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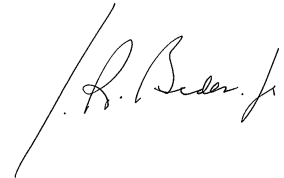
The President

Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to \$14 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 16, 2024

Presidential Documents

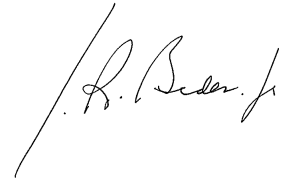
Memorandum of October 21, 2024

Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to \$64 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 21, 2024

Rules and Regulations

Federal Register

Vol. 89, No. 213

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2024-1912; Airspace Docket No. 24-AGL-16]

RIN 2120-AA66

Amendment of Class E Airspace; South Haven, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at South Haven, MI. This action is the result of an airspace review conducted due to the decommissioning of the Pullman very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the South Haven Regional Airport, South Haven, MI, and the name of Cromwell Health Watervliet Community Hospital Heliport, Watervliet, MI, are also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, February 20, 2025. 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 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA-2024-1912 in the **Federal Register** (89 FR 60581; July 26, 2024) proposing to amend the Class E airspace at South Haven, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J,

dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J 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 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface at South Haven Regional Airport, South Haven, MI, by removing the Pullman VORTAC and associated extension from the airspace legal description; updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; removes the city associated with Cromwell Health Watervliet Community Hospital Heliport, Watervliet, MI, to comply with changes to FAA Order JO 7400.2P, Procedures for Handling Airspace Matters; updates the name of Cromwell Health Watervliet Community Hospital Heliport (previously Watervliet Community Hospital) to coincide with the FAA's aeronautical database; and removes the exclusionary language as it is no longer required.

Regulatory Notices and Analyses

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

Environmental Review

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

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11], Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

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

* * * * *

AGL MI E5 South Haven, MI [Amended]

South Haven Area Regional Airport, MI
(Lat 42°21′05″ N, long 86°15′21″ W)
Cromwell Health Watervliet Community
Hospital Heliport, MI, Point in Space
Coordinates
(Lat 42°11′06″ N, long 86°15′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of South Haven Area Regional Airport; and within a 6-mile radius of the point in space serving the Cromwell Health Watervliet Community Hospital Heliport.

* * * * *

Issued in Fort Worth, Texas, on October 30, 2024.

Martin A. Skinner,
Acting Manager, Operations Support Group,
ATO Central Service Center.

[FR Doc. 2024–25465 Filed 11–1–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1361; Airspace
Docket No. 24–ANE–5]

RIN 2120–AA66

**Revocation of Class E Airspace;
Manchester, NH**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; withdrawal.

SUMMARY: A final rule was published in the **Federal Register** on August 19, 2024, revoking Class E surface airspace for Manchester Boston Regional Airport, Manchester, NH, as the overlying Class C airspace deemed the Class E surface airspace unnecessary. The FAA has determined that withdrawal of the final rule is warranted since this action was inconsistent with the associated notice of proposed rulemaking that referenced Class E surface airspace.

DATES: The final rule published in the **Federal Register** on August 19, 2024 (89 FR 66988) is withdrawn as of November 4, 2024.

FOR FURTHER INFORMATION CONTACT:
Marc Ellerbee, Operations Support
Group, Eastern Service Center, Federal
Aviation Administration, 1701
Columbia Ave., College Park, GA 30337;
Telephone (404) 305–5589.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (89 FR 66988, August 19, 2024) for Doc. No. FAA–2024–1361, revoking Class E surface airspace for Manchester Boston Regional Airport, Manchester, NH. After publication, the FAA found that this final rule revoked Class E surface airspace but referenced Class E airspace extending upward from 700 feet above the surface. As a result, the final rule is being withdrawn.

The Withdrawal

■ In consideration of the foregoing, the final rule for Docket No. FAA–2024–1361 (89 FR 66988, August 19, 2024), FR Doc. 2024–18435, is hereby withdrawn.

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.

Issued in College Park, Georgia, on October 28, 2024.

Patrick Young,
Manager, Airspace & Procedures Team North,
Eastern Service Center, Air Traffic
Organization.

[FR Doc. 2024–25449 Filed 10–31–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1650; Airspace
Docket No. 24–ANE–6]

RIN 2120–AA66

**Amendment of Class E Airspace;
Claremont, NH**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: A final rule was published in the **Federal Register** on October 3, 2024, amending Class E airspace extending upward from 700 feet above the surface for Claremont Municipal Airport, Claremont, NH, as the Claremont Non-directional Beacon (NDB) had been decommissioned, and associated instrument approaches canceled. This action corrects the Claremont Municipal Airport coordinates within the airspace description that contained a typographical error.

DATES: Effective 0901 UTC, February 20, 2025. 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.

FOR FURTHER INFORMATION CONTACT:
Robert Scott Stuart, Operations Support
Group, Eastern Service Center, Federal
Aviation Administration, 1701
Columbia Ave., College Park, GA 30337;
Telephone (404) 305–5926.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

History

The FAA published a final rule in the **Federal Register** (89 FR 80382, October 3, 2024) for Doc. No. FAA–2024–1650, amending Class E airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Claremont Municipal Airport and 2 miles on each side of the 093° bearing from the airport, extending from the 7.3-mile radius to 15.1 miles east of the airport. After publication, the FAA found that the coordinates (Lat.

43°22'14" N, long. 72°22'6" W) for Claremont Municipal Airport contained a typographical error. This action corrects the error by correcting the coordinates (lat. 43°22'14" N, long. 72°22'06" W) for Claremont Municipal Airport.

Correction to the Final Rule

Pursuant to the authority delegated to me, the amendment of Class E airspace extending upward from 700 feet above the surface for Claremont Municipal Airport, Claremont, NH, in Docket No. FAA–2024–1650, as published in the **Federal Register** on October 3, 2024 (89 FR 80382), is corrected as follows:

§ 71.1 [Corrected]

■ On page 80383, in the first column, replace the Claremont Municipal Airport coordinates (Lat. 43°22'14" N, long. 72°22'6" W) with the corrected coordinates (lat. 43°22'14" N, long. 72°22'06" W).

Issued in College Park, Georgia, on October 28, 2024.

Patrick Young,

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

[FR Doc. 2024–25456 Filed 11–1–24; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130, and 1243

[CPSC Docket No. 2023–0047]

Safety Standard for Infant Support Cushions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the U.S. Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. Under this statutory authority, the Commission is issuing a safety standard for infant support cushions. The Commission is also amending CPSC's consumer registration requirements to identify infant support cushions as durable infant or toddler products and amending CPSC's list of notices of requirements (NORs) to include infant support cushions.

DATES: The rule is effective on May 5, 2025. The incorporation by reference of

the publication listed in this rule is approved by the Director of the Federal Register as of May 5, 2025.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7945 or (888) 531–9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

A. Background

Infant support cushions are filled with or comprised of resilient material such as foam, fibrous batting, or granular material or with a gel, liquid, or gas, and are marketed, designed, or intended to support an infant's weight or any portion of an infant while reclining or in a supine, prone, or recumbent position. CPSC is aware of at least 79 reported fatalities involving infant support cushions from January 1, 2010, through December 31, 2022, as well as 124 nonfatal incidents or reports involving these products within the same time period. There were 17 deaths in 2020, and a minimum of 17 more in 2021.¹ More than 80 percent of the known fatalities associated with these products involve infants three months old or younger. In more than 60 percent of the fatalities, the official cause of death was asphyxia or probable asphyxia. These incidents typically involved the use of an infant support cushion placed in or on a sleep-related consumer product such as an adult bed, futon, crib, bassinet, play yard, or couch. For the nonfatal incidents, the most common circumstances involved an infant falling from an infant support cushion placed on a raised surface such as a bed or a sofa, or a threat of asphyxia or entrapment.

In 1992, pursuant to authority under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278, the Commission issued a ban on certain infant cushions and pillows filled with foam, plastic beads, or other granular material. 57 FR 27912 (June 23, 1992). That ban prohibits infant cushions, infant pillows, and similar articles that are:

- made with a flexible fabric covering;
- loosely filled with granular material, including, but not limited to, polystyrene beads or pellets;
- easily flattened;

¹ Due to reporting delays, fatality data reported to the CPSC is not considered complete until three years later; thus, the 2021 fatality data were not yet considered complete when the analysis was conducted in 2023.

- capable of conforming to the body or face of an infant; and
- intended or promoted for use by children under one year of age.

See 16 CFR 1500.18(a)(16). This final rule for infant support cushions does not change the existing FHSA ban. That ban was limited to products with the specific hazard presented by loosely filled granular material such as polystyrene beads or pellets, and those products will continue to be banned under the FHSA. Infant support cushions that are not subject to the ban are within the scope of this rule and are required to comply with the performance and labeling requirements of this rule.²

B. Statutory Authority

Section 104(b)(1)(A) of the CPSIA requires the Commission to (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts and (2) promulgate consumer product safety standards for durable infant and toddler products. See 15 U.S.C. 2056a(b)(1)(A). The Commission must continue to promulgate standards for all categories of durable infant or toddler products until the Commission has promulgated standards for all such product categories. See 15 U.S.C. 2056a(b)(2).

Consistent with section 104(b)(1)(A) of the CPSIA, CPSC consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this rule, including through participation in the juvenile products subcommittee meetings of ASTM.³ However, currently no voluntary or mandatory safety standard for infant support cushions exists to

² An exemption to the infant pillow ban applies to Boston Billow nursing pillows and substantially similar nursing pillows that are designed to be used only as nursing aids for breastfeeding mothers. 16 CFR 1500.86(a)(9). The exemption applies specifically to the FHSA ban and is not applicable to this rule or to the final rule for nursing pillows. 89 FR 85388 (October 25, 2024).

³ CPSC formally began the consultation process for this rulemaking in December 2021, via a letter from staff requesting that ASTM form a working group to develop a voluntary standard to reduce the risk of death and injury from hazards associated with infant pillow products, including nursing pillows. In response, ASTM formed two subcommittees intended to develop two separate voluntary standards: the F15.16 Infant Feeding Supports subcommittee, intended to develop a standard for nursing pillows; and the F15.21 Infant Loungers subcommittee. Staff has been actively participating in both ASTM subcommittees to develop voluntary standards that address hazards associated with these products.

address the hazards posed by these products.

Infant support cushions are durable infant or toddler products under section 104(f) of the CPSIA. Section 104(f)(1) defines the term durable infant or toddler product as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. *See* 15 U.S.C. 2056a(f)(1). Section 104(f)(2) of the CPSIA provides a non-exhaustive list of product categories within the definition of durable infant or toddler products. Although infant support cushions are not specifically listed in section 104(f)(2), they are durable infant or toddler products because (as explained in Part II, below) they: are not disposable; have a useful life of up to several years during which they are often used by multiple children successively; are similar to other soft durable infant and children's products such as crib mattresses and sling carriers (which the Commission has issued rules for under section 104); are resold and widely available on secondary marketplaces; and are primarily intended to be used by children five years old or younger.

Section 104(d) of the CPSIA requires manufacturers of durable infant or toddler products to establish a product registration program and comply with CPSC's rule for product registration cards, 16 CFR part 1130. The final rule amends part 1130 to include infant support cushions in the list of durable infant or toddler products that must comply with these product registration requirements. *See* 16 CFR 1130.2(a).

Manufacturers of children's products must also comply with the testing and certification requirements for children's products that are codified in 16 CFR parts 1107 and 1109. Section 14(a)(3) of the Consumer Product Safety Act (CPSA) requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (test laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The final rule is a children's product safety rule that requires issuance of an NOR.

C. Notice of Proposed Rulemaking (NPR)

On January 16, 2024, the Commission published an NPR under section 104 of the CPSIA that proposed a mandatory consumer product safety standard for infant support cushions to address the risk of death and injury associated with these products. 89 FR 2530. The proposed rule addressed the suffocation, entrapment, and fall hazards associated

with infant support cushions by including performance, testing, labeling, and instructional literature requirements. The proposed requirements in the NPR were based on staff's analysis of the hazards presented by infant support cushions as well as incident, injury and fatality data. The proposed requirements also considered the recommendations in the June 30, 2022, Pillows Product Characterization and Testing, Boise State University Report (BSU Final Report).⁴ CPSC awarded a contract to Boise State University (BSU) for infant biomechanics and suffocation research and consultancy services. This research included an analysis of the risk of injury or death to infants associated with the use of nursing pillows and infant support cushions during activities such as feeding, nursing, sleeping, propping, and lounging. The BSU Final Report provided recommendations and conclusions related to the performance and design of infant support cushions, including recommendations regarding firmness testing, airflow testing, and sagittal-plane testing. Tab C of Staff's NPR Briefing Package summarizes how the requirements of the NPR relate to the conclusions and recommendations of the BSU Final Report. The Commission received 18 comments in response to the NPR.

