid reasons for review suppression: (1) “the review contain[ed] . . . [(a)] trade secrets or privileged or confidential commercial or financial information, . . . [(b)] libelous, harassing, abusive, obscene, vulgar, or sexually explicit content, . . . [(c)] the personal information or likeness of another person, . . . [(d)] content that is discriminatory with respect to race, gender, sexuality, ethnicity, or another protected class, or . . . [(e)] content that is clearly false or misleading;” (2) “the seller reasonably believe[d] the review is fake;” or (3) “the review is wholly unrelated to the products or services offered by or available at the website or platform.” Based on the following, the Commission has determined to finalize this prohibition with some modifications.⁴²²

Multiple commenters said that the practice of product sellers suppressing less favorable reviews was problematic. One individual commenter said they were “[d]isgusted by businesses who[] filter/have control over their . . . reviews.”⁴²³ Another individual commenter stated that “[t]he removal of reviews that are critical, but accurate of the service or good creates an illusion and ultimately, defrauds the consumer of their choice,” but also worried about how “the FTC [will] catch companies that delete negative reviews.”⁴²⁴ A third individual commenter said that the “Rule should prohibit businesses from suppressing . . . honest negative reviews.”⁴²⁵ A fourth individual commenter wrote that “[b]usiness should be barred from misrepresenting reviews on their websites and from suppressing negative reviews.”⁴²⁶ The State Attorneys General said that, when “a merchant . . . only posts positive consumer reviews on its website, instead of both favorable and negative reviews, [it] can potentially mislead consumers into believing that such reviews represent most or all of the reviews submitted to the merchant’s website.”⁴²⁷ A retailer wrote that it “support[s] the goals of section 465.7[(b)], which prohibits sellers from suppressing customer reviews based on their negativity” and “believe[s] that it is critically important that customers not be deprived of useful, negative feedback when deciding whether to purchase a product.”⁴²⁸

The NPRM asked whether “it [is] appropriate that proposed § 465.7(b) is limited to circumstances in which reviews are being suppressed based on rating or negativity,” and a business commenter agreed that it was.⁴²⁹

A trade association commenter said “that the Commission has . . . failed to satisfy the requirement that the specific unfair or deceptive acts or practices identified in the rule be prevalent.”⁴³⁰ According to the commenter, “The rulemaking record cites only one case, one closing letter, and one comment in support of the Commission’s conclusion that review suppression is prevalent.”⁴³¹ The commenter

“material” misrepresentations. Nonetheless, in the context of § 465.7(b), the Commission believes that all such misrepresentations would likely always be material.

⁴²³ Hippensteel Cmt.

⁴²⁴ Superguest Cmt.

⁴²⁵ Ravnitzky Cmt. at 2.

⁴²⁶ TT in PA Cmt.

⁴²⁷ State AGs Cmt. at 3.

⁴²⁸ Amazon Cmt. at 12.

⁴²⁹ Transparency Company Cmt. at 14.

⁴³⁰ IAB Cmt. at 11.

⁴³¹ *Id.*

understates the significance of the evidence that the Commission considered in finding that the suppression of reviews based upon their rating or sentiment is prevalent. The closing letter to Yotpo, a company that provided review management services, is significant because the investigation revealed that more than 4,500 Yotpo merchant clients were automatically publishing only 4- or 5-star reviews and that most 1-star reviews and 2-star reviews submitted to those merchants were suppressed.⁴³² The investigation of Yotpo shows that there was widespread suppression of negative reviews. The Commission thus has a strong basis for its conclusion that the suppression of negative reviews on retailer or business websites is prevalent.

A review platform’s comment suggested changing “based upon their ratings or their negativity” to “based upon their ratings or their sentiment” because “reviews can be difficult to categorize as wholly ‘negative’ or ‘positive.’”⁴³³ The Commission intended for the phrase “based upon their ratings or their negativity” to refer to the suppression of reviews based on their ratings or their sentiment. However, in light of the comment, the Commission now realizes that the use of the word “negativity” in this context could be subject to misinterpretation and be construed to imply that a review must be wholly negative for its suppression to be problematic. Accordingly, the Commission is clarifying its original intent by changing “their negativity” to “their negative sentiment.” The commenter also said that “consumer harm may result if someone suppresses a review, regardless of the sentiment expressed in the review.”⁴³⁴ The Commission is not expanding the rule to address other types of review suppression not based on ratings or negative sentiment. There are numerous legitimate reasons for suppressing consumer reviews, including those listed in § 465.7(b)(1), (2), and (3). Furthermore, such an expansion would be beyond the scope of the rulemaking.

A trade association’s comment requested that the Commission “carve out the use of reviews in marketing materials” because the provision “could effectively prohibit retailers from highlighting any customer reviews in advertising—even though customers understand that advertising normally highlights particularly positive

⁴³² NPRM, 88 FR 49376.

⁴³³ Yelp Cmt. at 7–8.

⁴³⁴ *Id.*

⁴²⁰ ADA Cmt. at 1.

⁴²¹ *Id.* at 1–2.

⁴²² One modification, discussed above, is changing “its products or services” to “the products and services it sells.” See *supra* section IV.B.4. of this document. Another modification discussed above is changing “person” to “individual.” See *supra* section IV.A.2.b of this document. As it has done elsewhere in the rule, the Commission is limiting the misrepresentations prohibited to

reviews.”⁴³⁵ The Commission did not intend for proposed § 465.7(b) to cover the use of consumer reviews in marketing materials. Specifically, proposed § 465.7(b) was only intended to cover misrepresentations about the body of reviews in a “reviews” section of a website or platform—that is, a portion of a website or platform dedicated in whole or in part to receiving and displaying consumer reviews—and not misrepresentations about whether a highlighted review is “representative.” The Commission is clarifying this by changing “displayed on its website or platform” to “displayed in a portion of its website or platform dedicated in whole or in part to receiving and displaying consumer reviews.” The Commission notes however, that the use of non-representative consumer reviews in marketing could be deceptive in violation of section 5 of the FTC Act.⁴³⁶

A trade association asked that the Commission “clarify what it means for a review to be “suppressed (*i.e.*, not displayed).”⁴³⁷ The trade association said that “[m]any businesses that operate websites that display consumer reviews will organize those reviews in reasonable ways to help consumers navigate what might be a large corpus of varying consumer commentary” and that, “[i]f a business takes reasonable steps to organize their reviews, those reviews should not be considered ‘suppressed.’”⁴³⁸ The Commission agrees that organizing reviews does not qualify as suppressing reviews. The Commission notes, however, that organizing reviews in a way that makes it difficult for consumers to know about or find negative reviews could be an unfair or deceptive act or practice in violation of section 5 of the FTC Act. The commenter also asked that the Commission change “not displayed” to “not displayed or accessible.”⁴³⁹ The Commission is instead clarifying its original intent by changing “not displayed” to “not displayable,” so that the provision only covers reviews that consumers will be unable to view even

if they were to sort or filter the reviews differently. Another trade association’s comment said that “the Rule should explicitly allow retailers to sort reviews by objective measures unrelated to the positivity of the review, where the sorting method is disclosed.”⁴⁴⁰ As modified, § 465.7(b) does not prohibit the sorting or organization of reviews, so the proposed modification is unnecessary.

Four industry commenters argued that there are legitimate reasons for suppressing consumer reviews beyond those listed in proposed § 465.7(b).⁴⁴¹ One of these commenters, a retailer, gave examples of other legitimate reasons for suppressing a review: “describing violence, encouraging illegal activities or misuse of the product, incorporating hyperlinks that could jeopardize customer online safety, or using a language not supported by the website.”⁴⁴² Three of the industry commenters said that, by limiting review suppression to the listed reasons, the provision violated the First Amendment and section 230 of the Communications Decency Act,⁴⁴³ and all four asked the Commission to clarify that the listed reasons are not exhaustive.⁴⁴⁴ The Commission agrees that there are legitimate reasons for suppressing reviews beyond those listed and is clarifying that the listed criteria for review suppression are non-exhaustive examples.

Proposed § 465.7(b) provided that suppression was not violative “so long as the criteria for withholding reviews are applied to all reviews submitted without regard to the favorability of the review.” The Commission is clarifying that the criteria must be applied to all reviews equally. Additionally, to be consistent with the above clarification regarding sentiment, the Commission is changing “without regard to the favorability of the review” to “without regard to sentiment.”

An individual commenter asked whether a company could “have a policy of not posting reviews that mention other products” or suppress a review that is “patently false (wrong company, wrong product, wrong

location, *etc.*).”⁴⁴⁵ As long as the policy is applied to all reviews equally, those could be legitimate reasons for suppressing reviews.

A trade association commented that one of the listed, acceptable reasons for suppressing reviews is too limited. Specifically, it said that “libelous” reviews would not cover reviews with an oral component that were “slanderous,” and it thus recommended using the word “defamatory.”⁴⁴⁶ The Commission intended to cover all defamatory consumer reviews, not just written ones, and the Commission is making that clarification.

Another one of the listed, acceptable reasons for suppressing reviews was that “the seller reasonably believes the review is fake.” A review platform commented that it is important that this criteria “cannot be used by a business to seek to censor consumer reviews based on a valid experience” and said that, without information about the reviewer, the reviewer’s location, and the reviewer’s other reviews, “it can be difficult to accurately identify fake reviews.”⁴⁴⁷ One individual commenter wrote that this “is overbroad and gives sellers leeway to suppress reviews at their discretion so long as they claim a belief that said reviews were fake.”⁴⁴⁸ The commenter recommended “revising this provision to add specificity and identify the parameters of what a fake review looks like.”⁴⁴⁹ A seller does not risk liability if the suppression occurs for a reason other than the review’s rating or negative sentiment. The provision’s phrase “such as” recognizes that it is proper to suppress reviews for legitimate reasons. For this specific enumerated exception, “the seller [only needs to] reasonabl[y] believe[] the review . . . [to be] fake.” Thus, if there are indicia that would lead a reasonable person to believe that the review is fake, the seller would meet this exception.

A different, listed acceptable reason for suppressing reviews was “content that is discriminatory with respect to race, gender, sexuality, ethnicity, or another protected class.” The Commission is changing “protected class” to “intrinsic characteristic” in order to more closely echo the language in the CRFA on which the reason is based.⁴⁵⁰

⁴³⁵ NRF Cmt. at 12.

⁴³⁶ An individual commenter said it would be helpful to have rule language “around a business being allowed to highlight specific testimonial reviews on their website as long as there is a disclaimer or prominent indication that the page does not represent all reviews for the business.” Anonymous 3 Cmt. The rule does not prohibit such “highlighting” of specific reviews or testimonials, but the creation of a safe harbor for such highlighting is beyond the scope of the rule. In addition, the Commission believes that the wording of the proposed disclosure is likely inadequate.

⁴³⁷ IAB Cmt. at 11.

⁴³⁸ *Id.* at 11–12.

⁴³⁹ *Id.* at 12.

⁴⁴⁰ NRF Cmt. at 13.

⁴⁴¹ IAB Cmt. at 11; Technet Cmt. at 3; Amazon Cmt. at 12; NRF Cmt. at 13.

⁴⁴² Amazon Cmt. at 12. A different commenter gave the example of a snowstorm “obstruct[ing] the delivery of a package to a buyer who could claim failure to deliver on time.” TechNet Cmt. at 3. The Commission does not agree that this is a legitimate reason for suppressing consumer reviews.

⁴⁴³ IAB Cmt. at 12; Amazon Cmt. at 12; NRF Cmt. at 13.

⁴⁴⁴ IAB Cmt. at 11; TechNet Cmt. at 3; Amazon Cmt. at 12; NRF Cmt. at 12–13.

⁴⁴⁵ Anonymous 4 Cmt.

⁴⁴⁶ NFIB Cmt. at 5.

⁴⁴⁷ Trustpilot Cmt. at 18.

⁴⁴⁸ Madeline D’Entremont, Cmt. on NPRM at 1 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0064>.

⁴⁴⁹ *Id.*

⁴⁵⁰ See Consumer Review Fairness Act of 2016 § 2(b)(2)(C)(i), 15 U.S.C. 45b(b)(2)(C)(i).

A trade association noted that the “FTC should not prohibit sellers from excluding reviews that solely discuss service experience and do not include comments on the product.”⁴⁵¹ The rule as clarified does not prohibit suppressing reviews that solely discuss customer service as long as the criteria is applied equally to all reviews. The Commission notes, however, that it has expressed the view that suppressing customer reviews about a “particular seller’s customer service, delivery, returns, and exchanges” can be deceptive in violation of section 5 of the FTC Act.⁴⁵²

A consumer organization expressed concern that proposed § 465.7(b) “allows businesses to suppress reviews when they contain ‘harassing,’ ‘abusive,’ or ‘obscene’ content, which are highly subjective terms likely to be interpreted broadly by businesses that have a clear interest in suppressing reviews that may harm their public perception.”⁴⁵³ The commenter suggested that, “to preserve the public benefit of reviews that contain instances of objectionable content,” the Commission could “allow businesses to redact such content but require them to leave the remainder of the review along with any corresponding score or numerical rating available for public consumption.”⁴⁵⁴ Appropriate redaction of portions of consumer reviews may be difficult or infeasible in some instances. The Commission declines to impose such a requirement at this time.

The State Attorneys General asked in their comment that the Commission “delete[] the phrase ‘based upon their ratings or their negativity’ at the end of the first sentence.”⁴⁵⁵ The State Attorneys General’s reasoning for this request was that the language is unnecessarily limiting and superfluous” because “a company seeking to suppress negative reviews could potentially succeed by offering reasons that are proxies for negativity” and “any legitimate suppression should already be sufficiently covered by the robust carve-outs set forth in § 465.7(b)(1).”⁴⁵⁶ The Commission declines to make that change, as the enumerated “carve-outs” do not exhaustively identify every legitimate reason for suppressing reviews.

A business organization asserted that proposed § 465.7(b) “implies a ‘gross feedback score’ must be disclosed along

with the ‘net feedback score,’ which is the actual number of reviews viewable to a user.”⁴⁵⁷ The commenter is incorrect, as § 465.7(b) contains no such disclosure requirements.

An individual commenter expressed concern as to how the FTC will “catch companies that delete negative reviews” and suggested offering rewards “for individuals or organizations to help address” the problem.⁴⁵⁸ The Commission will use the investigative and law enforcement tools at its disposal to identify bad actors who suppress reviews.

In connection with proposed § 465.7(b), several commenters recommended that the Commission impose additional consumer review-related requirements. An individual commenter asked the Commission to “require businesses to display consumer reviews in a fair and transparent manner, such as by allowing consumers to choose how they want to sort or filter reviews, and by disclosing any criteria or algorithm that they use to rank or highlight reviews.”⁴⁵⁹ Another individual commenter said that “companies . . . should be required to maintain and periodically disclose records of review suppression,” which would, at a minimum, “contain the number of reviews suppressed at each rating level and an associated justification.”⁴⁶⁰ A review platform recommended the Commission expand the scope of the rule to (1) prevent reviews from “being misquoted and manipulated via quoting select parts of reviews,” and (2) require that the criteria on which consumer reviews are selected for showcasing (e.g., on a website carousel) be made clear.⁴⁶¹ A consumer organization commented that consumers should be able to assume that the reviews that they see on a business’s website are representative of the reviews the business receives, and if “a business wishes to curate reviews, the business should have the burden to transparently communicate the fact and nature of the curation to consumers.”⁴⁶² One individual commenter asked that the proposed rule be “extended to include penalties for Pay-to-Play platforms that engage in practices such as manipulating ratings and suppressing negative reviews for businesses that

advertise on their websites,”⁴⁶³ and another commenter thought the rule should cover “companies that profit from shaming businesses by posting negative reviews while unilaterally determining positive reviews are ‘unverified’—effectively holding any positive sentiment back until the business subscribes to the platform.”⁴⁶⁴ Some of these proposed requirements are beyond the scope of this rulemaking, although some of the acts and practices described may be deceptive or unfair in violation of section 5 of the FTC Act. For example, misquoting reviews can be deceptive⁴⁶⁵ and showcasing or curating reviews might deceptively represent that the reviews presented are representative or typical of the reviews received. Based on its policy expertise, the Commission declines to address any of these practices in this rulemaking at this time.

H. § 465.8—Misuse of Fake Indicators of Social Media Influence

Proposed § 465.8(a) sought to prohibit anyone from selling or distributing fake indicators of social media influence that can be used by persons or businesses to misrepresent their influence or importance for a commercial purpose. Proposed § 465.8(b) sought to prohibit anyone from purchasing or procuring fake indicators of social media influence to misrepresent their influence or importance for a commercial purpose. Based on the following, the Commission has determined to finalize these prohibitions with certain modifications.⁴⁶⁶

Several commenters raised concerns about the meaning of the term “fake” in the context of indicators of social media influence. A trade association asked, “Does ‘fake’ only mean that the likes and followers were created by bots or through fake accounts? If a social media influencer were to recommend that their followers also follow another business’ social media account, would that also be ‘procuring’ of ‘fake’ indicators of social media influence? . . . If the FTC means to capture a specific category of ‘likes,’ ‘follows,’ or other metrics that do not reflect any real opinions, findings, or experiences with the marketer or its products or services, it should make that

⁴⁶³ Anonymous 11, Cmt. on NPRM (Aug. 16, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0022>.

⁴⁶⁴ Anonymous 4 Cmt.

⁴⁶⁵ Endorsement Guides, 16 CFR 255.0(g)(1) and 255.1(b).

⁴⁶⁶ One modification is changing “Rule” to “part.” Another modification, discussed above, is changing “persons” to “individuals.” See *supra* section IV.A.2.b of this document.

⁴⁵¹ RILA Cmt. at 4.

⁴⁵² Endorsement Guides, 16 CFR 255.2(e)(8)(ii).

⁴⁵³ Consumer Reports Cmt. at 10.

⁴⁵⁴ *Id.*

⁴⁵⁵ State AGs Cmt. at 4.

⁴⁵⁶ *Id.*

⁴⁵⁷ TechNet Cmt. at 3.

⁴⁵⁸ Superguest Cmt.

⁴⁵⁹ Ravnitzky Cmt. at 2.

⁴⁶⁰ Rob Levy, Cmt. on NPRM at 2 (Sept. 22, 2023), <https://www.regulations.gov/comment/FTC-2023-0047-0057>.

⁴⁶¹ Trustpilot Cmt. at 18.

⁴⁶² Consumer Reports Cmt. at 11.

intention more clear.”⁴⁶⁷ A retailer asked for “confirmation . . . that this provision would not apply where companies award legitimate indicators of influence to certain users upon satisfaction of objective criteria, even if those individuals are later discovered to have circumvented or abused those criteria.”⁴⁶⁸ A second trade association said that, “[w]hen . . . indicators are awarded based on legitimate criteria, they serve this informative and non-deceptive purpose” and the “innovative companies that develop these indicators of influence should not be punished if bad actors try to abuse the processes,” so the Commission “should . . . clarify that this section applies to true ‘fake’ indicators of social media influence.”⁴⁶⁹ In response to these comments, the Commission is clarifying what it intended as “fake indicators of social media influence.” For this purpose, the final rule includes a definition of the phrase “fake indicators of social media influence” in § 465.1(h), which defines the phrase as indicators of social media influence derived from bots, purported individual accounts not associated with a real individual, accounts created with a real individual’s personal information without their consent, hijacked accounts, or that otherwise do not reflect a real individual’s or entity’s activities, opinions, findings, or experiences. If a social media influencer were to recommend that their followers also follow another social media account, any resulting followers of the second account would not be “fake.” If a company awards legitimate indicators of influence to certain users upon satisfaction of objective criteria reflecting the influence of the users, the company would not be selling “fake” indicators, even if bad actors were able to deceive the company.

Three commenters addressed the section’s lack of a knowledge requirement. A retailer commenter wrote that “a business could be in violation of this provision even if it innocently sold or procured a fake indicator, without knowledge or any indication that the indicator was fake,” which it said “is patently unreasonable.”⁴⁷⁰ A second retailer similarly “recommend[ed] that the rule be revised so that it only applies when the seller/buyer knows the indicators are fake.”⁴⁷¹ A trade association suggested “revising this section to

additionally require that the seller or purchaser act ‘with knowledge that the indicators of influence are fake.’”⁴⁷² The Commission recognizes that someone could think that they were paying for a promotional campaign to increase their followers but, unbeknownst to the purchaser, the entity offering the campaign was lying and just providing fake followers. It is also possible that a company might bestow a legitimate indicator of social media influence, like a seal, that the company does not know is based upon or derived from fake indicators of social media influence. The Commission is therefore narrowing the provision by adding “that they knew or should have known to be fake” to both § 465.8(a) and (b).

A trade association’s comment asserted that “the Commission failed to meet the prevalence requirement” because “the evidence the Commission . . . cited in the NPRM . . . all relate[s] to the use of actual ‘fake’ indicators of influence that the seller or purchaser knew were fake.”⁴⁷³ The Commission believes that, with the addition of the definition of “fake indicators” and the knowledge requirement, it has sufficiently addressed the commenter’s concerns.

A trade association expressed concern that the provision would “hold[] retailers vicariously liable for the actions of independent endorsers,” that is, the influencers and other endorsers that they hire.⁴⁷⁴ That was not the Commission’s intention. The distribution of fake indicators of social media influence was intended to mean the distribution to individuals or businesses who could use the indicators to misrepresent their influence, not causing the dissemination of social media by users of such fake indicators, e.g., by hiring influencers who happen to have fake followers. The Commission is clarifying this intent by adding a definition of “distribute fake indicators of social media influence” in § 465.1(g).

Although no commenter specifically raised the issue in the context of § 465.8, the Commission is adding the concept of materiality to both § 465.8(a) and (b) in terms of the scope of misrepresentations covered therein, so as to be consistent with other parts of the rule.