On April 23, 2024, CPSC published a notice of availability (NOA) in the **Federal Register** that announced the availability of the incident data relied upon for the infant support cushions NPR and sought comments from the public. 89 FR 30295. The Commission received one comment in response to the NOA.

D. Final Rule Overview

Pursuant to section 104 of the CPSIA, 15 U.S.C. 2056a, the Commission is issuing a mandatory standard for infant support cushions based on the proposed requirements in the NPR, with certain modifications in response to public comments, which are discussed in detail in Sections VI and VII of the preamble.⁵ The final rule defines an infant support cushion as an infant product that is filled with or comprised of resilient material such as foam,

fibrous batting, or granular material or with a gel, liquid, or gas, and which is marketed, designed, or intended to support an infant's weight or any portion of an infant while reclining or in a supine, prone, or recumbent position. This definition includes any removable covers, or slipcovers, sold on or together with an infant support cushion. This includes infant pillows, infant loungers, nursing pillows with a lounging function, infant props or cushions used to support an infant for activities such as tummy time, and other similar products. The final rule addresses the risk of death and injury associated with infant support cushions primarily due to suffocation, entrapment, and fall hazards. It addresses positional asphyxiation hazards by requiring that all surfaces be sufficiently firm that they are unlikely to conform to an infant's face and occlude the airways,⁶ and by setting a maximum incline angle that would prevent hazardous positioning of an infant's head and neck along the surfaces of the product. The final rule sets a side angle requirement that addresses the risk of entrapment between the sidewall and the occupant support surface. It addresses fall hazards by effectively limiting sidewall height to discourage caregivers from mistakenly believing these products to be safe for unsupervised infants. Finally, the final rule requires a strongly worded, conspicuous, and permanent on-product warning label.

Based on comments received on the NPR, the following changes have been made in the final rule:

- For clarity, the definition of infant lounger in § 1243.2 has been revised to change the term infant product to infant support cushion.

- For clarity, the definition of infant support cushion in § 1243.2 has been revised to add the sentence "This definition includes any removable covers, or slipcovers, sold on or together with an infant support cushion" at the end of the definition.

- To avoid ambiguity, a new definition of the term sidewall has been added in § 1243.2 which is defined as any wall at the edge of the occupant support surface.

⁴ Erin M. Mannen et al; Consumer Prod. Safety Comm'n. Pillows Product Characterization and Testing (2022). www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing.

⁵ On October 16, 2024, the Commission voted (5-0) to publish this final rule with changes. Chair Hoehn-Saric issued a statement in connection with his vote, available at: www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Statement-of-Chair-Alexander-Hoehn-Saric-on-Commission-Approval-of-a-Final-Rule-Establishing-a-Safety-Standard-for-Infant-Support-Cushions.

⁶ Airways occlusion means to block the passage of air from the nose and mouth into the lungs, so that inhaled air cannot reach the lungs. In this case, the airway occlusion is caused by a soft product that covers the nose and mouth. Once an infant's airflow is compromised, decreased levels of oxygen in the blood can further impair the ability of the infant to respond to the situation. If an infant cannot respond, a feedback loop of decreased heart and respiration rate develops that can eventually lead to cessation of breathing and may become fatal if uninterrupted.

- For accuracy and consistency, a reference to infant pillow in § 1243.3(d) has been changed to infant support cushion.

- The final rule removes proposed § 1243.3(e) regarding side height as this requirement is redundant with the maximum incline angle limits in the rule. The final rule renumbers the paragraphs following proposed § 1243.3(e) to reflect this change. The rule also removes the corresponding test in § 1243.5(d)(8) for consistency. To reflect this change, all numbers after § 1243.5(d)(7) have been renumbered in the final rule.

- The performance requirements in § 1243.4(e)(2) and (3) and (f) as well as the corresponding test methods in §§ 1243.5(g) and 1243.4(h) and (i) have been revised to clarify that the performance requirements and test methods apply only to products that contain a sidewall with language stating, for products with a sidewall.

- The test method in § 1243.5(f) has been clarified to explain that products sold with a slipcover on or together with the product are to be tested as assembled, with the slipcover on the product. The test method in § 1243.5(f) has also been clarified to explain that all products, including products one inch or less in thickness, shall be tested.

- Figure 2 (for products without a tummy time feature) to paragraph (d)(7) in § 1243.6 has been revised and a new figure 3 (for products with a tummy time feature) has been added to reflect changes in warning content made in response to public comments. These changes include adding a statement to address prone use during tummy time, removing references to “an awake baby,” separating the sleep and suffocating-relating warning content to provide clarity, adding a warning to address soft bedding both in and outside of the product, and deleting some of the statements to reduce length and increase clarity. Additionally, § 1243.6(d)(7) clarifies that all infant support cushions are required to contain a warning with the content and format depicted in this section as figure 2 (for products without tummy time) or figure 3 (if the product has a tummy time feature) to paragraph (d)(7), as applicable.

- Section 1243.6(e) has been revised to clarify that slipcovers sold on or together with the product shall contain the warning statement shown in figures 2 and 3 to paragraph (d)(7), as applicable.

II. The Product Category

A. Infant Support Cushions

Infant support cushions are products that support an infant for lounging, meaning reclining in a supine, prone, or recumbent position. Infant products within this category may or may not have perimeter sidewalls. Most infant support cushions currently on the market are filled with cushy foam or soft fibrous batting, covered by flexible fabric. Some infant support cushions are marketed for use in a crib or other infant sleep product, notwithstanding warnings from the Commission and other institutions, including the American Academy of Pediatrics (AAP), that soft objects, such as pillows and excess bedding, should not be placed in an infant's sleep environment.⁷

Illustrative pictures of infant support cushions can be found in Tab C of Staff's NPR Briefing Package.⁸ A non-exhaustive list of examples of infant support cushions includes:

- head positioner pillows;
- flat baby loungers;
- crib pillows;
- wedge pillows for infants;
- infant sleep positioners, unless regulated as medical devices by the Food and Drug Administration (FDA);
- stuffed toys marketed for use as an infant support cushion;
- infant tummy time or lounging pillows, whether flat or inclined;
- multi-purpose pillows marketed for both nursing and lounging;
- anti-rollover pillows with or without straps that fasten the pillow to the infant;
- infant self-feeding pillows that hold a bottle in front of the face of a reclining or lying infant;
- pads and mats; and
- accessory pillows and other padded accessories, often marketed for use with an infant car seat, stroller, or bouncer, but not sold with that product and therefore not included in the mandatory safety standard for those products.

These in-scope products must meet the requirements of the rule. However, to avoid potentially duplicative or conflicting obligations, the scope of products that would be subject to this

⁷ Rachel Y. Moon, Rebecca F. Carlin, Ivan Hand, *The Task Force On Sudden Infant Death Syndrome And The Committee On Fetus And Newborn*, 150(1) American Academy of Pediatrics: Evidence Base for 2022 Updated Recommendations for a Safe Infant Sleeping Environment to Reduce the Risk of Sleep-Related Infant Deaths (2022).

⁸ Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc.

rule does not include durable infant products that are already regulated by the Commission and included in the list of products at 16 CFR 1130.2(a).

The following products are NOT infant support cushions within the scope of this rule:

- pillows not marketed, designed, or intended for use by infants, such as adult bed and throw pillows;
- nursing pillows if subject to the Commission's final rule for nursing pillows (89 FR 85388 (October 25, 2024)), unless they are also marketed for lounging;
- crib and play yard mattresses that are regulated under the play yard standard (16 CFR part 1221) and crib mattress standard (16 CFR part 1241);
- purely decorative nursery pillows, such as those personalized with a baby's name and birthdate, that are not marketed, designed, or intended for infant use;
- stuffed toys (unless they meet the definition of an infant support cushion in this rule);
- padded seat liners that are sold with a rocker, stroller, car seat, infant carrier, swing, highchair, or bouncer that are specifically designed to fit that product;
- padded seat liners and inserts for a rocker, stroller, car seat, infant carrier, swing, highchair, or bouncer that are sold separately by the manufacturer as a replacement part and specifically designed to fit that product; and
- sleeping accommodations that are regulated under the Commission's infant sleep product rule at 16 CFR part 1236.

B. Market Description

Most types of new infant support cushions are sold online, including from general online retailers, online sites for “big box” stores, online baby products sites, and online marketplaces for handcrafted items. Some types of infant support cushions, particularly crib pillows and baby loungers, are also available from brick-and-mortar baby specialty stores and general retail stores. Prices for new infant support cushions average roughly \$30 and range from less than \$15 for a simple head positioner pillow or crib pillow to more than \$250 for a lounger with a removable cover or a large stuffed toy marketed for use while an infant sleeps. Several thousand manufacturers and importers, including hundreds of handcrafters and direct foreign shippers, supply infant support cushions to the U.S. market. See Tab E of Staff's NPR Briefing Package.⁹

⁹ Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-Continued

Infant support cushions may be re-used for multiple children or resold for use after an infant outgrows the product. For example, in June 2023, staff found listings on Mercari for used changing pads, large stuffed toys marketed for infant sleep, crib wedge pillows, baby neck pillows, baby sleep positioners, baby loungers, baby sleep mats, baby pillow chairs, infant self-feeding pillows, baby/toddler bean bag chairs, and crib pillows. Similar listings were identified on eBay.

III. Incident Data and Hazard Patterns

Staff searched the Consumer Product Safety Risk Management System (CPSRMS)¹⁰ and National Electronic Injury Surveillance System (NEISS)¹¹ databases for fatalities, incidents, and concerns associated with infant support cushions and involving infants up to 12 months old, reported to have occurred between January 1, 2010, and December 31, 2022. Staff identified 79 fatal incidents and 124 nonfatal incidents and consumer concerns reported to CPSC from 2010–2022. Of the 124¹² non-fatal reports, 22 consisted of emergency-department-treated injuries, three involved hospital admissions, 45 involved no injury, and for 54 the disposition was either unknown or unspecified. The incident data and hazard patterns cited in support of the NPR support this final rule and are unchanged from the NPR. For further discussion of the incident data and hazard patterns, see the NPR and Tab A of Staff's NPR Briefing Package, which describe the incident and hazard patterns associated with infant support cushions,¹³ and the NOA, which

describes the incident data and hazard patterns relied on for the rulemaking.¹⁴

IV. International and Voluntary Standards for Infant Support Cushions

A. International Standards for Infant Support Cushions

The Commission is aware of two British standards that contain performance requirements addressing suffocation and asphyxiation hazards associated with infant pillows: BS 1877–8:1974, Specification for Domestic bedding—Part 8: Pillows and bolsters for domestic use (excluding cellular rubber pillows and bolsters) (BS 1877–8:1974) and BS 4578:1970, Specification for Methods of test for hardness of, and for air flow through, infants' pillows (BS 4578:1970). The scope of BS 1877–8:1974 includes both adult and cot pillows (infant pillows) and recommends that cot pillows be filled firmly enough to prevent infants' heads from sinking into the products and that the pillow covering not be loose enough to be drawn into an infant's mouth. BS 1877–8:1974 has requirements for cot pillow size, filling, and covering. Under that standard, cot pillows must be 58 x 38 cm (23 x 15 inches) and their covering must be of open construction to allow air permeability. Both the filling and covering must meet performance requirements described in BS 4578:1970 for hardness (*i.e.*, firmness) and air permeability.

The hardness test in BS 4578:1970 requires that a 100 mm diameter probe be placed in the center of the product with 10 newtons (N) of force for one minute. BS 1877–8:1974 requires that displacement of the pillow when the force is applied shall not exceed 25 percent of the thickness. The proportional approach used in this standard allows thicker pillows to have a greater displacement than thinner pillows, which staff assesses does not sufficiently protect against the suffocation and asphyxia hazards associated with infant support cushions because that greater displacement could allow the product to obstruct the infant's airway.