A consumer organization said in its comment that the Commission “should clarify that ‘procure’” in § 465.8(b) “includes the creation of automated bot or other fake accounts that ‘follow’ or

‘subscribe’ to an account, artificially inflating the popularity of that account.”⁴⁷⁵ The Commission declines to make this change. It is not the creation of the bot or fake account, itself, that the rule makes illegal, but the use of the bot or fake account to follow another user, watch another user’s videos, or create other fake indicia of social media influence. The same commenter said the Commission should “remove the word ‘fake’ from the Rule to clarify that it covers the purchase or procurement of any social media engagement . . . from both real and fake accounts unless those incentives can be disclosed to people who can view the engagement.”⁴⁷⁶ The use of incentivized indicia of social media influence is not necessarily deceptive in all cases, and it is beyond the scope of this rulemaking.

Finally, a trade association and a retailer suggested changing the prohibition in § 465.8(a) from selling or distributing fake indicators that “can be used” by persons to misrepresent their influence to those that “are used” by persons to misrepresent their influence.⁴⁷⁷ The trade association said that “[a]pplying this section to indicators of social media influence that ‘can be’ used for this purpose, but are not, would mean that the rule prohibits conduct that is not deceptive.”⁴⁷⁸ Such fake indicators are not physical products that people collect and then use later as desired. Instead, their existence is premised on and limited to situations in which they appear deceptively on a social media site. Therefore, any person or business that obtains fake indicators of social media influence is misrepresenting their social media influence. While some individuals may not be doing so for a commercial purpose, those individuals are excluded from the rule’s scope. Further, a person or entity that is in the business of selling or distributing fake indicia of social media influence is engaging in commerce, and it is unreasonable to posit that no buyers would use such indicia to misrepresent their social media influence for a commercial purpose. The Commission therefore declines to make the suggested modification.

I. § 465.9—Severability

Proposed § 465.9 provided that the provisions of the rule are separate and severable from one another and that, if any provision is stayed or determined to

⁴⁶⁷ ANA Cmt. at 17–18.

⁴⁶⁸ Amazon Cmt. at 13.

⁴⁶⁹ IAB Cmt. at 13.

⁴⁷⁰ Hammacher and Schlemmer Cmt. at 7.

⁴⁷¹ Amazon Cmt. at 13.

⁴⁷² IAB Cmt. at 13.

⁴⁷³ *Id.* at 12.

⁴⁷⁴ NRF Cmt. at 13.

⁴⁷⁵ Consumer Reports Cmt. at 11.

⁴⁷⁶ *Id.*

⁴⁷⁷ IAB Cmt. at 13; Amazon Cmt. at 13.

⁴⁷⁸ IAB Cmt. at 13.

be invalid, the remaining provisions shall continue in effect. The Commission did not receive any comments regarding proposed § 465.9. The Commission is changing “shall continue in effect” to “will continue in effect” which is more precise. With that clarification, the Commission is finalizing § 465.9.

V. Final Rule

For the reasons described above, the Commission has determined to adopt the provisions of §§ 465.1, 465.2, and 465.4 through 465.9 with clarifying or limiting modifications. The Commission declines to finalize proposed § 465.3 regarding consumer review or testimonial reuse or repurposing.

VI. Final Regulatory Analysis Under Section 22 of the FTC Act

Under section 22 of the FTC Act, the Commission, when it promulgates any final rule for a “rule” as defined in section 22(a)(1), must include a “final regulatory analysis.” 15 U.S.C. 57b–3(b)(2). The final regulatory analysis must contain (1) a concise statement of the need for, and objectives of, the final rule; (2) a description of any alternatives to the final rule which were considered by the Commission; (3) an analysis of the projected benefits, any adverse economic effects, and any other effects of the final rule; (4) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and (5) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues. 15 U.S.C. 57b–3(b)(2)(A)–(E).

The Commission received several comments that included elements that the Commission identified as specifically in response to the preliminary regulatory analysis. Two trade associations asserted that compliance costs would be higher than estimated by the Commission. These associations stated that the risk of statutory penalties would lead many of their members to engage in compliance activities beyond those assumed for the high-cost compliance scenario in the NPRM.⁴⁷⁹ In the preliminary regulatory

analysis, the high-cost compliance scenario assumed an average compliance burden of 8 hours of attorney time for firms with greater than 500 employees. This average is consistent with some firms, especially the largest ones in industries more reliant on reviews and testimonials, choosing to make more extensive improvements to their compliance programs. In addition, the Commission has narrowed the rule and clarified the rule requirements as described in section IV of this document. For these reasons, the Commission continues to believe the high-cost scenario likely overestimates compliance costs, and chooses to not modify its estimate of possible compliance costs for that scenario, but it does present a sensitivity analysis below that assesses what effect systematic underestimation of compliance costs would have on the rule’s net benefits to the public.

One individual commenter asserted that the benefits the Commission estimated in the NPRM did not justify the estimated compliance costs because the same results could be obtained using the FTC’s existing section 5 authority.⁴⁸⁰ As explained in detail in this final regulatory analysis, the Commission believes that the final rule will increase deterrence of unfair or deceptive acts or practices involving consumer reviews and testimonials relative to relying on its existing authority and that the net benefits of the rule justify its promulgation.

A second individual commenter claimed that it was unreasonable to assume that the rule would eliminate the entire loss to consumers, in terms of choosing products optimally, from the impact of bad information in false reviews. The commenter asserted that deterrence would be only partial because some circumstances would make it difficult to identify such reviews.⁴⁸¹ The Commission believes that its estimate of the benefits of *reducing* manipulated reviews is appropriate, as discussed further below. However, the Commission presents additional sensitivity analysis below that assesses the effect of systematic overestimation of the degree to which the rule would fix review manipulation, and determines that, even conceding that point, the quantified net benefits are highly positive.

system/files/ftc_gov/pdf/r311003iabpetition20240212.pdf. As noted above, the presiding officer at that hearing found that IAB had not shown that compliance costs would be more than minimal.

⁴⁸⁰ Camp-Martin Cmt. at 2–3.

⁴⁸¹ Slezak Cmt. at 3.

Finally, a business offering third-party review fraud detection tools offered research that it claimed showed that the rule would generate benefits of \$180.83 billion and that the benefits would outweigh the costs 100:1.⁴⁸² These estimates are similar to those of the Commission.

A. Need for, and Objectives of the Final Rule

The Commission believes that the final rule will substantially improve its ability to combat certain specified, clearly unfair or deceptive acts or practices involving consumer reviews or testimonials. Although such unfair or deceptive acts or practices are already unlawful under section 5 of the FTC Act, the rule will increase deterrence of such conduct by allowing courts to impose civil penalties against the violators. In addition, the final rule will allow the Commission to seek court orders requiring violators to compensate consumers for the harms caused by their unlawful conduct. The Commission believes that the rule will accomplish these goals without significantly burdening honest businesses and that the rule will provide significant benefits to consumers and honest competitors.

The final rule will allow courts to impose civil penalties under section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A), against those who engage in the deceptive or unfair conduct that the final rule prohibits. The ability to obtain civil penalties is important because it can be difficult to quantify consumer losses that stem from the use of unfair or deceptive consumer reviews and testimonials. Without civil penalties, persons who engage in such conduct might avoid monetary consequences for their unlawful conduct simply because there is insufficient evidence to link their unlawful conduct to quantifiable losses suffered by consumers. And if there are no monetary consequences, potential wrongdoers have little incentive to refrain from engaging in unlawful practices. Because the final rule will allow courts to impose civil penalties for violations, it provides the deterrence necessary to incentivize compliance with the law, even in cases where it is difficult to quantify consumer harm.

In addition, the final rule is necessary to allow the Commission to recover redress more efficiently to redress consumer harm resulting from the unfair or deceptive use of reviews or testimonials. In 2021, the U.S. Supreme Court in *AMG Capital Management, LLC*

⁴⁷⁹ NRF Cmt. at 2–3, 13–14; IAB Cmt. at 5, 15. IAB also raised this issue in the context of the informal hearing discussed above in section I of this document. See, e.g., *Petition by Interactive Advertising Bureau to Designate Disputed Issues of Material Fact* (Feb. 12, 2024), <https://www.ftc.gov/>

⁴⁸² Transparency Company Cmt. at 6–9.

v. *FTC*⁴⁸³ ruled that section 13(b) of the FTC Act⁴⁸⁴ did not authorize the Commission to seek court orders requiring wrongdoers to return money unlawfully taken from consumers through unfair or deceptive acts or practices or give up the unjust gains they earned from engaging in such unlawful conduct. The *AMG* ruling has made it significantly more difficult for the Commission to return money to injured consumers, particularly in cases that do not involve rule violations.⁴⁸⁵

Since *AMG*, the primary means for the Commission to return money unlawfully taken from consumers is section 19 of the FTC Act, 15 U.S.C. 57b, which provides two paths for consumer redress. The longer path, under section 19(a)(2), typically requires the Commission to first conduct an administrative proceeding to determine whether the respondent violated the FTC Act; if the Commission finds that the respondent did so, the Commission issues a cease-and-desist order, which might not become final until after the resolution of any resulting appeal to a Federal court of appeals. After the conclusion of the administrative proceeding (and any appeal), the Commission must initiate an action in Federal court to obtain monetary relief under section 19 and, in that action, the Commission must prove that the violator engaged in objectively fraudulent or dishonest conduct.⁴⁸⁶ In effect, the section 19(a)(2) pathway requires the Commission to file two separate actions to obtain monetary relief.

The more efficient path to monetary relief is under section 19(a)(1), which allows the Commission to recover redress in one Federal court action for violations of a Commission rule relating to unfair or deceptive acts or practices.⁴⁸⁷ Only a small portion of the

Commission's past cases challenging unfair or deceptive consumer reviews or testimonials involved rule violations that would allow the Commission to seek monetary relief under section 19(a)(1). With the final rule, however, the Commission will be able to use section 19(a)(1) to obtain redress for consumer losses attributable to violations of the rule.

Overall, outlawing egregious review and testimonial practices in the final rule expands the Commission's enforcement toolkit and allows it to deliver on its mission by stopping and deterring harmful conduct and, in some cases, making American consumers whole when they have been harmed. The unfair or deceptive acts or practices involving reviews and testimonials encompassed by this final rule are prevalent and harmful to consumers and honest businesses. Thus, the unlocking of additional remedies through this rulemaking—particularly, the ability to obtain civil penalties against violators and redress for consumers or others injured by the conduct—will allow the Commission to more effectively police and deter harmful review and testimonial practices that plague consumers and honest businesses.

B. Anticipated Costs and Benefits of the Final Rule

As discussed below, the Commission has determined that the rule's benefits greatly outweigh its costs. The rule promotes accuracy in reviews and testimonials by prohibiting certain unfair or deceptive acts or practices involving reviews and testimonials. Thus, this rule will help the vast majority of American consumers who rely on such reviews and testimonials to make better-informed purchase decisions. The rule prohibits (1) the creation, sale, purchasing, or procurement from insiders of fake or false reviews, and (2) buying of reviews conditioned on the reviews expressing particular sentiments. It also includes prohibitions on fake or false consumer or celebrity testimonials, certain insider reviews without adequate disclosures, misleading company-controlled review websites or entities, certain review suppression practices, and the misuse of fake indicators of social media influence.

In the analysis below, the Commission describes the anticipated impact of the rule. Where possible, the Commission quantifies the benefits and costs. If a benefit or cost is quantified, the Commission indicates the sources of the data relied upon. If an assumption is needed, the analysis makes clear which quantities are being assumed. The Commission measures the benefits and costs of the rule against a baseline in which no rule has been promulgated by the Commission. For the remainder of section VI, and in the interest of brevity, the term "reviews" collectively refers to both reviews and testimonials.

Quantifiable benefits stem from consumer welfare improvements and consumer time savings. With the rule, reviews will be more accurate overall, leading consumers to purchase higher-quality products or products that are better-matched to their preferences. The rule will also lead to more trustworthy aggregate review ratings (e.g., star ratings), leading some consumers to spend less time scrutinizing reviews to determine their validity. Quantifiable costs primarily reflect the resources spent by businesses to review the rule and to take any preemptive or remedial steps to comply with its provisions. Because the rule is an application of preexisting law under section 5 of the FTC Act, the Commission expects these compliance costs to be minimal.

A period of ten years is used in the baseline scenario because FTC rules are subject to review every ten years.⁴⁸⁸ Quantifiable aggregate benefits and costs are summarized as the net present value over this ten-year period in Table 1.1. The discount rate reflects society's preference for receiving benefits earlier rather than later; a higher discount rate is associated with a greater preference for benefits in the present. The present value is obtained by multiplying each year's net benefit by a discount factor raised to the power of the number of years in the future the net benefit accrues.

⁴⁸⁸ Fed. Trade Comm'n, Notice Announcing Ten-Year Regulatory Review Schedule and Request for Public Comment on the Federal Trade Commission's Regulatory Review Program, 76 FR 41150, 41150 (July 13, 2011), <https://www.govinfo.gov/content/pkg/FR-2011-07-13/pdf/2011-17513.pdf> ("all rules and guides are scheduled to be reviewed ten years after implementation and ten years after completion of a regulatory review.")

⁴⁸³ 141 S. Ct. at 1352.

⁴⁸⁴ 15 U.S.C. 53(b).

⁴⁸⁵ See ANPR, 87 FR at 67425, 67425 n.1 (discussing *AMG Cap. Mgmt.*).

⁴⁸⁶ See 15 U.S.C. 57b(a)(2) ("If the Commission satisfies the court that the act or practice to which the cease-and-desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief.")

⁴⁸⁷ Certain statutes, such as the Restore Online Shoppers' Confidence Act, 15 U.S.C. 8401–05, include provisions that treat violations of the statute as a violation of a rule for purposes of section 19(a)(1). See 15 U.S.C. 8404(a).

TABLE 1.1—PRESENT VALUE OF NET BENEFITS
[2024–2033 (in billions)]

	Present value: low-end estimate	Present value: high-end estimate
Total Benefits:		
3% Discount Rate	\$67.40	\$269.55
7% Discount Rate	57.03	230.44
Total One-Time Costs	0.87	0.00
Net Benefits:		
3% Discount Rate	66.53	269.55
7% Discount Rate	56.16	230.44

1. Estimated Benefits of the Final Rule

This section describes the beneficial impact of the rule, provides quantitative estimates where possible, and describes benefits that are only assessed qualitatively. The quantifiable estimates reflect benefits stemming from the decrease in online review manipulation on third-party platforms or company websites, which covers most of the prohibitions contained in the rule. This analysis does not calculate benefits from the other aspects of the rule—that is, the prohibitions on fake or false celebrity testimonials, company-controlled entities that deceptively purported to provide independent opinions, review suppression, and the misuse of fake indicators of social media influence—because of the limited quantitative research in these areas. Some of these benefits are likely to be substantial. The quantified benefits are presented by benefit category, rather than stemming from a specific provision of the rule, because the relevant provisions have the same end goal—that is, to improve the information available to consumers by reducing the level of review manipulation. Therefore, it is difficult to disentangle the benefits stemming from each provision.

Existing academic literature in economics, marketing, computer science, and other fields documents the importance of online reviews; specifically that the number of online reviews and aggregate ratings are extremely important for consumer purchase decisions. It is widely documented that the presence of online reviews improves consumer welfare via reductions in both search costs and the level of information asymmetry that exists prior to purchase.⁴⁸⁹

⁴⁸⁹ See, e.g., Dina Mayzlin, *Promotional Chat on the Internet*, 25(2) Mktg. Sci., 155–63 (2006).

When making purchase decisions, consumers typically have incomplete information on product quality and attributes. Searching for additional information is costly. Consumers incur costs—including time and effort costs—to seek, evaluate, and integrate incoming information. Online platforms where past users share information about their experiences can significantly lower search costs.

Researchers have also demonstrated that consumer reviews create value for consumers beyond a reduction in search costs. Consumers are better able to learn of a product’s quality and attributes when there is free-flowing, non-manipulated commentary from past consumers. Consumer reviews lead to “better” decisions by increasing the level of information available prior to purchase and reducing uncertainty. By the same token, the academic literature also documents that manipulated or fake reviews lead to reductions in consumer welfare by leading consumers to buy low-quality products or otherwise make suboptimal purchase decisions.⁴⁹⁰

A secondary benefit is deterrence of the specified review practices. The rule

⁴⁹⁰ See, e.g., Chrysanthos Dellarocas, *Strategic Manipulation of Internet Opinion Forums: Implications for Consumers and Firms*, 52(10) Mgmt. Sci., 1577–93 (2006), <https://www.jstor.org/stable/pdf/20110630.pdf>; Michael Anderson & Jeremy Magruder, *Learning from the Crowd: Regression Discontinuity Estimates of the Effects of an Online Review Database*, 122(563) Econ. J., 957–89 (2012); Michael Luca & Georgios Zervas, *Fake It Till You Make It: Reputation, Competition, and Yelp Review Fraud*, 62(12) Mgmt. Sci., 3412–27 (2016), <https://dash.harvard.edu/handle/1/22836596>; Jonathan Zinman & Eric Zitzewitz, *Wintertime for Deceptive Advertising?*, 8(1) Am. Econ. J. Applied, 177–92 (2016), <https://www.aeaweb.org/articles?id=10.1257/app.20130346>; Imke Reiners & Joel Waldfogel, *Digitization and Pre-purchase Information: The Causal and Welfare Impacts of Reviews and Crowd Ratings*, 111(6) Am. Econ. Rev., 1944–71 (2021), <https://www.aeaweb.org/articles?id=10.1257/aer.20200153>.

is essentially the only means for imposing civil penalties in most cases involving such practices. Civil penalties are not available for conduct that violates section 5(a)’s prohibition on unfair or deceptive acts or practices—rather, a violation of an FTC rule is necessary to impose civil penalties under section 5(m)(1)(a). Civil penalties act as a deterrent to fraud and deception in connection with reviews.⁴⁹¹

To obtain redress without alleging a rule violation, the Commission must typically first determine in an administrative proceeding that the respondent violated the FTC Act, successfully defend that determination in any appeal to a Federal court of appeals, and then initiate a second action in Federal district court under section 19(a)(2) in which the Commission must prove that the conduct at issue is “one which a reasonable man would have known under the circumstances was dishonest or fraudulent.”⁴⁹² Although these requirements are likely to be satisfied in cases involving the conduct covered by

⁴⁹¹ In October 2021, the Commission authorized a Notice of Penalty Offenses concerning endorsement practices that the FTC determined to be unfair or deceptive in prior administrative cases, including falsely claiming an endorsement by a third party; misrepresenting whether an endorser is an actual, current, or recent user; and failing to disclose an unexpected material connection with an endorser. See, e.g., Press Release, Fed. Trade Comm’n, *FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements* (Oct. 13, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other-misleading-endorsements>. The notice allows the agency to seek civil penalties pursuant to section 5(m)(1)(B) of the FTC Act against a company that received the notice and then engages in conduct that the Commission previously determined to be unfair or deceptive. 15 U.S.C. 45(m)(1)(B).

⁴⁹² 15 U.S.C. 57b(a)(2). Depending on the egregiousness of the misconduct and the harm it is causing, the Commission also may seek preliminary injunctive relief in Federal court. 15 U.S.C. 53(b).

the rule, it would take substantially more time and resources, and would significantly delay any redress to consumers, compared to a single Federal court action alleging a rule violation, in which the court adjudicates both whether the defendant violated the rule and, if so, the appropriate amount of monetary relief to award.⁴⁹³

Given the prevalence of unfair or deceptive conduct involving reviews and testimonials, the Commission will have no shortage of bad actors to investigate; it can invest the extra resources freed up by the final rule into more investigations and actions with respect to consumer reviews or testimonials. In sum, the potential consumer-redress benefits of the rule are significant: the Commission can put a stop to more inarguably unfair or deceptive consumer reviews, return more money to consumers, and obtain that redress more quickly.

a. Consumer Welfare Benefits From Better-Informed Purchase Decisions

The study containing the most direct estimate of welfare losses from review manipulation finds that the presence of fake reviews leads consumers to lose \$0.12 for every dollar spent in an experimental setting.⁴⁹⁴ The study considers a limited number of kinds of review manipulation, which notably does not include suppression of negative reviews or misrepresenting the independence of reviews, which might mean that \$0.12 is an underestimate of the effect of the rule. However, the study also measures the effect of complete elimination of inflated star ratings and false written narratives, which might mean that \$0.12 is an overestimate of the effect of the rule. Thus, the Commission believes that a reasonable proxy for the effect of the rule's elimination of much review manipulation is that consumers will gain an estimated \$0.12 for every dollar spent on goods whose online reviews included fake or false ones.

To estimate consumer welfare benefits from better-informed purchase decisions, the Commission first estimates the total amount of sales for

which consumers consult online reviews. U.S. e-commerce sales by retail firms totaled \$1.119 trillion in 2023.⁴⁹⁵ The Commission assumes that all online retail sales had some form of user-generated commentary (e.g., on third-party review platforms or on company websites), and that this commentary factored into consumers' purchase decisions for these goods.

Online reviews are also important for commerce that is not conducted online, including for revenues earned by the hospitality industry and by other services. Sales for businesses classified as "Food Services and Drinking Places" by the U.S. Census totaled \$980.15 billion in 2022, which includes revenue from restaurants and bars.⁴⁹⁶ The Commission assumes that consumers rely on reviews for only a portion of these sales. Some consumers—particularly those living in rural parts of the country and in smaller cities—may have a small set of familiar food and drink establishments available to them, making online reviews less influential to their decision to patronize a particular one. Moreover, prior research has found that online reviews do not impact revenues of chain restaurants.⁴⁹⁷ Accordingly, the Commission assumes that consumers rely on reviews for twenty-five percent of the total revenue generated in the food services and drinking places sector (twenty-five percent of \$980.15 billion, or \$245.04 billion).⁴⁹⁸

Online reviews are also important for sales in other service sectors. In 2022, total revenue was \$316.35 billion for the accommodations sector (which includes hotels and vacation rentals), and total revenue was \$67.70 billion for personal services (including beauty salons, barber shops, health clubs, and non-veterinary

pet care), totaling \$384.05 billion for both sectors.⁴⁹⁹ About half of hotel revenue is generated by business travelers, who might rely less on online reviews than leisure travelers do.⁵⁰⁰ In addition, pre-paid hotel bookings and vacation rentals booked online are already accounted for in the e-commerce sales figure described above. Furthermore, some consumers may be loyal customers of local salons and other personal services, regardless of these businesses' online reputations. For these reasons, the Commission assumes that a subset of accommodation and personal services revenues is affected by consumer reviews. Similar to the calculation for the food and drinking places industry, the Commission assumes that twenty-five percent of total accommodation and personal care services revenue is impacted by consumer reviews (twenty-five percent of \$384.05 billion, or \$96.01 billion). The total estimated revenue for services impacted by consumer reviews is \$341.05 billion (the sum of \$245.04 billion and \$96.01 billion). Combining the revenue estimates described above yields \$1.461 trillion in estimated sales of goods or services for which consumers incorporate reviews into their decision-making.