B. ASTM Voluntary Standards Work

Currently, there are no published U.S. voluntary standards for infant support cushions. ASTM is working on a

voluntary standard for infant loungers under the Subcommittee F15.21 on Infant Carriers, Bouncers, and Baby Swings.¹⁵ On March 25, 2024, ASTM issued ballot F15.21 (24–01), which included the latest draft of the infant lounger's voluntary standard. The ballot closed on April 29, 2024, and received eight negative votes and other comments including a comment from staff.¹⁶ On September 16, 2024, ASTM issued ballot F15 (24–18), Item #1 which addressed the negative comments and other comments on the draft standard for infant loungers included in ballot F15 (24–01). That ballot closed on October 16, 2024.¹⁷

In the ASTM draft voluntary standard, infant loungers would be products with a raised perimeter, a recess, or other area that is intended to be placed on the floor and to provide a place for an infant to sit, lie, recline, or rest, while supervised by an adult, but are not intended or marketed for sleep. The draft definition would apply to only a subset of the products covered by this rule, which includes infant positioners, nursing pillows with dual use for lounging, infant cushions, and other infant pillow-like products, as well as the infant loungers being considered by the ASTM draft standard. ASTM's draft voluntary standard for infant loungers includes general requirements typically found in other ASTM juvenile product standards, such as requirements addressing lead content, small parts, hazardous sharp edges or points, resistance to collapse and disassembly, openings, protective components, permanency of labels and warnings, and toy accessories that are attached to, removable from, or sold with the products. The ASTM draft standard also specifies that if the lounger can be converted to another product, it shall comply with the applicable requirements of the converted product's standard. The general requirements of the ASTM draft infant lounger standard also state that the sidewall height of the

of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc.

¹⁰ CPSRMS is the epidemiological database that houses all anecdotal reports of incidents received by CPSC, "external cause"-based death certificates purchased by CPSC, all in-depth investigations of these anecdotal reports, as well as investigations of select NEISS injuries. CPSRMS documents include hotline reports, online reports, news reports, medical examiner's reports, death certificates, retailer/manufacture reports, and documents sent by state and local authorities, among others.

¹¹ NEISS is a statistically valid surveillance system for collecting injury data. NEISS is based on a nationally representative probability sample of hospitals in the U.S. and its territories. Each participating NEISS hospital reports patient information for every emergency department visit associated with a consumer product or a poisoning to a child younger than five years of age. The total number of product-related hospital emergency department visits nationwide can be estimated from the sample of cases reported in the NEISS. See www.cpsc.gov/Research—Statistics/NEISS-Injury-Data.

¹² The NPR listed 125 nonfatal incidents, but one of those incidents was a duplicate.

¹³ Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice

of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc.

¹⁴ Notice of Availability and Request for Comment: Data Regarding Incidents Associated With Infant Support Cushions, 89 FR 30295 (April 23, 2024), available at: www.federalregister.gov/d/2024-08605.

¹⁵ See Tab B of Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc. This ASTM standard is still in draft form and has not completed the full consensus process to become an approved standard, and thus the draft standard is subject to change.

¹⁶ CPSC Staff Comment to Ballot ASTM F15.21 on Infant Loungers, available at: www.cpsc.gov/s3fs-public/CPSCStaffCommenttoBallotASTMF1521onInfantLoungers.pdf?VersionId=tGM05rvyA6WCUzQxHFCdkVHVxRLbtQLv.

¹⁷ CPSC Staff Comment to Ballot ASTM F15.21 on Infant Loungers, available at: www.cpsc.gov/s3fs-public/staff-comment-to-ballot-ASTM-F15-21-on-infant-loungers.pdf?VersionId=oMjqK0hKBI0IEWiQliiCj3u3OP2XcB7n.

product shall be less than two inches on both the interior and exterior sides of the sidewall when measured according to the sidewall height measurement test method specified in the draft standard. The ASTM draft voluntary standard includes performance requirements that address stability, restraints, occupant support surface angle, fabric/mesh integrity, bounded openings, occupant support surface firmness, sidewall firmness, side angle measurements, and deflection at the occupant support surface and sidewall intersection. Finally, the ASTM draft voluntary standard for loungers also includes marking, labeling, and instructional literature requirements, such as warning the consumer about not using the product for sleep or naps, only using the product when the occupant baby is supervised, only using the product on the floor, keeping soft bedding out of the product, not using the product on raised surfaces, and not using the product to carry or move an infant.

As previously noted, the ASTM draft standard for infant loungers primarily differs from the final rule regarding the scope of products subject to the standard. Specifically, the final rule includes all types of infant support cushions such as infant positioners, infant loungers, and other types of infant mats and pads, while the scope of the ASTM draft standard would apply only to infant loungers. Given that the ASTM draft standard for loungers has not been finalized and published and would not cover the same scope of products as the final rule, the Commission finds that no voluntary standard currently exists or will likely exist in the foreseeable future that would adequately address the hazards presented by infant support cushions. This rule is required under section 104 of the CPSIA to address the identified hazards presented by infant support cushions. 15 U.S.C. 2056a.

VI. Response to Public Comments

CPSC received 18 public comments during the NPR comment period, and one comment during the NOA comment period. The comments are available on: www.regulations.gov, by searching under docket number CPSC–2023–0047. This section describes the significant issues raised in the comments and CPSC's responses to them.

A. Scope of the Final Rule

Comment: The Boppy Company, LLC (Boppy), Best Practice Quality LLC (BPQ), Heroes Technology (US) LLC d/b/a Snuggle Me Organic (Heroes Technology), and Juvenile Products Manufacturers Association (JPMA)

object to the broad scope of the proposed rule and argue that the proposed rule does not take into consideration that it is difficult to develop specific standards because of the wide range of infant support cushion designs.

Response: We disagree that performance requirements and warning and labeling requirements for a wide range of infant support cushions cannot be comprehensively developed to mitigate the hazards posed to infants from infant support cushions. Although infant support cushions include many different types of products, incident data relied upon to support the rule indicate that infants are at risk from falls and suffocations, and that the hazard patterns are similar for all types of infant support cushions. As indicated in the incident data, caregivers use infant support cushions, which are not intended for sleep, in infant sleep settings and infants tend to fall asleep in these products. Thus, it is reasonably foreseeable that caregivers will use infant support cushions in infant sleep settings, which poses a suffocation hazard. Therefore, the performance requirements and warnings in the rule are designed to reduce the fall and suffocation hazards that these products pose.

Comment: JPMA argues that a rule for infant support cushions is unnecessary because CPSC has a safety standard for infant sleep products, codified at 16 CFR part 1236, addressing infant support cushions that are primarily intended or marketed for sleep.

Response: The scope of this rule includes products that are not subject to the infant sleep products rule, but that still present a risk of injury or death to infants. Infant support cushions do not meet the definition of infant sleep products because they are not marketed or intended to provide sleeping accommodations. Therefore, this rule is necessary to address the hazards posed by infant support cushions because the infant sleep products rule does not apply to infant support cushions.

1. Scope Age

Comment: BPQ asserts that the in-scope age range in the rule should be changed to align with the ASTM Lounger standard in development, which BPQ states covers infants 0–6 months.

Response: Since publication of the NPR, the ASTM F15.21 Infant Loungers Scope Task Group changed the scope of its draft safety standard to include

infants up to 12 months of age.¹⁸ Incident data, as outlined in the incident data and hazard pattern section of the NPR and Tab A of Staff's NPR Briefing Package,¹⁹ indicate that incidents associated with infant support cushions occur with infants up to 12 months old (*i.e.*, 365 days). Based on the incident data and hazard pattern analysis, the performance requirements and warnings were developed to mitigate the hazards associated with infant support cushions for infants up to 12 months old. The Commission declines to limit the scope of the final rule with a specific age limitation. The Commission's approach mitigates the hazards associated with infant support cushions for all infants, regardless of age, and discourages manufacturers from making age-based marketing claims specifically to attempt to remove their products from being subject to the rule.

2. Tummy Time Pillows

Comment: BPQ, the Toy Association (TA), Boppy, and Graco Children's Products Inc (Graco) argue that the rule should exempt tummy time pillows.

Response: We disagree that tummy time pillows should be exempted from the rule. Tummy time pillows, which are pillow products on which infants may be propped, present the same suffocation and fall hazards as other types of infant support cushions, as indicated in the incident data discussed above. Infants can suffocate when tummy time pillows conform to an infant's face and occlude the airways; further, infants can roll from a tummy time pillow, creating a fall risk if the tummy time pillow is placed on an elevated surface. Therefore, tummy time pillows are subject to the requirements of the rule because allowing an exemption for tummy time pillows would allow those products to present the same suffocation and fall hazards to infants that this rule is intended to address. We note that AAP and National Institute of Child Health and Human Development (NICHD), while endorsing tummy time, do not specifically

¹⁸ ASTM F15.21 Infant Loungers Scope Task Group—MeetingLog, available at: www.cpsc.gov/content/ASTM-F1521-Infant-Loungers-Scope-Task-Group-Meeting%E2%80%AFLog-1.

¹⁹ Staff's NPR Briefing Package available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrK_EvV00xeX75dsFc.

recommend tummy time pillows for that activity.^{20 21}

3. Dual Use Products

Comment: AAP supports the scope of the proposed rule and specifically asserts that dual use products marketed for both nursing and lounging should be within the scope of the rule. BPQ and Boppy state that the rule should exempt dual use products. Boppy asserts that there are distinct differences between nursing pillows and infant support cushions; it further states that the intent of the nursing pillows rule is to limit nursing pillow use to solely breast feeding and bottle feeding, obviating the need to cover nursing pillows of any type, including dual use, in this rule. BPQ further argues that because the draft ASTM nursing pillows standard, at the time of the comment, specifically states that nursing pillows may not be marketed for multipurpose use, nursing pillows should be exempt from this rule even if they otherwise would meet the definition of an infant lounger.

Response: We disagree that the rule should exempt dual use products marketed for both nursing and lounging. A nursing pillow that is also marketed for lounging is an infant support cushion subject to this rule. The new nursing pillow standard, ASTM F3669–24, published on September 10, 2024, specifies that if a nursing pillow can be converted into another product or has use features for which a consumer safety specification exists, the product shall comply with the requirements of all applicable voluntary standards. On October 25, 2024, the Commission final rule for nursing pillows published (89 FR 85388), which does not have a requirement for convertible products. Nursing pillows that meet the definition of infant lounger in § 1243.2 must also meet the requirements of this rule because the two rules are intended to address different hazard patterns. While the nursing pillow performance requirements and warnings discourage lounging, the infant support cushion rule requirements are intended to mitigate suffocation hazard while lounging. It is common for multiple CPSC mandatory safety regulations to apply to a single children's product, such as the existing regulations for

small parts, phthalates, and lead content.

Comment: BPQ recommends the following statement should be added to the rule: If the infant lounger can be converted into another product for which a consumer safety specification exists, the product shall comply with the applicable requirements of that standard.

Response: The commenter's requested statement is unnecessary because § 1243.3(g) of the rule regarding convertible products already states that if the infant support cushion can be converted into another product for which a consumer product safety standard exists, the product also shall comply with the applicable requirements of that standard.

4. Playmats

Comments: Bureau Veritas (BV) requests clarification regarding whether playmats are intended to be classified as infant support cushions. Dorel Juvenile Group, Inc. asserts that playmat products subject to the requirements for toys in ASTM F963 and 16 CFR part 1250 and whose base "pad or mat" is a flat layer no greater than one inch in thickness should be exempt from the rule. TA and Graco also assert that playmats that are subject to ASTM F963 and 16 CFR part 1250 should be exempt from the rule.

Response: We disagree that the rule should exempt playmats. While playmats must meet the requirements of ASTM F963 and 16 CFR part 1250, those requirements do not address the infant suffocation hazards presented by playmats. Additionally, a playmat could have a flat layer no greater than one inch in thickness but still have greater than 1-inch sides or borders presenting a potential suffocation hazard. Finally, not providing the requested exemption is consistent with the ASTM draft voluntary standard for infant loungers, which currently also does not contain an exemption for playmats.

5. Accessory Pillows and Other Padded Accessories

Comment: BV requests clarification on the scope of the final rule regarding accessory pillows and other padded accessories sold with a juvenile product, or accessories sold separately from a juvenile product but intended to be used on a juvenile product. Boppy and Graco assert that the rule should exempt accessory pillows and other padded accessories for durable nursery products that are sold separately. Boppy additionally states that infants are seated while in contact with these pillows and padded accessories, so they

do not meet the definition of an infant support cushion. Dorel Juvenile Group argues that the rule should exempt padded seat liners and inserts included with a car seat. BPQ argues that products that are used to keep an infant's head positioned in an infant carrier should be out of scope of this rule.