Quantitative estimates of the incidence of fake or false reviews vary by source.⁵⁰¹ Nevertheless, at least three prior studies examining the degree of review manipulation as a proportion of businesses or products (rather than as a proportion of reviews) contain similar findings. According to these studies, approximately ten percent of products or businesses have some manipulated

⁴⁹⁹ See U.S. Census Bureau, *Service Annual Survey (SAS)*, *supra* note 496 (listing total 2022 revenue of \$316,350,000,000 for NAICS Code 721 and listing total 2022 revenue of \$67,698,000,000 for NAICS Codes 812111 through 812199 and NAICS Code 81291).

⁵⁰⁰ See Linchi Kwok, *Will Business Travel Spending Return to the Pre-Pandemic Level Soon?*, Hospitality Net, Sept. 22, 2022, <https://www.hospitalitynet.org/opinion/4112075.html>.

⁵⁰¹ These estimates range from the single digits to over twenty percent. See Tripadvisor, *2023 Review Transparency Report*, <https://www.tripadvisor.com/TransparencyReport2023> (last visited July 5, 2024) (finding that 4.4 percent of review submissions were fraudulent); Trustpilot, *Transparency Report 2024*, https://assets.ctfassets.net/b7g9mr/fayuu/7p63VLqZ9vmU2TB65dVdnF/6e47d9ee81c145b5e3d1e16f81bba89a/Trustpilot_Transparency_Report_2024.pdf (last visited July 5, 2024) (stating that its software removed 6 percent of reviews due to being fake); Yelp, *2023 Yelp Trust & Safety Report* (Feb. 28, 2024), <https://trust.yelp.com/trust-and-safety-report/2023-report> (stating that 16 percent of submitted reviews were marked as "not recommended" by Yelp's software); Devesh Raval, *Do Gatekeepers Develop Worse Products? Evidence from Online Review Platforms*, (Feb. 27, 2023), <https://deveshraval.github.io/reviews.pdf> (Working Paper) (finding that the share of hidden (likely fake) Yelp reviews is as high as 47 percent).

⁴⁹³ See, e.g., Press Release, Fed. Trade Comm'n, *Marketers of Ab Force Weight Loss Device Agree to Pay \$7 Million for Consumer Redress* (Jan. 14, 2009), <https://www.ftc.gov/news-events/news/press-releases/2009/01/marketers-ab-force-weight-loss-device-agree-pay-7-million-consumer-redress> (describing a 2009 settlement of a follow-on section 19(a)(2) action against Telebrands Corp. that was brought after the conclusion of litigation over a 2003 administrative complaint alleging violations of section 5).

⁴⁹⁴ See Jesper Akeson et al., *The Impact of Fake Reviews on Demand and Welfare*, National Bureau of Economic Research Working Paper 31836, Nov. 2023, <https://www.nber.org/papers/w31836>.

⁴⁹⁵ See U.S. Census Bureau, *Quarterly Retail E-Commerce Sales 4th Quarter 2023*, Feb. 20, 2024, <https://www2.census.gov/retail/releases/historical/ecommm/23q4.pdf>.

⁴⁹⁶ U.S. Census Bureau, *Service Annual Survey (SAS)*, Jan. 30, 2024, <https://www.census.gov/programs-surveys/sas.html> (listing total revenue of \$980,153,000,000 for NAICS Code 722 in 2022, the most recent year with data).

⁴⁹⁷ See Michael Luca, *Reviews, Reputation, and Revenue: The Case of Yelp.com*, Harvard Bus. Sch. Working Paper 12–016 (2016).

⁴⁹⁸ Twenty-five percent is likely a reasonable estimate based on the difference in revenues for new restaurants and established restaurants. A study conducted by Toast, Inc., found that new restaurants earn approximately \$112,000 in average revenue per year. Justin Guinn, *What is the Average Restaurant Revenue for a New Restaurant?*, <https://pos.toasttab.com/blog/on-the-line/average-restaurant-revenue> (last visited July 5, 2024). This is approximately twenty-five percent of average revenue for restaurants overall (\$486,000, according to the website Eat Pallet, see Shari Mason, *How Much Do Restaurants Make in a Day? Solved*, May 24, 2024, <https://eatpallet.com/how-much-do-restaurants-make-in-a-day>).

consumer reviews.⁵⁰² Thus, a basic approximation of total e-commerce sales involving some review manipulation is ten percent of \$1.119 trillion, or \$111.9 billion. Similarly, a basic approximation of review-dependent service industry sales involving some review manipulation is ten percent of \$341.05 billion, or \$34.1 billion.

Importantly, online businesses that engage in review manipulation are likely to earn less revenue than other e-commerce companies. For example, prior research has found that independent firms and sellers offering lower-quality products are more likely to engage in review manipulation.⁵⁰³ Therefore, e-commerce sales affected by review manipulation are likely to be lower than the \$111.9 billion in sales described above. A more conservative estimate of e-commerce sales involving review manipulation can be obtained by

using price differentials of review-manipulated products versus others. Because products with online review manipulation have price points that are approximately 19 percent of the average price of goods sold online (according to research using data from Amazon),⁵⁰⁴ a more conservative estimate of review-manipulated products' revenue is 1.9 percent (19 percent × 10 percent) of all \$1.119 trillion in e-commerce sales, or \$21.26 billion. Because the Commission does not have data on the revenue or quantities sold of review-manipulated products, it assumes that revenue is constant across price points and relies solely on the price differential to approximate revenue. The Commission does not similarly adjust revenues for non-e-commerce firms (e.g., restaurant and hotels) because there is less variation in prices in those industries.

The Commission estimates annual welfare gains by applying the \$0.12 estimate, described above, to the estimated amount of U.S. sales that are likely to have some manipulated consumer reviews, yielding an annual estimate of welfare gains in the range of \$6.64 billion (12 percent of \$55.36 billion, the sum of \$21.26 billion and \$34.1 billion) and \$17.52 billion (12 percent of \$146.0 billion, the sum of \$111.9 billion and \$34.1 billion). Assuming that e-commerce sales increase linearly over the next ten years at the same rate as they did in the past year,⁵⁰⁵ the present value of consumer welfare improvements from better-informed purchasing decisions is estimated to be between \$57.03 and \$230.36 billion as described in Table 2.1.

TABLE 2.1—ESTIMATED BENEFITS FROM CONSUMER WELFARE IMPROVEMENTS FROM PURCHASE DECISIONS [2024–2033]

Percent of e-commerce revenue impacted by review manipulation	Total annual welfare improvements from better-informed purchase decisions (in billions)	Total 10-year (2024–2033) welfare improvement, 3% discount rate (in billions)	Total 10-year (2024–2033) welfare improvement, 7% discount rate (in billions)
10	\$17.52	\$230.36	\$196.91
1.9	6.64	67.40	57.03

b. Consumer Time Savings From Increased Reliability of Summary Ratings

The rule's prohibitions against deceptive and unfair consumer review acts and practices would increase the reliability of consumer reviews. The Commission assumes that this improvement in the dependability of reviews will lead consumers to place more trust in aggregate measures (e.g., aggregate star ratings), which many review settings use to summarize

consumer reviews. This in turn will lead some consumers to spend less time scrutinizing individual reviews to detect red flags commonly found in manipulated reviews (e.g., spelling and grammar mistakes, generic highly positive or negative statements, and lack of detail). Therefore, the rule is likely to result in some amount of time savings for consumers who consult online reviews before making purchases.

Approximately eighty percent of Americans are online shoppers.⁵⁰⁶ Of those who shop online, fourteen percent

shop online more than once a week, twenty percent shop online once a week, twenty-three percent shop online once every two weeks, twenty-five percent shop online once a month, and the remainder do so every few months.⁵⁰⁷ Different age groups of online shoppers spend various amounts of time reading reviews before making a purchase decision. On average, younger consumers spend more time reading reviews than older consumers.⁵⁰⁸ This analysis does not incorporate time spent by consumers researching reviews of

⁵⁰² See Nan Hu et al., *Manipulation of Online Reviews: An Analysis of Ratings, Readability, and Sentiments*, 52(3) Decision Support Systems 674–84 (Feb. 2012) (finding that 10.3 percent of books sold on Amazon had manipulated reviews); Luca, *Fake It Till You Make It: Reputation, Competition, and Yelp Review Fraud*, *supra* note 490 (finding that ten percent of Boston restaurants had filtered 5-star reviews on Yelp) (Table 3, row 4); Raval, *Do Gatekeepers Develop Worse Products? Evidence from Online Review Platforms*, *supra* note 501 (finding that 9.7 percent of businesses with reviews or complaints with the Better Business Bureau are of low quality, where fake reviews inflate ratings) (Table III, column 3, row 1).

⁵⁰³ See, e.g., Sherry He et al., *The Market for Fake Reviews*, 41(5) Mktg. Sci. 896 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3664992; Dina Mayzlin et al., *Promotional Reviews: An Empirical Investigation of Online Review Manipulation*, 104(8) Am. Econ. Rev. 2421–55 (2014).

⁵⁰⁴ See Davide Proserpio et al., *How Fake Customer Reviews Do—and Don't—Work*, Harvard Bus. Rev., Nov. 24, 2020, <https://hbr.org/2020/11/how-fake-customer-reviews-do-and-dont-work>. The authors find that products sold on Amazon with manipulated reviews are typically in the \$15 to \$40 price range. The midpoint of this range (\$27.50) represents 19 percent of the average product's price (\$142.74, according to one study see Semrush Inc., *Amazon Pricing Study: The Most Expensive Products, Category Volatility, and Seasonal Price Shifts*, Mar. 22, 2022, <https://www.semrush.com/blog/amazon-pricing-study>).

⁵⁰⁵ E-commerce sales increased by 7.6 percent from 2022 to 2023. See U.S. Census Bureau, *Quarterly Retail E-Commerce Sales 4th Quarter 2023*, *supra* note 495. Using growth in the past year to predict future e-commerce sales results in a more conservative estimate than using a longer time frame. E-commerce sales experienced higher annual growth rates prior to 2021 (14 percent from 2018 to 2019, 43 percent from 2019 to 2020, and 14

percent from 2020 to 2021) and grew 7.7 percent from 2021 to 2022. This analysis does not project revenues for non-e-commerce industries because linear trends during recent years are unique to the pandemic and are unlikely to be accurate for future years.

⁵⁰⁶ See Pew Research Center, *Online Shopping and E-Commerce*, Dec. 19, 2016, <https://www.pewresearch.org/internet/2016/12/19/online-shopping-and-e-commerce>.

⁵⁰⁷ See Int'l Post Corp., *Cross-Border E-Commerce Shopper Survey 2022*, Jan. 2023, <https://www.ipc.be/-/media/documents/publications/ipc-shoppers-survey/onlineshoppersurvey2022.pdf>.

⁵⁰⁸ See BrightLocal, *Local Consumer Review Survey 2019*, Dec. 11, 2019, <https://www.brightlocal.com/research/local-consumer-review-survey-2019>.

restaurants, hotels, and other goods and services that are not purchased online because of the limited amount of information available regarding consumers' total time spent on such activities.

According to the Bureau of Labor Statistics, the average hourly wage in 2023 was \$31.48.⁵⁰⁹ Recent research suggests that individuals living in the United States value their non-work time at eighty-two percent of average hourly earnings.⁵¹⁰ Thus, Americans overall value their non-work time at \$25.81 per hour on average.

The survey data does not specify whether consumers were surveyed regarding the time spent reading reviews before the purchase of a single product or whether the question

concerned the purchase of multiple products. This analysis assumes that the time listed in the survey results pertains to the purchase of a single product. It also assumes that the implementation of the rule will reduce the time spent reading reviews by ten percent. Combining the above figures results in \$2.49 billion in consumer time savings per year, or a present value of \$33.53 billion to \$39.19 billion over a 10-year period, as described in Table 2.2.

In addition, there are likely to be other utility-related benefits consumers receive when reading nonmanipulated online reviews or consulting more accurate aggregate summary measures, such as increased satisfaction (apart from purchasing decisions) and

decreased frustration. The Commission is not able to quantify these benefits.

Finally, some consumers may spend more time reading reviews if reviews are less likely to be fake or otherwise manipulated. This increase in time spent reading reviews may offset any time savings from the increased reliability of summary ratings. Therefore, the Commission presents another scenario in Table 2.2 where consumers do not gain any benefits from time savings. However, as before, there are likely to be additional benefits that are difficult to quantify (e.g., decreased frustration) that result from reading more accurate reviews, likely yielding positive net benefits related to reading reviews even when consumers spend more time doing so.

TABLE 2.2—ESTIMATED BENEFITS FROM TIME SAVINGS
[2024–2033]

Scenario 1—Improved Reliability of Aggregate Measures Reduces Overall Time Spent Reading Reviews	
Number of online shoppers, age 18–34 ^a	60,467,204
Average amount of time spent reading online reviews before making a purchase decision (in hours), age 18–34	0.336
Number of online shoppers, age 35–54 ^a	67,273,832
Average amount of time spent reading online reviews before making a purchase decision (in hours), age 35–54	0.231
Number of online shoppers, age 55+ ^a	78,920,814
Average amount of time spent reading online reviews before making a purchase decision (in hours), age 55+	0.167
Total amount of time all online shoppers spend reading online reviews before making a purchase decision (in hours)	48,991,116
Total amount of time U.S. online shoppers spend reading online reviews per year (in hours) ^b	1,728,406,578
Value of time for online shoppers (per hour)	\$25.81
Percentage of time saved	10%
Total annual time savings	\$4,461,017,378
Total 10-year (2024–2033) time savings, 3% discount rate (in billions)	\$39.19
Total 10-year (2024–2033) time savings, 7% discount rate (in billions)	\$33.53
Scenario 2—Increase in Time Spent Reading Reviews Offsets Time Savings from Improved Reliability of Summary Measures	
No quantifiable benefit	\$0

^a 80% of age-specific total U.S. population (Source: Pew Research Center, U.S. Census).

^b Adjusting for online shopping frequency (Source: International Post Corporation).

c. Benefits Related to Competition

Accurate online reviews have been shown to improve competition. Several studies have found that online reviews are particularly important for independent and newer firms.⁵¹¹ Ratings are more influential for these firms because consumers do not have strong prior beliefs as to their quality. New entrants whose sales benefit from

online reviews typically offer higher quality goods and services. On the other hand, lower-quality firms often experience revenue losses with more online review activity.⁵¹²

Relatedly, fake, false, and manipulated online reviews allow companies to surpass competitors. One study found that it only takes 50 fake reviews for a seller to pass any of its

competitors in terms of visibility (e.g., via rankings or search results).⁵¹³ It follows that by curbing the number of fake, false, or manipulated reviews, the rule would benefit consumers by improving the competitive environment for legitimate firms selling higher-quality products (i.e., those who do not rely on review manipulation to sell their goods). While the benefits resulting

⁵⁰⁹ Bureau of Labor Statistics, *May 2023 National Occupational and Wage Estimates, United States*, https://www.bls.gov/oes/current/oes_nat.htm (listing mean hourly wage of \$31.48 for all occupations).

⁵¹⁰ See Daniel S. Hamermesh, *What's to Know About Time Use?*, 30 J. of Econ. Survs. 198–203 (2016), <https://doi.org/10.1111/joes.12107>.

⁵¹¹ See Luca, *Reviews, Reputation, and Revenue: The Case of Yelp.com*, *supra* note 497 (finding that chain restaurants have declined in market share as Yelp penetration has increased); Gregory Lewis and

Georgios Zervas, *The Welfare Impact of Consumer Reviews: A Case Study of the Hotel Industry*, <https://economics.sas.upenn.edu/sites/default/files/filevault/u475/tawelfare.pdf> (Working Paper) (finding that demand for independent hotels is more sensitive to reviews on Tripadvisor); Brett Hollenbeck, *Online Reputation Mechanisms and the Decreasing Value of Chain Affiliation*, 55(5) J. of Mktg. Resch. 636–54 (2018), <https://www.jstor.org/stable/26966532> (finding that branded, chain-affiliated hotels' premiums over

independent hotels have declined substantially largely due to online reputation mechanisms).

⁵¹² See Limin Fang, “The Effects of Online Review Platforms on Restaurant Revenue, Consumer Learning, and Welfare” 68(11) Mgmt. Sci. 7793–8514 (2022).

⁵¹³ See Theodoros Lappas et al., *The Impact of Fake Reviews on Online Visibility: A Vulnerability Assessment of the Hotel Industry*, 27(4) Inf. Sys. Research 940–961 (2016), <https://pubsonline.informs.org/doi/abs/10.1287/isre.2016.0674>.

from improvements in the competitive environment are difficult to quantify, the Commission believes they are likely to be substantial.

2. Estimated Costs of the Final Rule

This section describes the costs associated with the rule, provides quantitative estimates where possible, and describes costs that are only assessed qualitatively. While the Commission only quantifies benefits from reduced review manipulation and not the other rule provisions above, the Commission quantifies compliance costs for all aspects of the rule.

a. Compliance Costs

The acts and practices prohibited by the rule are unfair or deceptive under section 5 of the FTC Act. The rule targets acts or practices that are clear violations of section 5, and businesses that are already compliant will not experience any additional compliance costs as a result of the rule. Moreover, the FTC routinely provides guidance to businesses on complying with FTC law, which will make the implications of the rule easy to understand for a wide range of businesses. Finally, in response to the comments, the Commission has both narrowed and clarified the rule requirements relative to the proposed rule (see section IV of this document). Accordingly, one of the scenarios reflected in Table 3.1 assumes that businesses will spend a *de minimis* amount of time interpreting the rule and make no changes to their current policies.

However, because businesses now face the potential for civil penalties if

they engage in conduct that violates the final rule, businesses may choose to incur additional administrative burdens to ensure compliance. The Commission presents another scenario in Table 3.1 where businesses notify their employees of the rule, conduct a review of their processes, and take any steps they deem important to ensure compliance. For firms that already comply with section 5 of the FTC Act, these steps might be out of caution so as not to risk the possibility of violating the rule. For example, some sellers may currently flag and remove reviews on their websites that they reasonably believe are fake. While this practice would not amount to a violation of the relevant rule provision (§ 465.7(b)), the rule may lead some businesses to choose to take extra steps to verify the inauthenticity of such reviews before suppressing them. A business may also decide to notify its employees of the rule. For example, if certain employees are responsible for posting new product pages or managing the company’s social media presence, business owners may wish to notify these employees to ensure compliance. Although cautious firms may elect to conduct additional compliance review, the rule would not require any additional recordkeeping or notices beyond what is required by section 5 of the FTC Act.

For the heightened compliance review scenario in Table 3.1, the Commission makes assumptions about the number of businesses impacted and the number of person-hours involved in compliance activities. In 2021, there were approximately 34.77 million total firms in the United States. Of these firms,

19,688 had 500 or more employees (“large companies”), and the remaining 34.75 million had fewer than 500 employees (“small companies”).⁵¹⁴ The Commission assumes that all 19,688 large companies had some form of online consumer review presence (e.g., on third-party business platforms such as Yelp or Google Reviews, or on their own websites). It assumes that 74 percent of the 34.75 million small companies (25.71 million companies) had an online consumer review presence.⁵¹⁵

With heightened compliance review, the Commission assumes that lawyers at large companies, whose time is valued at \$70.08 per hour,⁵¹⁶ will spend eight hours conducting a one-time review of the rule and notifying employees whose role involves creating new product pages, managing the company’s social media presence, and any other relevant practices covered by the rule. It assumes that small company owners, whose time is valued at \$33.48,⁵¹⁷ and are less likely have formal compliance programs, spend one hour doing the same.

In addition, some companies may spend time reviewing their automated processes to ensure that they comply with the rule. These costs, which companies might incur just once or on a recurring basis, are likely to be minimal. The Commission does not quantify these process-related costs because, among other things, the Commission does not know the number of firms that might undertake such a review.

The total estimated costs are tabulated in Table 3.1.

TABLE 3.1—ESTIMATED COMPLIANCE COSTS

	2024 Only
Scenario 1—No Review	
No cost	\$0
Total cost	\$0
Scenario 2—Heightened Compliance Review	
Number of large companies (in thousands)	19.69
Cost per hour of rule review and related activities	\$70.08
Number of hours of rule review and related activities	8
Subtotal (in millions)	\$11.04
Number of small companies with online reviews (in thousands)	25,715.23
Cost per hour of rule review and related activities	\$33.48

⁵¹⁴ See U.S. Census Bureau, *2021 SUSB Annual Data Tables by Establishment Industry*, <https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html> (last visited July 5, 2024) (listing 6.29 million total firms with at least one paid employee) and U.S. Census Bureau, *Nonemployer Statistics*, <https://www.census.gov/programs-surveys/nonemployer-statistics.html> (listing 28.48

million firms with no paid employees) (last visited July 5, 2024).

⁵¹⁵ Seventy-four percent of small businesses have at least one Google review. See BrightLocal, *Google Reviews Study: How Many Reviews Do Local Businesses Need?*, Oct. 31, 2018, <https://www.brightlocal.com/research/google-reviews-study/>.

⁵¹⁶ See Bureau of Labor Statistics, *Occupational Outlook Handbook: Lawyers*, <https://www.bls.gov/ooh/legal/lawyers.htm> (last visited July 5, 2024).

⁵¹⁷ See Payscale, *Average Small Business Owner Salary*, https://www.payscale.com/research/US/Job=Small_Business_Owner/Salary (last visited July 5, 2024) (reporting median base salary of \$69,648 for small business owners). We assume small business owners work 2,080 hours per year.