Response: Padded seat liners that are sold with a rocker, stroller, car seat, infant carrier, swing, highchair, or bouncer and are specifically designed to fit that product are not subject to the rule. However, we agree with BV, Boppy, Graco, and Dorel Juvenile Group that replacement padded seat liners and inserts for these products that are sold separately by the manufacturer as a replacement part and specifically designed to fit a rocker, stroller, car seat, infant carrier, swing, highchair, or bouncer would meet the rule's definition of an infant support cushion, even though they would be subject to the rules for those specific products as well. To avoid this unintended result, we have added these products to the list of products not within the scope of the rule because they are subject to the specific safety standard for those products discussed in section II.A of the preamble. Under § 1243.1, products subject to another standard listed in 16 CFR 1130.2(a) are exempt from the rule.

Aftermarket accessory pillows and other padded accessories, often marketed for use with a rocker, stroller, infant car seat, infant carrier, swing, highchair, or bouncer, but not sold with that specific product or as a replacement part, are subject to this rule, and thus must meet the requirements of the rule. This can include products that are used to keep an infant's head positioned in an infant carrier, unless they are sold with that product or as a manufacturer's replacement part. Such portable products can be used for purposes other than their intended use, including as an infant sleep product. Therefore, we disagree with BPQ that products that are used to keep an infant's head positioned in an infant carrier should be outside the scope of this rule. We also disagree with Boppy that accessory pillows and other padded accessories, used with seated products, should be excluded from the scope of the rule. These accessories present a suffocation hazard to infants because they are highly portable, and therefore can be used not only in the product for which they were intended but also in a variety of other products in which infants sleep, such as cribs, bassinets, and play yards. Because infants sleep for a majority of the day and tend to fall asleep in products intended for lounging, it is reasonably

²⁰ Benefits of Tummy Time | Safe to Sleep® (nih.gov), available at: <https://safetosleep.nichd.nih.gov/reduce-risk/tummy-time#:~:text=Babies%20benefit%20from%20having%20two,of%20total%20tummy%20time%20daily>.

²¹ American Academy of Pediatrics (2017). Back to sleep, tummy to play. Retrieved August 28, 2018, from www.healthychildren.org/English/ages-stages/baby/sleep/Pages/Back-to-Sleep-Tummy-to-Play.aspx.

foreseeable that caregivers will use these accessory products in an infant sleep environment or that infants will fall asleep on them. Therefore, the rule has requirements and warnings to reduce the suffocation hazard presented by infant support cushions.

6. Infant Sleep Positioners, Anti-Rollover Pillows, and Wedge Pillows for Infants

Comment: BPQ and Boppy argue that the rule should exempt infant sleep positioners and anti-rollover pillows. Boppy states that the rule should exempt wedge pillows for infants. Boppy and Graco additionally state infant wedge pillows, infant sleep positioners, and anti-rollover pillows are all sleep products and thus should be subject to the infant sleep products rule, not this rule. BPQ additionally states that there is precedent to have discrete standards for each product category.

Response: We disagree with the commenters' assertion that infant wedge pillows, infant sleep positioners, and anti-rollover pillows should be outside the scope of the rule because all of these products are sleep products.²² Infant wedge pillows, infant sleep positioners, and anti-rollover pillows do not meet the definition of infant sleep products in 16 CFR part 1236 because they are not marketed or intended to provide sleeping accommodations. Nevertheless, it is reasonably foreseeable that caregivers will use these products in an infant sleep environment. CPSC and FDA have warned against using infant positioning products in an infant sleep environment because they pose suffocation hazards.^{23 24} The incident data, which includes both fatal and nonfatal incidents, show that infants can suffocate when wedges, sleep positioners, and anti-rollover pillows conform to an infant's face. Therefore, the performance requirements and warnings of the rule are intended to mitigate the suffocation hazard posed by these products. Because the incident data hazard patterns associated with these products are the same and show that all infant support cushions are used for lounging, we disagree that it is

necessary to develop separate standards specifically for these products.

7. Pads and Mats

Comments: An anonymous commenter requests clarification on the type of pads and mats subject to the rule because they assert that the term is generic and could apply to products beyond those on which a child could sleep.

Response: Pads and mats that are marketed, designed, or intended to support an infant's weight or any portion of an infant while reclining or in a supine, prone, or recumbent position are subject to the rule. These pads and mats pose a suffocation hazard because they can be used in a variety of products in which infants sleep such as cribs, bassinets, and play yards. In addition, because infants sleep for a majority of the day and tend to fall asleep in products intended for lounging, it is reasonably foreseeable that infants will fall asleep on pads and mats. Pads and mats are associated with both fatal and nonfatal incidents in the incident data, and the performance requirements of the final rule are intended to mitigate the suffocation hazard to infants from these products.

8. Framed Seating Products

Comment: Graco argues that framed seating products should be exempt from the rule because these types of framed products do not present the same hazards as soft cushioned infant pillow products and because the NPR did not specifically address hazards associated with seated infant products that have rigid frame containment.

Response: We agree with the commenter that framed seating products, including infant floor seats, rockers, strollers, car seats, infant carriers, swings, highchairs, bouncers, or other infant products with rigid components are not infant support cushions as defined in § 1243.2 of the rule. Thus, an exemption is unnecessary because these products are not subject to the requirements of the final rule.

B. Definitions

Comment: TA requests the term "infant pillow" used in § 1243.3(d), but nowhere else in the proposed rule, be amended to reference the defined term of infant support cushion for consistency. Alternatively, TA argues that "infant pillow" could be included as a discrete term in § 1243.2.

Response: For consistency and clarity, the reference to infant pillow in § 1243.3(d) of the proposed rule has been changed to infant support cushion in the final rule.

Comment: Graco requests that the definition of infant lounger be modified by to substitute the term infant support cushion for infant product. Graco also requests that the phrase "infant loungers do not include seated infant products with a rigid frame used as containment" be added to the definition of an infant lounger.

Response: We agree with the commenter's recommended change to the definition of infant lounger in § 1243.2 and have replaced the phrase infant product with infant support cushion in the final rule. We disagree that it is necessary to specify that infant loungers do not include seated products with a rigid frame used as containment as these products are not within the scope of infant support cushions and thus are not subject to the requirements of the rule.

Comment: JPMA asserts that the definitions used in the rule should align with the ASTM standard, in development, for infant loungers.

Response: The draft ASTM standard for infant loungers is in draft form and subject to change as part of the consensus process. Therefore, we decline to align the definitions in the final rule with the ASTM standard in development. Additionally, the final rule's definition of infant support cushion addresses the hazards presented by different types of infant support cushions, not just the infant loungers under consideration by the ASTM draft standard.

Comment: Heroes Technology argues that many of the products within the scope of the rule do not have an occupant support surface and the rule does not address how to test products without an occupant support surface.

Response: All infant support cushions contain an occupant support surface, which is defined in § 1243.2 as the area that holds up and bears the infant or any portion of the infant to support the infant's weight or any portion of the infant while reclining or in a supine, prone, or recumbent position. By definition, every infant support cushion subject to the rule contains an occupant support surface, and thus is required to meet the performance requirements of the rule that involve testing the occupant support surface.

Comment: Boppy notes that the proposed rule does not define the term sidewall.

Response: The Commission agrees that a definition of the term sidewall is needed for clarity. Thus, a new definition for sidewall, which means any wall at the edge of the occupant support surface, has been added to § 1243.2 of the final rule.

²² See Safety Standard for Infant Sleep Products, 86 FR 33022 (June 23, 2021), available at: www.federalregister.gov/d/2021-12723.

²³ Recommendations for Parents/Caregivers About the Use of Baby Products | FDA, available at: www.fda.gov/medical-devices/baby-products-sids-prevention-claims/recommendations-parentscaregivers-about-use-baby-products.

²⁴ Deaths prompt CPSC, FDA warning on infant sleep positioners | CPSC.gov, available at: www.cpsc.gov/Newsroom/News-Releases/2010/Deaths-prompt-CPSC-FDA-warning-on-infant-sleep-positioners.

C. Use of Substitute Products

Comment: Boppy, Heroes Technology and JPMA raised a concern about the potential for consumers to use substitute products such as adult pillows or blankets, instead of infant support cushions. The commenters note that such products would fall outside the scope of the rule but could pose similar suffocation and fall hazards to infants.

Response: None of the commenters provide data to support the claim that the requirements in the proposed rule would lead consumers to use substitute products. The rule is intended to ensure that consumers have access to infant support cushions that do not present the same risks of death or injury as some current products, and this rule should not cause consumers to seek out alternative products. The rule also contains warnings that explain why soft surfaces, blankets, and other soft items present a hazard when placed in and around the product, which can further educate consumers on the risks posed by substitute products with soft surfaces.

Comment: Boppy questions whether the performance requirements in the proposed rule could negatively impact tummy time rates.

Response: The rule is not likely to reduce beneficial tummy time. Regarding tummy time, AAP and NICHD, while endorsing tummy time, do not recommend specifically using tummy time pillows. Additionally, this rule would allow the manufacture and sale of tummy time products as long as those products meet the requirements of the rule. Therefore, tummy time guidance is not likely to change based on this rule.

D. Product Misuse and Education

Comment: BPQ recommends CPSC develop educational campaigns to address the unsafe sleep settings and misuse of products not intended for infant sleep exhibited in the incident data. Commenter Julian Dreest asks what strategies are currently in place to educate consumers about the proper use of infant support cushions.

Response: The use of infant support cushions for sleep, or in an infant sleep setting, is not appropriate. Consumer education campaigns about safe sleep and the safe use of infant support cushions are useful and necessary to assist new parents and older generations of caregivers about safe sleep practices. CPSC actively promotes safe sleep outreach and education throughout the year to reach parents, grandparents, and

caregivers on our website²⁵ and by engaging in targeted safe sleep messaging during Baby Safety month (September).

However, education campaigns alone are not enough to address the hazards associated with infant support cushions. Data generally indicate that consumers believe if an infant product is on the market, it must be safe for use with infants—an assumption that is not always true. Therefore, this final rule for infant support cushions, paired with educational campaigns, is needed to better ensure safe uses of these products.

Comment: Julian Dreest, BPQ, and Heroes Technology assert that educational strategies should reflect the new requirement for a maximum incline angle of 10 degrees or less, which limits the side height of the product to approximately 1.9 inches. The commenters assert this new requirement will invite some caregivers to improvise or modify the product to achieve the containment level they desire, increase consumer complacency, and provide a false sense of security leading to less supervision. Therefore, they argue, the rule will increase falls from elevated surfaces and the likelihood of roll-out from the product into an unsafe setting. AAP and the Joint Consumer Advocate Commenters strongly support the maximum incline angle requirement of 10 degrees or less in the proposed rule.

Response: We disagree that limiting the maximum incline angle to 10 degrees or less will lead to increased falls or suffocations due to decreased supervision. As discussed in Tab D of Staff's NPR Briefing Package,²⁶ a cushioned sidewall with a height of up to four inches may give caregivers the false perception that the product can safely contain a child without supervision, regardless of what the product warnings might say. The presence of a distinct, raised perimeter surrounding the occupant support surface, as observed in various products on the market, provides a visual cue to consumers that the infant is safely contained in the product. Infant support cushions currently marketed for sale often display images of infants sleeping or resting in such products, and thus convey the appearance of effective containment of infants. The incident data shows that parents may mistakenly

believe that products with cushioned sidewalls greater than two inches surrounding the infant would make them safe on elevated surfaces, that the infant can be left alone on the product, and that the product will safety contain their infant. The incident data further shows that infants suffer falls from products with cushioned sidewalls that are higher than 2 inches surrounding the occupant. Specifically, infants roll out of products with cushioned sidewalls greater than two inches into hazardous settings. With infant support cushions with cushioned sidewalls less than 2 inches, parents can see their infant is not secure in the product, that the product does not contain their infant, and that the infant should not be left alone on the product, particularly on elevated surfaces. Furthermore, the accompanying warnings alert users to the risks of leaving infants unattended or allowing use of the products for sleep or using on elevated surfaces. We note that AAP and the Joint Consumer Advocate Commenters strongly support the maximum incline angle requirement of 10 degrees or less in the proposed rule.