TABLE 3.1—ESTIMATED COMPLIANCE COSTS—Continued

	2024 Only
Number of hours of rule review and related activities	1
Subtotal (in millions)	\$860.95
Total cost (in millions)	\$871.98

b. Other Impacts of the Rule

There are several other potential effects from the rule. While the proposed requirements are far from onerous, there is the possibility that some sellers may “overcorrect” in response to the penalties available for rule violations. For example, a firm may encounter an excess of fake, negative reviews from a competitor. While § 465.7(b) permits the suppression of reviews that the seller reasonably believes are fake, an overcautious seller seeking to suppress fake reviews from competitors may choose to display no reviews whatsoever so as not to risk violating the rule. Alternatively, such a firm may take no action towards suspected fake reviews to avoid a possible rule violation. Both of these hypothetical scenarios would likely hurt the information environment for consumers. The Commission believes that such unintended consequences of the rule are very unlikely, especially in light of how the rule has been clarified and narrowed in response to the comments.

C. Reasonable Alternatives and Explanation of Why Particular Alternative Chosen

The Commission has attempted to catalog and quantify the incremental benefits and costs of the provisions included in the final rule. Extrapolating these benefits over the 10-year assessment period and discounting to the present provides an estimate of the present value for total benefits and costs of the rule, with the difference—net benefits—providing one measure of the value of regulation.

Using our low-end estimate above, the present value of quantified benefits for consumers from the rule’s requirements over a 10-year period using a 7% discount rate is estimated at \$57.03 billion. The present value of quantified costs for covered firms of complying with the rule’s requirements over a 10-year period using a 7% discount rate is estimated at \$0.83 billion. This generates an estimate of the present value of quantified net benefits equal to \$56.16 billion using a discount rate of 7%. Using the upper-end assumptions discussed in the preceding analysis

results in net benefits of \$230.44 billion using a discount rate of 7%.

To examine the sensitivity of the net benefits conclusions to the possibility of systematic underestimating of compliance costs, the Commission calculates costs and benefits in a scenario where all labor costs turn out to be ten times larger than the parameter values in the heightened compliance review scenario. For both small and large companies, the number of hours of rule review and related activities are increased by a factor of ten. All benefits and other cost parameters are unchanged in this analysis. With these new parameters, compliance review will cost \$8.72 billion in 2024, and the present value of quantified net benefits will be equal to \$48.31 billion using a discount rate of 7%. Thus, while the Commission believes compliance costs in the heightened compliance scenario are likely overestimates, even if they are instead severe underestimates, the quantified net benefits are highly positive.

To examine the sensitivity of the net benefits conclusions to the possibility of systematic overestimating of the effectiveness of deterrence, the Commission calculates costs and benefits in a scenario in which the rule only partially eliminates the welfare losses to consumers caused by the various types of review manipulation covered by the rule. For this scenario, the Commission instead assumes that consumers will gain an estimated \$0.04, rather than \$0.12, for every dollar spent on goods whose online reviews included fake or false ones, the minimum welfare improvement reported for partial elimination of review manipulation in the study on which these estimates are based.⁵¹⁸ Under this scenario, the present value of quantified net benefits under a 7% discount rate is \$18.14 billion instead of \$56.16 billion. Combining the two scenarios, if the Commission both systematically underestimates compliance costs and systematically overestimates the effectiveness of the

rule in preventing review manipulation, the present value of quantified net benefits under a 7% discount rate is \$10.29 billion. Thus, even if the main compliance cost estimates above are underestimates and the main welfare benefits above are overestimates, the quantified net benefits are highly positive.

One alternative to the final rule would be to terminate the rulemaking and rely instead on the existing tools that the Commission currently possesses to combat the specified review and testimonial practices, such as consumer education and enforcement actions brought under sections 5 and 19 of the FTC Act. Failing to strengthen the set of tools available in support of the Commission’s enforcement program against unfair or deceptive consumer reviews or testimonials would deprive it of the net benefits outlined above.

The Commission expects unquantified benefits to outweigh unquantified costs for this rule. As noted above, the benefits from several rule provisions are unquantified, while the compliance costs of all rule provisions are quantified. Thus, the quantified net benefits of \$56.16 billion above likely underestimate the benefits to the public. Furthermore, these estimates are robust to uncertainty. Even assuming systematic underestimation of compliance costs and systematic overestimation of the rule effectiveness, the quantified net benefits are large and positive. Therefore, this regulatory analysis indicates that adoption of the rule will result in benefits to the public that outweigh the costs.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501 *et seq.*, requires Federal agencies to seek and obtain Office of Management and Budget (“OMB”) approval before undertaking a collection of information directed to ten or more persons. As part of the NPRM, the Commission noted that the proposed rule did not contain an information collection requirement. However, for the purpose of confirmation, in Question 4 of the NPRM, the Commission nonetheless asked commenters whether the proposed rule contained a collection

⁵¹⁸ See Akesson, *The Impact of Fake Reviews on Demand and Welfare*, *supra* note 494 (reviews for inferior products that had inflated star ratings but accurate written narratives caused consumers to lose \$0.04 in welfare for every dollar spent).

of information.⁵¹⁹ One commenter responded, “Yes, it does. It contains our research and others’ research, as well as valuable estimates to harm/costs for all 3 parties: consumers, businesses, and government.”⁵²⁰ The Commission believes that this commenter was addressing whether the NPRM was collecting information, as opposed to whether the proposed rule would contain a collection of information within the meaning of the PRA. No other comments responding to the NPRM or Notice of Hearing addressed this question. While the Commission finalizes the proposed rule with some limiting modifications and clarifications based on the comments it received, it has not added any new requirements that would collect information from the public. Accordingly, the Commission has determined that the final rule neither includes a new collection of information, nor modifies an existing collection of information.

VIII. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601 *et seq.*, requires an agency to provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule and a Final Regulatory Flexibility Analysis (“FRFA”) with a final rule, if any, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.⁵²¹ The purpose of a regulatory flexibility analysis is to ensure that an agency considers potential impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities.

In the NPRM, the Commission provided an IRFA, stating its belief that the proposal will not have a significant economic impact on small entities, and soliciting comments on its burden estimate. In addition to publishing the NPRM in the **Federal Register**, the Commission announced the proposed rule through press and other releases. The Commission received comments from small businesses and associations that represent small businesses. In order to reduce compliance burdens on small businesses and other small entities, the Commission finalizes the proposed rule with some limiting modifications and clarifications as described in section IV of this document.

The Commission believes that the rule will not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. The rule primarily prohibits certain unfair or deceptive acts or practices involving consumer reviews or testimonials and does not impose a reporting or recordkeeping requirement upon businesses. In addition, the Commission does not anticipate these changes will impose any additional significant additional costs upon small businesses. Specifically, as discussed in further detail below, the Commission anticipates that an average small business will spend, at most, one hour on compliance review, incurring a cost of \$33.48.⁵²² Therefore, the rule imposes no new significant burdens on law-abiding small businesses. The Commission has determined, nonetheless, that it is appropriate to publish an FRFA to identify the impact of the rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Reasons for the Rule

The Commission describes the reasons for the rule in section VI.A. of this document. The FTC’s law enforcement, outreach, and other engagement in this area indicate that certain unfair or deceptive acts or practices involving consumer reviews or testimonials are prevalent. The rule will benefit consumers and legitimate businesses without imposing significant burdens.

B. Statement of the Objectives of, and Legal Basis for, the Rule

The Commission describes the objectives for the rule in section VI.A of this document. The legal basis for the rule is section 18 of the FTC Act, 15 U.S.C. 57a, which authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices in or affecting commerce that are unfair or deceptive within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

C. Issues Raised by Comments, the Commission’s Assessment and Response, and Any Changes Made as a Result

One individual commenter accepted the Commission’s estimated compliance costs on small businesses but said it was unfair that “small companies with online reviews would bear almost all of the [rule’s] estimated compliance

costs.”⁵²³ As the Commission stated in the NPRM, it is likely that only a minority of small businesses would elect to conduct optional compliance review and the total compliance costs for small businesses is likely to be significantly lower than the Commission’s estimate.⁵²⁴

One trade association simply asserted that certain provisions of the proposed rule could be detrimental to small businesses but did not specifically address the IRFA.⁵²⁵ This commenter expressed concern about: (1) civil penalty exposure for failing to stop the actions of undiscovered third parties providing reviews and testimonials appearing on a business’s website; (2) a subsequent broadening of the proposed rule to prohibit incentivized reviews other than those required to express a particular sentiment; and (3) potential liability when an agent’s review or testimonial appears without a disclosure.⁵²⁶ The Commission addresses these specific concerns in section IV of this document and has narrowed the rule or provided clarification as appropriate.

The Commission does not believe that it needs to make any changes to its IRFA in response to these comments.

Section IV provides a section-by-section analysis that discusses the provisions proposed in the NPRM, the comments received, the Commission’s responses to the comments, and any changes made by the Commission as a result.

D. Comments by the Chief Counsel for Advocacy of the SBA, the Commission’s Assessment and Response, and Any Changes Made as a Result

The Commission did not receive any comments from the Chief Counsel for Advocacy of the SBA.

E. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The final rule could impact small entities that currently have, or might potentially, solicit consumer reviews or disseminate consumer testimonials. It could also impact small entities that use celebrity testimonials or have a social media presence. It is likely that the rule will primarily affect businesses that sell products or services directly to consumers. For example, the rule is less likely to impact small entities that manufacture niche raw materials for other businesses or small agricultural

⁵¹⁹ NPRM, 88 FR 49388.

⁵²⁰ Transparency Company Cmt. at 10.

⁵²¹ See 5 U.S.C. 605(b).

⁵²² See *infra* section VIII.F of this document.

⁵²³ Camp-Martin Cmt. at 2–3.

⁵²⁴ NPRM, 88 FR 49388.

⁵²⁵ IAB Cmt. at 1–15.

⁵²⁶ *Id.* at 2, 5–6, 8–9, 10.

firms that do not sell directly to consumers. Nevertheless, for a conservative estimate of total costs, the Commission assumes that the rule will impact all industry classes of small entities.

As described in section VI.B.2 of this document, there are approximately 34.75 million small businesses in the United States. Prior research has found that 74 percent of small businesses have at least one Google review.⁵²⁷ On the one hand, it is possible that, across all platforms (beyond Google reviews), a higher percentage of small businesses have consumer reviews or testimonials, celebrity testimonials, or a social media presence. On the other hand, it is likely that many of these firms do not interact with reviews and such passive firms would not be affected by the rule. The Commission does not have the appropriate data to refine this estimate. Therefore, its best estimate is that no more than 25.71 million (74 percent $\times$ 34.75 million) small businesses will be impacted by the rule.

F. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rule contains no reporting or recordkeeping requirements. Therefore, many law-abiding businesses are likely to incur no additional compliance costs with the rule.

As described in section VI.B.2 of this document, a cautious firm may elect to undertake additional compliance review due to the potential for civil penalties for rule violations. If every small business impacted by the rule conducts one hour of compliance review, each firm would incur \$33.48 of compliance costs, which reflects the estimated hourly earnings of a small business owner.⁵²⁸ Therefore, under the conservative estimate of heightened compliance review for all small businesses, costs to small businesses would total \$860.95 million (25.71 million $\times$ \$33.48). Because it is likely that only a minority of small businesses will elect to conduct optional compliance review, total compliance costs for these entities are likely to be significantly lower than this estimate.