Comment: Graco states that in addition to the current infant pillows that are already banned under 16 CFR 1500.18, the CPSC had considered an "Infant Pillow Ban" in former operating plans that would take these dangerous products off the market, but instead has pivoted to allow the very same types of products in the NPR, without sufficient requirements that would address the inherent misuse and hazards.

Response: The Commission finds that the requirements in this rule will mitigate the suffocation and fall hazards to infants posed by infant support cushions. Therefore, the Commission concludes, that this rule will better address the known hazards posed by infant support cushions rather than just merely expanding the existing infant pillow ban, while still providing consumers with the utility of infant support cushions for supervised infant use.

Comment: JPMA asserts that improper use of infant support cushions has contributed to the majority of incidents associated with these products since 2010. JPMA also contends that the majority of the products in the scope of this rule are not marketed or intended for sleep and have recognized utility for parents who need a safe product in which to place their child during awake time interaction, play, and engagement.

Response: The incident data clearly indicate a pattern of use of infant support cushions in infant sleep settings and for sleep. The designs of infant

²⁵ Safe Sleep—Cribs and Infant Products, available at: www.cpsc.gov/SafeSleep.

²⁶ See Tab D of Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrK_EvV00xeX75dsFc.

support cushions currently on the market encourage the use of these products for sleep. These products are often used for sleep because of the false perception that the soft, pillow-like design, with high borders/sides, are appropriate for infant sleep and will safely contain an infant, including on elevated surfaces. Further, staff is aware of infant support cushions that are or have previously been marketed and promoted as sleep products. Changing only the marketing of the product, without changing the design of the product, will not adequately discourage the behavior of caregivers allowing infants to sleep on infant support cushions unsupervised. We agree that infant support cushions have utility for parents to place their infant when actively supervised.

E. Incident Data

Comment: BPQ, Boppy, Heroes Technology, and JPMA state that the percentages of incidents by product category are not provided in the NPR and Tab A of Staff's NPR Briefing Package. BPQ also argues that the two largest nonfatal hazard patterns, falls and threatened asphyxia, are not broken down by age.

Response: The Commission published an NOA announcing the availability of incident data relied upon for the NPR and seeking comment. The data in the NOA released for public comment shows that for fatal incidents, 63 incidents were associated with loungers, 10 incidents were associated with sleep positioners, four incidents were associated with pads/mats, one incident was associated with an infant wedge, and one incident was associated with a tummy time pillow. For nonfatal incidents, 104 incidents were associated with loungers, 13 incidents were associated with sleep positioners, three incidents were associated with infant wedges, two incidents were associated with pads/mats, one incident was associated with a tummy time pillow, and one incident was associated with a small infant pillow. As described above, the hazard patterns throughout these incidents are consistent with the risks of suffocation and falls presented by infant support cushions. Based on the data made available to commenters in the NOA, for incidents involving threatened asphyxia, 21 victims were up to 4 months old, two were 4–6 months old, and in three incidents the age was unreported. For incidents involving falls, 15 victims were up to 4 months old, nine were 4–6 months old, four were over 6 months old, and in one incident the age was unreported.

Comment: Boppy argues in a comment on the NPR that CPSC provided insufficient data to support that all products proposed to be covered by the rule, and specifically tummy time pillows, need regulation with a mandatory rule. Boppy also argues in a comment on the NOA that there are zero reported incidents related to tummy time pillows, so there is no justification for any inclusion of tummy time pillows within the scope of this proposed rule.

Response: The Commission disagrees that tummy time pillows should be excluded from the scope of the rule. Tummy time pillows are products on which infants may be propped, and therefore they must meet the requirements of this rule. Tummy time pillows were associated with one fatal incident and one nonfatal incident as reflected in the incident data and present the same hazards as other infant support cushions. So, allowing a tummy time pillow for infants to be exempted from this regulation is contrary to the regulation's intent and would allow manufacturers to remarket other types of infant support cushions as tummy time pillows to avoid regulation. We note AAP and NICHD, while endorsing tummy time, do not specifically recommend pillows for tummy time.

F. General Requirements

Comments: Consumer Federation of America, Consumer Reports, Kids In Danger, National Center for Health Research, Public Citizen, U.S. Public Interest Research Group (Joint Consumer Advocate Commenters), and Safe Infant Sleep recommend that the rule prohibit any type of electronics used inside or attached to an infant support cushion. The commenters also recommend prohibiting battery powered features, including vibration and white noise that can encourage sleep or may overheat presenting a burn risk, or features that contain cords which present a strangulation risk.

Response: Some vibrations and music/sounds may lull infants to sleep. However, other music and sounds may engage infants during awake time. Staff has not identified any products in the incident data where an electronic component caused an injury or a death through fire, heat, or otherwise. Because no such products were identified in the incident data as presenting a hazard, this rule does not include a requirement related to electronics.

G. Performance Requirements

Comment: Heroes Technology requests that CPSC conduct round robin studies of the performance requirements and test methods involving multiple

laboratories and multiple exemplar products in each category, with a view to reproposing and ultimately adopting test methods and performance requirements.

Response: The Commission considers the performance requirements and test methods in this rule to adequately address the hazards associated with infant support cushions without a need for the type of round robin process suggested by Heroes Technology, which could take years to complete while injuries and deaths continue to occur. The Commission concludes that the urgency of addressing the hazards associated with infant support cushions, and the requirement in CPSIA section 104 to promulgate safety standards, supports the Commission's promulgation of this rule. The factual and scientific basis for the performance requirements and test methods in the rule are described in Tab C of Staff's NPR Briefing Package.²⁷

1. Restraint

Comments: Graco asserts that the presence of a restraint system on an infant support cushion or lounger would further deter consumers from using them for sleep because the safety standards for sleep products do not allow restraint systems or cords or straps in the occupant area. On this basis, Graco suggests that the rule's prohibition on restraints could indicate to caregivers that infant support cushions are intended for sleep.

Response: The Commission's yearly report of injuries and deaths associated with nursery products demonstrates that consumers use infant products, both with and without restraints, for infant sleep.²⁸ In addition, restraints indicate to consumers that the infant is secure in the product and will not move, and thus the caregiver can leave the infant unsupervised. Because fall-related incidents have involved unattended infants who were left propped or lounging in the product, consumers are likely to interpret the presence of an infant restraint as meaning that unattended use is acceptable when an infant is restrained. Additionally, as is the case with several other children's product areas, loops, cords, or strings

²⁷ Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrK_EvV00xeX75dsFc.

²⁸ Injuries and Deaths Associated with Nursery Products Among Children Younger than Age Five, August 2023, available at: www.cpsc.gov/content/Injuries-and-Deaths-Associated-with-Nursery-Products-Among-Children-Younger-than-Age-Five-12.

that enter into the occupant space can create an entanglement hazard, as seen in the incident data. Infant support cushions should be used with constant adult supervision, so prohibiting restraints in the rule is appropriate.

2. Maximum Incline Angle

Comment: Heroes Technology argues that it is not clear in the rule what “approximately 1.9 inches” means and asserts that this is an arbitrary value. Graco argues that figure 6 in the text of the proposed rule alludes to a side height measurement, without criteria stipulated for the side height.

Response: The rule does not include a side height performance requirement or a side height test method. Instead, the maximum incline angle performance requirement of 10 degrees or less in the rule effectively limits the height of the product to approximately 1.9 inches, which reduces the hazard from falls and suffocation when the product could otherwise give the false perception of containment to a caregiver that the product will safely contain the infant. The maximum incline angle test in the rule, as compared to a side height test, can more effectively be applied to all the different types of infant support cushions subject to the rule, which include infant support cushion products other than loungers and even products without a sidewall. Some products subject to the rule contain occupant support surfaces that allow an infant to be placed in various locations on the product. The maximum incline angle requirement applies to all the manufacturer’s recommended use positions, and also to all other infant support cushion surfaces that can feasibly support an infant’s head (occupant support surface-head), including the angle from the sidewall (if present) to the occupant support surface, or from the occupant support surface-head to the floor when no elevated sidewall is present, or from the sidewall to the floor when an elevated sidewall is present. Staff calculated that the side height for very firm products which meet the 10-degree angle requirements would likely be approximately 1.9 inches (4.8 cm) or less based on the geometry of the newborn hinged weight gauge. The side height was not recommended arbitrarily, and is not itself a requirement, but rather describes the geometric calculations of the likely height of a product just meeting the required incline angle of 10 degrees.

Comment: BPQ recommends the sidewall height should be set at 2 inches, as in the draft ASTM infant loungers standard, and not 1.9 inches.

BPQ contends that if the height of the product is set at 1.9 inches, then there would be no need to measure the incline angle. The commenter also recommends that the inclined angle of 10 degrees or less should be applied on the support surface of the base and only if the side height is greater than 2 inches.

Response: The Commission disagrees that a maximum sidewall height of 2 inches should be required. The NPR did not propose a maximum side height requirement but instead proposed a maximum incline angle performance requirement. As discussed in the response to the previous comment, the maximum incline angle performance requirement in the rule is based on the varying designs of products and is expected to geometrically result in the height of the product being no more than 1.9 inches in order to comply with the incline angle requirement.

Comment: Graco argues that subjecting infant support cushions to a maximum incline angle requirement for products that are not intended for sleep would incorrectly result in them sharing a critical characteristic of infant sleep products, that are also required to have a sleep surface of 10 degrees or less.

Response: Infant support cushions are not sleep products, but infants fall asleep in many types of products other than sleep products, including infant support cushions. The maximum incline angle requirement in the rule addresses the suffocation hazard that could result if an infant sleeps in an infant support cushion. Section 1243.5(d) of the rule requires infant support cushions to have an incline angle of 10 degrees or less in order to reduce the hazard of suffocation if an infant falls asleep in the product.

Comment: Heroes Technology argues that if there is no incline in the manufacturer’s recommended use location for the product, and other use locations represent misuse, then the product should not be subject to a maximum incline angle requirement.

Response: We disagree that products with no incline in the manufacturer’s recommended use location should not be subject to the maximum incline angle requirement of the rule. Some products subject to the rule contain occupant support surfaces that allow a variety of use modes, so the infant may be placed in various locations on the product, while some products do not have sidewalls. With other products, infants may move, roll, or be placed in various positions on the product. To address known hazard patterns, the rule appropriately includes a maximum 10-degree incline angle requirement that

applies to any foreseeable use position on the infant support cushion’s occupant support surface or sidewall that supports the head for reclining, to mitigate suffocation and fall hazards. The maximum incline angle requirement applies to all manufacturer’s recommended use positions, as well as to all other infant support cushion surfaces that can feasibly support an infant’s head (occupant support surface-head). This includes the angle from the sidewall (if present) to the occupant support surface or from the occupant support surface-head to the floor when no elevated sidewall is present or from sidewall to floor when an elevated sidewall is present.

Comment: Heroes Technology notes that an example of a “feasible location” is provided in the proposed rule, but the term is not defined. The comment also notes that a “location likely to fail” is also not defined in the rule, nor is any guidance provided as to how such a location should be determined.

Response: A “feasible location” is language commonly used in ASTM standards and is typically followed by an example of such a location in the requirement. Section 1243.5(d)(8) is the only place in the rule where the term feasible location is used. This section represents the intent for a feasible location by providing an explicit example “such as perpendicular to the recommended use location(s)” without limiting the potential to test any area that is applicable with a discrete definition.

The language a “location likely to fail” is language commonly used in ASTM standards and longstanding CPSC safety standards that incorporate these ASTM standards. While a location most likely to fail cannot be determined by the use of a single test, not all locations on the product need to be evaluated. For example, with respect to the maximum incline angle requirement, any extremity with respect to the overall height of the sidewall or occupant support surface should be considered areas likely to fail. Therefore, we disagree that “feasible location” or “location most likely to fail” needs to be defined in the rule.

Comment: Graco argues that it is unclear if a two-inch height would prevent infants from rolling out of a product into a dangerous environment. Dony Ly suggests CPSC should recommend a side height that will best mitigate falls, while accounting for the wide range of infant age and ability but did not provide any recommendation as to that height. Julian Dreest proposes revising the sidewall height limitation

to a minimum of four inches to mitigate the risk of falls; he also asks if there has been a risk assessment analysis comparing the incidence of falls from products with different sidewall heights, while also taking into account the age of the infant. Heroes Technology asserts that CPSC failed to consider that a shorter sidewall height will increase the fall hazard.