G. Description of Steps Taken To Minimize Impact of the Rule on Small Entities

In response to comments, the Commission has narrowed the rule and clarified the rule requirements as described in section IV of this

document, which should minimize further any economic impact on small entities. In its IRFA, the Commission described an alternative to the proposed rule, namely, to rely on the Commission's previously existing tools, such as consumer education and enforcement actions brought under sections 5 and 19 of the FTC Act, to combat the specified review and testimonial practices. The Commission believes that promulgation of the rule will result in greater net benefits to the marketplace while imposing no additional burdens beyond what is required by the FTC Act. As described in further detail in section VI.B.1.c of this document, the rule will not only result in significant benefits to consumers but also improve the competitive environment, particularly for small, independent, or new firms. Therefore, the rule appears to be superior to this alternative for small entities.

IX. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 465

Advertising.

■ For the reasons set forth above, the Federal Trade Commission amends 16 CFR Chapter I by adding part 465 to read as follows:

PART 465—RULE ON THE USE OF CONSUMER REVIEWS AND TESTIMONIALS

Sec.

- 465.1 Definitions.
- 465.2 Fake or false consumer reviews, consumer testimonials, or celebrity testimonials.
- 465.3 [Reserved]
- 465.4 Buying positive or negative consumer reviews.
- 465.5 Insider consumer reviews and consumer testimonials.
- 465.6 Company-controlled review websites or entities.
- 465.7 Review suppression.
- 465.8 Misuse of fake indicators of social media influence.
- 465.9 Severability

Authority: 15 U.S.C. 57a.

§ 465.1 Definitions.

(a) *Business* means an individual who sells products or services, a partnership that sells products or services, a corporation that sells products or services, or any other commercial entity that sells products or services.

(b) *Celebrity testimonial* means an advertising or promotional message

(including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual) that consumers are likely to believe reflects the opinions, beliefs, or experiences of a well-known individual who purchased, used, or otherwise had experience with a product, service, or business.

(c) *Clear and conspicuous* means that a required disclosure is easily noticeable (*i.e.*, difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented in at least the same means as the representation(s) requiring the disclosure.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an interactive electronic medium, such as social media or the internet, the disclosure must be unavoidable. A disclosure is not clear and conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(8) When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes members of that group.

(d) *Consumer review* means a consumer's evaluation, or a purported consumer's evaluation, of a product, service, or business that is submitted by

⁵²⁷ See *supra* note 515.

⁵²⁸ See Payscale, *Average Small Business Owner Salary*, *supra* note 517.

the consumer or purported consumer and that is published to a website or platform dedicated in whole or in part to receiving and displaying such evaluations. For the purposes of this part, consumer reviews include consumer ratings regardless of whether they include any text or narrative.

(e) *Consumer review hosting* means providing the technological means by which a website or platform enables consumers to see or hear the consumer reviews that consumers have submitted to the website or platform.

(f) *Consumer testimonial* means an advertising or promotional message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual) that consumers are likely to believe reflects the opinions, beliefs, or experiences of a consumer who has purchased, used, or otherwise had experience with a product, service, or business.

(g) *Distribute fake indicators of social media influence* means the distribution of fake indicators of social media influence to individuals or businesses who could use the indicators to misrepresent their influence.

(h) *Fake indicators of social media influence* means indicators of social media influence generated by bots, purported individual accounts not associated with a real individual, accounts created with a real individual's personal information without their consent, or hijacked accounts, or that otherwise do not reflect a real individual's or entity's activities, opinions, findings, or experiences.

(i) *Immediate Relative* means a spouse, parent, child, or sibling.

(j) *Indicators of social media influence* means any metrics used by the public to make assessments of an individual's or entity's social media influence, such as followers, friends, connections, subscribers, views, plays, likes, saves, shares, reposts, and comments.

(k) *Manager* means an employee of a business who supervises other employees or agents and who either holds the title of a "manager" or otherwise serves in a managerial role.

(l) *Officers* include owners, executives, and managing members of a business.

(m) *Purchase a consumer review* means to provide something of value, such as money, gift certificates, products, services, discounts, coupons, contest entries, or another review, in exchange for a consumer review.

(n) *Reviewer* means the author or purported author of a consumer review.

(o) *Testimonialist* means the individual giving or purportedly giving a consumer testimonial or celebrity testimonial.

(p) An *unfounded or groundless legal threat* is a legal threat based on claims, defenses, or other legal contentions unwarranted by existing law or based on factual contentions that have no evidentiary support or will likely have no evidentiary support after a reasonable opportunity for further investigation or discovery.

§ 465.2 Fake or false consumer reviews, consumer testimonials, or celebrity testimonials.

(a) It is an unfair or deceptive act or practice and a violation of this part for a business to write, create, or sell a consumer review, consumer testimonial, or celebrity testimonial that materially misrepresents, expressly or by implication:

(1) That the reviewer or testimonialist exists;

(2) That the reviewer or testimonialist used or otherwise had experience with the product, service, or business that is the subject of the review or testimonial; or

(3) The reviewer's or testimonialist's experience with the product, service, or business that is the subject of the review or testimonial.

(b) It is an unfair or deceptive act or practice and a violation of this part for a business to purchase a consumer review, or to disseminate or cause the dissemination of a consumer testimonial or celebrity testimonial, about the business or one of the products or services it sells, which the business knew or should have known materially misrepresented, expressly or by implication:

(1) That the reviewer or testimonialist exists;

(2) That the reviewer or testimonialist used or otherwise had experience with the product, service, or business that is the subject of the review or testimonial; or

(3) The reviewer's or testimonialist's experience with the product, service, or business that is the subject of the review or testimonial.

(c) It is an unfair or deceptive act or practice and a violation of this part for a business to procure a consumer review from its officers, managers, employees, or agents, or any of their immediate relatives, for posting on a third-party platform or website, when the review is about the business or one of the products or services it sells, and when the business knew or should have known that the review materially

misrepresented, expressly or by implication:

(1) That the reviewer exists;

(2) That the reviewer used or otherwise had experience with the product, service, or business that is the subject of the review; or

(3) The reviewer's experience with the product, service, or business that is the subject of the review.

(d) However, paragraphs (b) and (c) of this section do not apply to:

(1) Reviews or testimonials that resulted from a business making generalized solicitations to purchasers to post reviews or testimonials about their experiences with the product, service, or business; or

(2) Reviews that appear on a website or platform as a result of the business merely engaging in consumer review hosting.

§ 465.3 [Reserved]

§ 465.4 Buying positive or negative consumer reviews.

It is an unfair or deceptive act or practice and a violation of this part for a business to provide compensation or other incentives in exchange for, or conditioned expressly or by implication on, the writing or creation of consumer reviews expressing a particular sentiment, whether positive or negative, regarding the product, service, or business that is the subject of the review.

§ 465.5 Insider consumer reviews and consumer testimonials.

(a) It is an unfair or deceptive act or practice and a violation of this part for an officer or manager of a business to write or create a consumer review or consumer testimonial about the business or one of the products or services it sells that fails to have a clear and conspicuous disclosure of the officer's or manager's material relationship to the business, unless, in the case of a consumer testimonial, the relationship is otherwise clear to the audience.

(b)(1) It is an unfair or deceptive act or practice and a violation of this part for a business to disseminate or cause the dissemination of a consumer testimonial about the business or one of the products or services it sells by one of its officers, managers, employees, or agents, which fails to have a clear and conspicuous disclosure of the testimonialist's material relationship to the business, when the relationship is not otherwise clear to the audience and the business knew or should have known the testimonialist's relationship to the business.

(2) However, paragraph (b)(1) of this section does not apply to:

(i) Generalized solicitations to purchasers for them to post testimonials about their experiences with the product, service, or business, or

(ii) Merely engaging in consumer review hosting.

(c)(1) It is an unfair or deceptive act or practice and a violation of this part for an officer or manager of a business to solicit or demand a consumer review about the business or one of the products or services it sells from any of their immediate relatives or from any employee or agent of the business, or to solicit or demand that such employees or agents seek such reviews from their relatives, when:

(i) The solicitation or demand results in an officer's or manager's immediate relatives, an employee or agent, or the immediate relatives of an employee or agent writing or creating such a review without a disclosure of the reviewer's material relationship to the business, and

(ii) The officer or manager:

(A) Encouraged the prospective reviewer not to make such a disclosure, (B) Did not instruct that prospective reviewers disclose clearly and conspicuously their relationship to the business, or

(C) Knew or should have known that such a review appeared without such a disclosure and failed to take remedial steps.

(2) However, paragraph (c)(1) of this section does not apply to generalized solicitations to purchasers for them to post reviews about their experiences with the product, service, or business.

§ 465.6 Company-controlled review websites or entities.

It is an unfair or deceptive act or practice and a violation of this part for a business to materially misrepresent, expressly or by implication, that a

website, organization, or entity that it controls, owns, or operates provides independent reviews or opinions, other than consumer reviews, about a category of businesses, products, or services including the business or one or more of the products or services it sells.

§ 465.7 Review suppression.

It is an unfair or deceptive act or practice and a violation of this part:

(a) For anyone to use an unfounded or groundless legal threat, a physical threat, intimidation, or a public false accusation in response to a consumer review that is made with the knowledge that the accusation was false or made with reckless disregard as to its truth or falsity, in an attempt to:

(1) Prevent a review or any portion thereof from being written or created, or

(2) Cause a review or any portion thereof to be removed, whether or not that review or a portion thereof is replaced with other content, or

(b) For a business to materially misrepresent, expressly or by implication, that the consumer reviews of one or more of the products or services it sells displayed in a portion of its website or platform dedicated in whole or in part to receiving and displaying consumer reviews represent most or all the reviews submitted to the website or platform when reviews are being suppressed (*i.e.*, not displayable) based upon their ratings or their negative sentiment. For purposes of this paragraph, a review is not considered suppressed based upon rating or negative sentiment if the suppression occurs based on criteria for withholding reviews that are applied equally to all reviews submitted without regard to sentiment, such as when:

(1) The review contains:

(i) Trade secrets or privileged or confidential commercial or financial information,

(ii) Defamatory, harassing, abusive, obscene, vulgar, or sexually explicit content,

(iii) The personal information or likeness of another individual,

(iv) Content that is discriminatory with respect to race, gender, sexuality, ethnicity, or another intrinsic characteristic, or

(v) Content that is clearly false or misleading;

(2) The seller reasonably believes the review is fake; or

(3) The review is wholly unrelated to the products or services offered by or available at the website or platform.

§ 465.8 Misuse of fake indicators of social media influence.

It is an unfair or deceptive act or practice and a violation of this part for anyone to:

(a) Sell or distribute fake indicators of social media influence that they knew or should have known to be fake and that can be used by individuals or businesses to materially misrepresent their influence or importance for a commercial purpose; or

(b) Purchase or procure fake indicators of social media influence that they knew or should have known to be fake and that materially misrepresent their influence or importance for a commercial purpose.

§ 465.9 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions will continue in effect.

By direction of the Commission.

April J. Tabor,
Secretary.

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