Response: As seen in the incident data and proposed in the NPR, a maximum incline angle requirement of 10 degrees or less mathematically limits the side height of the product to less than 2 inches to address potential asphyxiation hazards. The incident data also indicated that caregivers placed infant support cushions into infant sleep settings for unsupervised sleep or on elevated surfaces. Higher sidewall heights give the false perception to the caregiver that the product will safely contain their infant. At the same time, the incident data show that higher sidewall heights do not adequately contain infants or prevent falls and that infants roll out from and fall out of products with a side height of 4 inches or higher. The incident data also indicates that infants can turn over or roll without warning and are at risk of falling when infant support cushions are placed on an elevated surface.

In contrast to products with higher side heights, products with side heights of approximately 2 inches or less are less likely to give the false perception to the caregiver that the product will safely contain their infant. Therefore, caregivers are less likely to leave infants unattended in a product with a less than 2-inch side height or to place the product on an elevated surface. When the side height is limited to less than 2 inches it provides a visual cue to caregivers that the product will NOT safely contain their infant which encourages caregivers to place the product on the floor, thus mitigating the fall hazard posed to infants from products placed on elevated surfaces. Furthermore, there is no evidence that a maximum sidewall height of about 2 inches would increase the risk of injury from a fall or lead to different consequences than a higher sidewall because, as reflected in the incident data, infant support cushions with higher side heights do not safely contain infants and infants already roll out of these products. Additionally, products with side heights of more than 2 inches would exceed the maximum incline angle requirement in the final rule and poses a suffocation or positional asphyxiation hazard. Also, the commenter's proposal to require 4-inch-high sidewalls would not allow for

products such as flat playmats or other infant support cushion products that do not contain sidewalls. Staff's analysis of incident data did not identify the need for a sidewall requirement and thus the final rule has no requirements for a minimum side height. Therefore, the Commission is not adopting the commenters' recommendations to require higher sidewalls because higher sidewalls encourage unsafe placement of infants on elevated surfaces, while also failing to adequately contain infants or prevent falls. Finally, staff is unaware of a risk assessment analysis specifically comparing the incidence of falls from infant support cushions of different product heights, while also taking into account the age of the infant.

Comment: Heroes Technology asserts that CPSC failed to consider that with reduced side heights consumers will use blankets and towels to create a bumper.

Response: Although this rule only regulates infant support cushions, it does contain specific warnings about the serious risks posed by soft bedding and other soft items in and around infant support cushions. Regardless of the side height of a product, some caregivers may use other products such as blankets and pillows to create a barrier around an infant, whether the infant is on an infant support cushion or not. CPSC will continue providing information and education campaigns for safe infant care regarding the hazards associated with soft bedding and soft items in sleep settings.

3. Firmness

Comment: Boppy argues that the test requirements and procedures in the proposed rule do not consider products that do not have a sidewall. The performance requirements do not specify if the sidewall firmness and angle requirements only apply to products with a sidewall, and the testing procedures for sidewalls do not include language such as "if applicable" or "for products with a sidewall."

Response: We agree that the rule should clarify whether the performance requirements and test methods apply to products that do not contain a sidewall. Therefore, the final rule adds "For products with a sidewall" to the beginning of the sentence regarding the performance requirements in § 1243.4(e)(2) and (3) and (f) and also adds "For products with a sidewall" to the beginning of the sentence before "perform" in the test methods in §§ 1243.5(g) and 1243.4(h) and (i).

Comment: Boppy notes that the rule does not specify how testing is to be performed on products with an

occupant support surface of one inch or less.

Response: We agree that clarification on how testing is to be performed on products with an occupant support surface of one inch or less is necessary in the final rule. Therefore, § 1243.5(f) of the final rule adds the language "All products, including products one inch or less in thickness, are required to be tested" to clarify how testing is to be performed on products with an occupant support surface of one inch or less. The rule requires all in-scope products, including those with an occupant support surface of one inch or less, to be tested to all of the performance requirements to ensure that they meet the standard. As discussed above, no exception is provided for products of one inch or less in thickness.

Comment: Safe Infant Sleep proposes that CPSC should consider a requirement that would not allow covers to have extra padding or cushioning, since such extra padding or cushioning may introduce an additional suffocation hazard.

Response: The Commission agrees that slipcovers with extra padding or cushioning may introduce a suffocation hazard that would not be addressed by testing only the firmness of the infant support cushion without the slipcover installed on the product during testing. The Commission also agrees that testing should be performed with slipcovers installed as part of the as assembled product and the product and slipcover, if sold on or together with the product, must meet the test requirements because extra padding or cushioning on a slipcover may introduce an additional suffocation hazard that is not addressed if the product is tested without the slipcover installed. In order to make clear that infant support cushions sold with a slipcover, on or together with the product, are subject to the rule and must be tested as assembled, the definition of infant support cushion in § 1243.2 has been revised to add a new sentence at the end of the definition stating "This definition includes any removable covers, or slipcovers, sold on or together with an infant support cushion." However, aftermarket slipcovers not sold with the product do not meet the definition of an infant support cushion and thus would not be within scope of this rule. Finally, § 1243.5(f) adds the language "for products sold with a slipcover on or together with the product, products shall be tested as assembled with the slipcover on the product" to the final rule to clarify that slipcovers, sold on or together with the

product, need to be installed on the product during testing.

Comment: Graco argues that infant support cushions should not be tested on a solid or firm testing surface.

Response: We disagree. Infant support cushions should be tested on a solid or firm testing surface as the product relies on the underlying surface it is placed upon for support and shape. In order to accurately measure the firmness of the foam, filling, padding, or supporting material in an infant support cushion, the testing surface cannot move in response to the applied force (*i.e.*, displace, shift, bend, deviate, compress, deflect, translate or otherwise), because any movement of the testing surface in response to the applied load would contribute to an under-measured value for the firmness measurement and thus would not provide repeatable results.

Comment: Graco argues that the minimum value for acceptable firmness for the firmness test cannot be directly correlated to the firmness values used in other safety standards for children's products. Graco recommends that all data underlying the performance requirements be published to permit an independent assessment. Graco also argues that the performance requirements are not substantiated by reliable test results.

Response: The Commission considered the recommendations of the BSU Final Report when developing the proposed requirements in the rule.²⁹ Additionally, the requirements in the rule reflect staff's testing of a variety of infant support cushions, as well as an analysis of hazard patterns obtained from incident data associated with infant support cushions. The Commission made this incident data available for public review and comment as described in the NOA. This information was used to develop the specific performance requirements, and labeling and instructional literature requirements that address the suffocation and fall hazards associated with infant support cushions. The development of the firmness test method and test results are discussed in further detail in Tab C of the Staff's NPR Briefing Package.³⁰

Comment: Heroes Technology argues that the firmness testing described in

the rule regarding the intersection of the occupant support surface and sidewalls is ambiguous and that the term "location most likely to fail" is similarly vague.

Response: The firmness test for the intersection of the sidewall and occupant support surface is intended to address suffocation hazards from infant support cushion products due to the presence of a sidewall adjacent to an occupant support surface. The rule provides instructions and guidance to measure firmness at the intersection of the sidewall and occupant support surface. Specifically, firmness is measured at the intersection of sidewall and occupant support surface as the force to deflect the surface 1.0 in (2.54 cm) using the 3-inch hemispherical probe oriented at an angle, determined according to the test method in § 1243.5(h), *Intersection of sidewall and occupant support surface firmness*. Section 1243.5(h) requires a force greater than 10.0 N (2.24 lbs) to address the suffocation hazard due to soft surfaces. The terms "most likely to fail" or "likely to fail" are standard language commonly used in ASTM standards and longstanding CPSC rules that incorporate these ASTM standards. However, areas where the sidewall appears to be vertical or slanted inward immediately over top of the occupant support surface, even while satisfying the angle requirement for the side as a whole, would be considered areas "likely to fail." Therefore, the Commission disagrees that "location most likely to fail" needs to be defined in the rule.

4. Sidewall Angle

Comment: Heroes Technology argues that the proposed sidewall angle requirement cannot be conducted effectively on the firm's Snuggle Me infant lounger due to the lounger's unique design features.

Response: The sidewall angle requirement is intended to address the risk of entrapment between the sidewall and the occupant support surface that is not fully addressed by the firmness requirements alone. While the Snuggle Me infant lounger may possess unique design features, such as an unpadded occupant support surface, the product can still be evaluated to the sidewall angle requirement in the rule. The unpadded surface, and the firm flat surface the rule requires the units be tested on, would be considered the occupant support surface for the evaluation and the sidewall angle should be taken with respect to that surface.

Comment: Heroes Technology argues that the rule provides no instructions or guidance to locate the intersection of the sidewall and occupant support surface.

Response: In § 1243.5(i), *Sidewall angle determination*, the rule provides instructions and guidance regarding the test procedure to locate the intersection of the sidewall and occupant support surface.

H. Marking and Labeling

Comment: Boppy, AAP, BPQ, the Joint Consumer Advocate Commenters, Safe Infant Sleep, and JPMA all recommend an additional warning for the tummy time infant support cushion subcategory to provide clarity and resolve confusion surrounding the warning "use only on floor, with baby face up on back" when it is used on a product that is also a tummy time pillow.

Response: We agree that some infant support cushion products, such as tummy time pillows, may have features that require the infant to be on their stomach while using the product and that different statements are appropriate for products designed for tummy time. Because prone positioning is a risk factor for infants that can lead to suffocation when the mouth and nose are occluded, the final rule adds a new figure 3 in § 1243.6 to accommodate products with multi-use positions. Specifically, the following statement "Put baby on back after Tummy Time" has been added to the warning label after the phrase "use only on the floor with baby on back, face up" in new figure 3. Figure 3 is only required for products that have a tummy time feature because only products that have a tummy time feature should allow prone positioning. Tummy time pillow manufacturers may also omit the word "only" from the statement "use only on floor with baby on back, face up" to accommodate the multi-use positioning of the product which is indicated in new figure 3. This entire warning statement bullet point was also moved up within the warning statement in figures 2 and 3 to reflect the serious hazard to infants from prone positioning. Products without a tummy time feature are required to use figure 2.

Comment: The Joint Consumer Advocate Commenters propose requiring the product warning label on replacement covers for infant support cushions.

Response: The Commission agrees that warning labels should be included on slipcovers that are sold on or together with infant support cushions. As discussed above regarding slipcovers sold on or together with the product that

²⁹ Erin M. Mannen et al; Consumer Prod. Safety Comm'n. *Pillows Product Characterization and Testing* (2022). www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing.

³⁰ Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc.

must be tested with the slipcover installed on the product, the definition of infant support cushion in § 1243.2 has been revised to add a new sentence at the end of the definition, “This definition includes any removable covers, or slipcovers, sold on or together with an infant support cushion,” to make clear that slipcovers sold on or together with the product are subject to the requirements of the rule. However, aftermarket slipcovers or third-party covers are considered accessories that are not part of the product and thus not subject to the rule. Finally, in response to this comment, § 1243.6(e) of the final rule has been revised to require warning labels on slipcovers that are sold on or together with an infant support cushion.

Comment: Safe Infant Sleep recommends laundering/cleaning instructions to mitigate a mold hazard.

Response: Incident data do not indicate there is a mold hazard that would require infant support cushions to have laundering/cleaning instructions as part of this rulemaking. Therefore, the Commission assesses at this time no requirement is needed to address laundering/cleaning. However, if this information is provided, it should not be placed on a warning label because warning labels that have too much information that is not urgent for the user of the product dilute all messages on the label.

Comment: The Joint Consumer Advocate Commenters suggest that CPSC should consider more ways to clearly emphasize in the warning label that infant support cushions should not be used for sleep.

Response: The Commission assesses that no change to the rule is needed to clearly emphasize the warning against using infant support cushions for sleep because this message is already strongly communicated through the initial sentence of the warning about the deadly consequences of using the product for sleep or naps.

Comment: Safe Infant Sleep objects to using the statement “using this product for sleep or naps can kill” because this statement implies that naps are different than sleep and this can be damaging to safe sleep education. The commenter instead recommends “using this product for ANY duration of sleep, even when supervised can kill.”

Response: Consumers have indicated that “sleep” and “naps” may mean different things for infants and have indicated that infants “nap” anywhere but should be in a specific sleep product when they are put to “sleep.”³¹

Therefore, the rule retains the requirement for the warning label to contain the statement “using this product for sleep or naps can kill” to reinforce that the products are unsafe for all types of sleep. However, the final rule revises the warning labels in figure 2 and new figure 3 of § 1243.6 by separating “stay near and watch baby during use” from “if a baby falls asleep, move baby to infant sleep product, such as a crib or bassinet.” These changes, which provide clearer instruction on what a caregiver should do if their baby falls asleep, have been made to figure 2 and new figure 3 of § 1243.6.

Comment: Graco notes that the warning “use only with an awake baby” is a new type of warning and it is not clear if parents understand what level of awake their baby should be.

Response: The Commission agrees that the phrase “use only with an awake baby” from the warning statement should be removed because the safety messaging to not use infant support cushions with sleeping infants or in an infant sleep setting is already strongly communicated through the initial sentence of the warning about the deadly consequences of using the product for sleep or lounging. Therefore, the final rule removes “use only with an awake baby” from the warning labels in figure 2 and new figure 3 of § 1243.6.

Comment: Heroes Technology recommends changing the proposed warning “USING THIS PRODUCT FOR SLEEP OR NAPS CAN KILL” to “USING THIS PRODUCT FOR INFANT SLEEP OR NAPS CAN LEAD TO SERIOUS INJURIES OR DEATH.”

Response: We disagree with the commenter’s recommended change to the warning label. First, the warning label statement “can kill” is an accurate and concise statement of the consequences of infants sleeping or napping on infant support cushions. Warning messages on many infant products are often too long, resulting in consumers not reading and heeding the messages. The commenter’s recommended statement “can lead to serious injuries or death” is much less impactful than “can kill” and thus would not be as effective in warning caregivers about the serious suffocation hazard to infants from using these products for sleep or naps.

Comment: Heroes Technology suggests stronger warning language surrounding the use of soft bedding in and around infant support cushions.

Response: Incident data indicate that infant deaths occurred when soft bedding was placed in an infant support cushion. Infant deaths also occurred when the product was used on soft bedding and the infant rolled out of the product into a hazardous setting containing soft bedding around the product. The Commission accordingly agrees that the rule should have stronger warning language regarding the use of soft bedding in and around infant support cushions. Therefore, the warning labels in figure 2 and new figure 3 of § 1243.6 have been revised to add “Do not use on soft surfaces or in sleep products like cribs or bassinets. Keep blankets and other soft items out of and away from product.” to warn against the hazard presented by soft bedding in and around infant support cushions. Additionally, this revision to figure 2 and new figure 3 of § 1243.6 in the final rule separates this warning statement into a separate bullet point to emphasize the risk to infants from soft bedding.

Comment: Heroes Technology suggests stronger and more impactful language surrounding the fall risk from placing the product on elevated surfaces, and warning consumers that infants may roll unexpectedly.

Response: We disagree that the warning label in the rule requires stronger and more impactful language regarding the fall risk from placing infant support cushions on elevated surfaces and warning consumers that their infants may roll unexpectedly is necessary. These messages are already presented concisely on the warning labels in figure 2 and new figure 3 of § 1243.6.

Comment: Graco states that the warning statements were not provided in the proposed regulatory text and were only provided in figure 2 of the NPR.

Response: The proposed rule characterized the warning label in figure 2 as an example. Thus, it was unclear if the exact content and format for the warning label depicted in proposed figure 2 in § 1243.6(d)(7) is required. The final rule clarifies that the required content and format of the warning labels in figure 2 and new figure 3 are to be used exactly as written, as applicable. Additionally, in § 1243.6(d)(7), the word example was removed from the figure 2 and new figure 3 captions.

Comment: Graco recommends adding the following statement to the warning label of the infant support cushion rule: “For babies with medical conditions, developmental delay, or complications relating to premature birth, consult a doctor before use.”

Report”, available at: www.cpsc.gov/s3fs-public/Consumer-Product-Safety-Commission%E2%80%9393Sleep-Warnings-Final-Report.pdf?VersionId=MjJcAAip4YNWVf.RllvXQtwNN7chjHyt.

³¹ Fors Marsh Group’s, 2022 “Consumer Product Safety Commission (CPSC): Sleep Warnings Final

Response: The Commission disagrees with requiring this information to be placed on the warning label because not all helpful information needs to be included on the warning label in the rule. The warning label in § 1243.6 of the rule includes messaging focused on the serious suffocation and fall hazards posed by infant support cushions.

I. Comparative Analysis

Comment: JPMA argues that CPSC has not provided a risk/benefit analysis, risk/hazard analysis, or a consumer choice analysis regarding the proposed rule.

Response: The types of analysis described by the commenter that would quantify the hazard reduction benefits versus the costs of compliance are not required by section 104 of the CPSIA. A consumer choice model would require detailed consumer demand data that commenters did not provide and would involve quantifying consumer demand for theoretical product alternatives not specified by the commenter and not required by section 104 of the CPSIA. The Initial Regulatory Flexibility Analysis (IRFA)³² did provide a specific numerical estimate of the cost of compliance, and the staff analysis of incidents found multiple deaths each year associated with these products—17 deaths per year in 2021 and at least 17 in 2022.³³

J. Effective Date

Comments: Boppy, Heroes Technology, and JPMA contend that a 180-day effective date is insufficient for compliance and argue that a one-year effective date would be appropriate to limit the burdens on manufacturers.

Response: While the commenters assert that 180 days is insufficient time to comply with the rule without burdening manufacturers, they do not provide any specific data or information showing that the level of effort to redesign and distribute an infant support cushion would require a one-year compliance period. Furthermore, JPMA typically allows 180 days for products in their certification program to implement a new voluntary standard such that juvenile product manufacturers are accustomed to

adjusting to new standards within this time frame. Therefore, the rule provides a reasonable effective date that takes into consideration manufacturers' burdens and the risk of continued infant injuries and deaths. Based on the urgency of addressing the hazards associated with infant support cushions, the 180-day effective date proposed in the NPR is appropriate and is being finalized as proposed.

K. Stockpiling

Comments: AAP and the Joint Consumer Advocate Commenters request that CPSC take action to prevent manufacturers from increasing production of, or stockpiling, noncompliant infant support cushions and to prevent sellers from putting on the market large quantities of products that are noncompliant.

Response: The Commission notes the commenters' recommendations to include a stockpiling provision in the final rule. Commenters provided no evidence that manufacturers or importers are likely to increase significantly their manufacture or importation of infant support cushions before the rule's effective date. In addition, the 180-day effective date should serve to limit the stockpiling of noncompliant products so as to prevent such manufacturers from circumventing the purpose of the rule. Therefore, the final rule does not include a stockpiling provision.

L. Regulatory Procedure

Comment: BPQ requests that CPSC revise the NPR and reissue it for public comment to reflect recent revisions to ASTM's draft infant lounger voluntary standard.

Response: As of the date of the publication of the final rule, there is no voluntary standard addressing the suffocation and fall hazards of infant support cushions on which a mandatory rule could be based. Additionally, the draft ASTM standard is in draft form and subject to change as part of the consensus process. Section 104 of the CPSIA does not require an existing voluntary standard in order for the Commission to promulgate a safety standard for a durable infant or toddler product. *See* 15 U.S.C. 2056a(b)(2); *Finnbin, LLC v. Consumer Prod. Safety Comm'n*, 45 F.4th 127, 134 (D.C. Cir. 2022).

Comment: Boppy and Heroes Technology argue that this rule cannot be promulgated under section 104 of the CPSIA without a preexisting voluntary standard for infant support cushions.

Response: Section 104 of the CPSIA does not require an existing voluntary

standard in order for the Commission to promulgate a safety standard for a durable infant or toddler product. *See* 15 U.S.C. 2056a(b)(2); *Finnbin, LLC v. CPSC*, 45 F.4th 127, 134 (D.C. Cir. 2022). In *Finnbin*, the court explained that CPSC has an express statutory command to regulate all categories of durable infant or toddler products and must do so for products not covered by voluntary standards. Furthermore, by the terms of 15 U.S.C. 2056a(b)(1), the requirement to examine and assess the effectiveness of any voluntary standards only applies if a voluntary standard exists. Because no voluntary standards currently address the suffocation and fall hazards posed by infant support cushions, the procedural requirements in section 104(b) of the CPSIA, to develop a rule with reference to an existing standard, do not apply to this rule.

Comment: Boppy argues that infant support cushions are not durable nursery products because infant support cushions are "pillow-like" and pillows are soft, textile products that are in no way comparable to cribs, strollers, bathtubs, or bed rails. Boppy additionally argues that there are no products in either the original twelve, or additional six product categories of durable goods that can be rationally compared to "pillows."

Response: Infant support cushions meet the statutory requirement for durable infant or toddler products in section 104(f)(1) of the CPSIA because they are intended for use, and may be reasonably expected to be used, by children under the age of 5 years and routinely have a life span of several years. They are not disposable; have a useful life of up to several years and are often used by multiple children in succession; are similar to other soft durable infant and children's products such as crib mattresses and sling carriers (which the Commission has issued rules for under section 104); are resold and widely available on secondary marketplaces; and are primarily intended to be used by children five years old or younger. Therefore, although infant support cushions are not specifically listed in section 104(f)(2) of the CPSIA, the Commission may reasonably treat them as "durable infant or toddler products."

The Commission has previously added to the statutory list of durable infant or toddler products by including other products for young infants, such as changing products and infant bouncers, that also have a market for secondary use. As the Commission explained in 2009, "[b]ecause the statute has a broad definition of a durable infant or toddler product but

³² See Tab E of Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc.

³³ See Tab A of Staff's NPR Briefing Package, available at: www.cpsc.gov/s3fs-public/Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Support-Cushions.pdf?VersionId=rA60lesWHddS1.wrk_EvV00xeX75dsFc.

also includes 12 specific product categories, additional items can and should be included in the definition.” Requirements for Consumer Registration of Durable Infant or Toddler Products, 74 FR 68668, 68669 (December 29, 2009).

Comments: Boppy contends the proposed rule is unconstitutional because it violates the non-delegation doctrine and the Separation of Powers and Appointments Clause of the U.S. Constitution.

Response: The rule is being promulgated under the Danny Keysar Child Product Safety Notification Act, section 104 of the CPSIA, which directs the Commission to promulgate consumer product safety standards for durable infant or toddler products. CPSC is an independent agency and the Commissioners do not exercise Executive power, consistent with the Supreme Court’s holding in *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935). Several Federal Courts of Appeals have recently rejected similar Constitutional arguments about CPSC. *Consumers’ Rsch. v. CPSC*, 91 F.4th 342 (2024), petition for cert. filed, (*Consumers’ Rsch. v. CPSC*, No. 23–1323 (petition for cert. filed on July 18, 2024)), and *Leachco, Inc. v. CPSC*, 103 F.4th 748 (10th Cir. 2024), petition for cert. pending, No. 22–7060 (filed Aug. 9, 2024)).

VII. Description of the Final Rule for Infant Support Cushions

As section 104 of the CPSIA requires, to address the risks of death and injury associated with infant suffocations, entrapments, and falls, the Commission is issuing this rule to establish mandatory performance and labeling requirements for infant support cushions. The requirements of the rule are based on an evaluation of incident data and the hazard patterns associated with infant support cushions, and the recommendations of the BSU Final Report. The final rule is summarized below, and the rule is being finalized as proposed in the NPR except as noted.

A. Section 1243.1 Scope, Purpose, Applications, and Exemptions

Section 1243.1 explains that the rule applies to infant support cushions, including infant positioners, nursing pillows with a dual use for lounging, infant loungers, infant props, or cushions used to support an infant for activities such as tummy time, and other infant pillow-like products. It excludes products already regulated by other Commission mandatory standards for durable infant products, which are listed in 16 CFR 1130.2(a). The rule

applies to all infant support cushions manufactured after the effective date of the rule. Section 1243.1 is being finalized without changes as proposed in the NPR.

B. Section 1243.2 Definitions

Section 1243.2 provides definitions for the following terms used in the rule: conspicuous, infant lounger, infant positioner, infant support cushion, occupant support surface, seat bight line, and sidewall. The definitions in § 1243.2 are being finalized as proposed in the NPR except as discussed below. In response to a comment from Graco and for clarity, the definition of infant lounger has been revised to change the proposed words “infant product” to “infant support cushion” in the final rule. Also, in response to comments from Safe Infant Sleep and The Joint Consumer Advocate Commenters, the definition of infant support cushion has been revised to add a new sentence at the end of the definition “This definition includes any removable covers, or slipcovers, sold on or together with an infant support cushion”. Finally, in response to a comment from Boppy, a new definition for the term “sidewall,” which is defined as “any wall at the edge of the occupant support surface”, has been added to the final rule to provide clarity regarding the meaning of that term.

C. Section 1243.3 General Requirements

Section 1243.3 provides general requirements for infant support cushions, including requirements addressing hazardous sharp edges or points (§ 1243.3(a)), small parts (§ 1243.3(b)), lead in paints (§ 1243.3(c)), toys (§ 1243.3(d)), the removal of components (§ 1243.3(e)), the permanency of labels and warnings (§ 1243.3(f)), and convertible products (§ 1243.3(g)). Section 1243.3 is being finalized as proposed in the NPR except that the reference to “infant pillow” in § 1243.3(d) has been changed in the final rule to “infant support cushion” for accuracy and consistency based on a comment from TA. The final rule also removes proposed § 1243.3(e) regarding side height. Measuring the height of the product is unnecessary and thus duplicative because the maximum incline angle test in § 1243.5(d)(7) already accounts for the height of the product remaining under 2 inches. The final rule renumbers the paragraphs following § 1243.3(d) to reflect this change.

D. Section 1243.4 Performance Requirements

Section 1243.4 provides performance requirements for infant support cushions for restraints (§ 1243.4(a)), seam strength (§ 1243.4(b)), bounded openings (§ 1243.4(c)), maximum incline angle (§ 1243.4(d)), firmness (§ 1243.4(e)), and sidewall angle (§ 1243.4(f)). Section 1243.4 is being finalized as proposed in the NPR except as discussed below. In response to a comment from Boppy, two changes have been made in paragraph (e) of § 1243.4 that establishes requirements for firmness. In § 1243.4(e)(2) and (3), “For products with a sidewall” has been added to the beginning of the sentence because the proposed rule did not make clear whether the performance requirements are applicable to products without sidewalls. Additionally, in response to a comment from Boppy, the same change has been made to § 1243.4(f) that establishes requirements for side angles because the proposed rule did not clarify the applicability of performance requirements for products without sidewalls.

E. Section 1243.5 Test Methods

Section 1243.5 provides the test methods to be used to test for compliance with the requirements of the rule. Section 1243.5 includes test methods for test conditions (§ 1243.5(a)), test for permanence of labeling and markings (§ 1243.5(b)), head entrapment test (§ 1243.5(c)), maximum incline test (§ 1243.5(d)), firmness test setup (§ 1243.5(e)), occupant support surface firmness test method (§ 1243.5(f)), sidewall firmness test method (§ 1243.5(g)), test method for the intersection of sidewall and occupant support surface firmness (§ 1243.5(h)), test method for sidewall angle determination (§ 1243.5(i)), seam strength test method (§ 1243.5(j)), and removal of components test method (§ 1243.5(k)). Section 1243.5 is being finalized as proposed in the NPR except as discussed below.

For the same reason discussed above for the removal of proposed § 1243.3(e) regarding side height, the final rule removes the corresponding test in § 1243.5(d)(8) for consistency. To reflect this change, all numbers after § 1243.5(d)(7) have been renumbered.

In response to a comment from Safe Infant Sleep, the following language has been added after the first sentence of § 1243.5(f): “For products sold with a slipcover on or together with the product, products shall be tested as assembled with the slipcover on the product.” This language has been added

to the final rule because slipcovers with extra padding or cushioning may introduce suffocation hazards that would not be addressed if slipcovers sold on or together with an infant support cushion were not required to be tested as assembled with the slipcover on the product. In response to a comment from Boppy, right after the new sentence added above, the following language has been added to § 1243.5(f) of the final rule: “All products, including products one inch or less in thickness, are required to be tested.” This language has been added to the final rule because a product could either vary in thickness or be so close to 1 inch in thickness that it would be difficult to determine thickness without testing. In response to another comment from Boppy, § 1243.5(g) of the final rule adds in the first sentence “products with a sidewall” between “For” and “perform” because the proposed rule did not specifically clarify the applicability of test methods for products without sidewalls. The Boppy comment also resulted in changes to § 1243.5(h) and (i) at the beginning of the first sentence, adding “For products with a sidewall,” before “perform,” to state directly that products with sidewalls must be tested according to the test methods.

F. Section 1243.6 Marking and Labeling

Section 1243.6 provides the marking and labeling requirements for infant support cushions, including general markings (§ 1243.6(a)), permanency (§ 1243.6(b)), upholstery labeling (§ 1243.6(c)), warning design for product (§ 1243.6(d)), and warning statements (§ 1243.6(e)). Section 1243.6 is being finalized as proposed in the NPR except as discussed below.

Several changes have been made to figure 2 in § 1243.6(d)(7) as described below. We also add a new figure 3, Warning for Tummy Time Product, in § 1243.6(d)(7), as described below.

- In response to a comment from Graco, the phrase “use only with an

awake baby” has been removed from the warning label in figure 2 and new figure 3 because the safety messaging to not use infant support cushions with sleeping infants or in an infant sleep setting is already strongly communicated through the initial sentence of the warning about the deadly consequences of using the product for sleep or naps, and limiting the amount of text on warning labels makes the material being presented more prominent.

- The rule clarifies that figure 2 in § 1243.6(d)(7) is required for all infant support cushions that do not have a tummy time feature.

- In response to comments from Boppy, AAP, BPQ, the Joint Consumer Advocate Commenters, Safe Infant Sleep, and JPMA, the Commission is adding a new figure 3 in § 1243.6(d)(7) for products with a tummy time feature. The statement bullet point was also moved up within the warning statement to reflect the serious hazard to infants presented by prone positioning. In new figure 3, the statement “Put baby on back after Tummy Time” is added to the warning label after the phrase “Use only on the floor with baby on back, face up,” to accommodate multi-use positions of some infant support cushion products, such as tummy time pillows that may have features that require the infant to be on their stomach while using the product. Figure 3 additionally omits the word “only” from “use only on the floor with baby on back, face up”. Figure 3 is required only for products that have a tummy time feature because only those products that have a tummy time feature should allow for prone positioning.

- In response to a comment from Safe Infant Sleep the warning labels have been revised with more concise wording and clarity to provide instruction for what a caregiver should do if their baby falls asleep by separating “stay near and watch baby during use” from “if a baby falls asleep, move baby to infant sleep product, such as a crib or bassinet”.

- In response to a comment from Heroes Technology, the warning labels for figure 2 and new figure 3 now includes the statement “Do not use on soft surfaces or in sleep products like cribs or bassinets. Keep blankets and other soft items out of and away from product” to discourage soft bedding use in and around the product. This revision also separates these warning statements into a separate bullet point to emphasize the risk to infants from soft bedding placed both in and around the product.

- In response to a comment from Graco, the word “example” was removed from the captions on figure 2 and new figure 3 because it was unclear if the exact content and format for the warning labels in § 1243.6(d)(7) is required as depicted in proposed figure 2 and new figure 3. Additionally, the final rule clarifies in § 1243.6(d)(7) that the content and format as depicted in figure 2 and new figure 3 as applicable, are required.

- Note 4 to proposed § 1243.6(e) has been removed from the rule as unnecessary because the final rule clarifies that the required content and format of the warning labels in figure 2 and new figure 3, as applicable, are to be used as written.

- A new note 4 to § 1243.6(d)(6) has been added below figure 1 for paragraph (d)(6), which was originally the language above figure 1 for paragraph (d)(6), with the new note 4 providing the original text indicating that the depicted warnings are filler text, known as lorem ipsum, commonly used to demonstrate graphic elements.

- In figure 2 and new figure 3, a black line has been inserted between the suffocation warnings and the fall warnings to distinguish between the messages.

The changes described above are depicted below in the revised figure 2, Warning for Product Without Tummy Time, and new figure 3, Warning for Tummy Time Product, from § 1243.6 of the final rule.

Warning for Product Without Tummy Time

⚠ WARNING
USING THIS PRODUCT FOR SLEEP OR NAPS CAN KILL. Babies can turn over or roll out without warning and CAN SUFFOCATE in only a few minutes. • Only use on the floor with baby on back, face-up. • Stay near and watch baby during use. • Do not use on soft surfaces or in sleep products like cribs or bassinets. Keep blankets and other soft items out of and away from product. • If baby falls asleep, move baby to infant sleep product, such as a crib or bassinet.
Babies have been injured from FALLS. • Do not use on beds, sofas, or other raised surfaces. • Never carry or move product with baby in it.

Warning for Tummy Time Product

⚠ WARNING
USING THIS PRODUCT FOR SLEEP OR NAPS CAN KILL. Babies can turn over or roll out without warning and CAN SUFFOCATE in only a few minutes. • Use on the floor with baby on back, face-up. Put baby on back after Tummy Time. • Stay near and watch baby during use. • Do not use on soft surfaces or in sleep products like cribs or bassinets. Keep blankets and other soft items out of and away from product. • If baby falls asleep, move baby to infant sleep product, such as a crib or bassinet.
Babies have been injured from FALLS. • Do not use on beds, sofas, or other raised surfaces. • Never carry or move product with baby in it.

Additionally, in response to a comment from the Joint Consumer Advocate Commenters, the final rule adds language at the end of § 1243.6(e) stating that slipcovers, sold on or together with the product, are required to contain a warning with the content and format depicted in figure 2 or 3, as applicable, to paragraph (d)(7). This

language is being added because when an infant support cushion is sold with a slipcover, it is expected that slipcover will hide the warning label that should be visible to a caregiver while placing an infant onto or into the product, when the product is in the manufacturer's recommended use position. Therefore, the warning label should be

conspicuously located on the slipcover as is required for an infant support cushion that does not come with a slipcover.

G. Section 1243.7 Instructional Literature

Section 1243.7 provides requirements for instructional literature for infant

support cushions, including requiring instructional literature be provided with the product, as well as requirements as to what such information must include. Section 1243.7 also requires that instructional literature meet the requirements of the National Electrical Manufacturers Association's (NEMA's) ANSI Z535.4–2011(R2017), *American National Standard for Product Safety Signs and Labels* (ANSI Z535.4–2011). The final rule specifically requires the warning format requirements in sections 6.1–6.4, 7.2–7.6.3, and 8.1 of ANSI Z535.4–2011(R2017). Finally, under § 1243.7 any instructions provided in addition to those required by § 1243.7 shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer. Section 1243.7 is being finalized as proposed in the NPR.

H. Section 1243.8 Incorporation by Reference

Section 1243.8 incorporates by reference ANSI Z535.4–2011(R2017), *American National Standard for Product Safety Signs and Labels*, and ASTM D3359–23, *Standard Test Methods for Rating Adhesion by Tape Test*, and provides information on where those standards are available. ANSI Z535.4–2011 includes requirements related to safety alert symbol use; signal word selection; warning panel format, arrangement, and shape; color requirements for each panel; letter style; to identify and warn against specific hazards; and to provide information to avoid personal injury. ASTM D3359–23 covers procedures for assessing the adhesion of relatively ductile coating films to metallic substrates by applying and removing pressure-sensitive tape over cuts made in the film.

VIII. Amendment to 16 CFR Part 1112 To Include NOR for Infant Support Cushions

Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third-party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission must publish an NOR for the accreditation of testing laboratories as third party conformity assessment bodies to assess conformity with a children's product safety rule. 15 U.S.C. 2063(a)(3). The

infant support cushions rule is a children's product safety rule that requires the issuance of an NOR.

The Commission's rules, at 16 CFR part 1112, establish requirements for accreditation of third party conformity assessment bodies to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also lists the NORs that the CPSC has published. In the NPR the Commission proposed to amend part 1112 to include the Safety Standard for Infant Support Cushions in the list of children's product safety rules for which the CPSC has issued NORs. Section 1112.15(a)(57) is being finalized as proposed in the NPR.

Laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new Safety Standard for Infant Support Cushions standard are required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have the Safety Standard for Infant Support Cushions included in its scope of accreditation as reflected on the CPSC website at www.cpsc.gov/labsearch.

IX. Amendment to 16 CFR Part 1130 To Include Infant Support Cushions

Infant support cushions are a category of "durable infant or toddler product" for purposes of CPSIA section 104 because they: are intended for use, and may be reasonably expected to be used, by children under the age of five years; are products similar to other products listed in section 104(f)(2), such as crib mattresses, and sling carriers; and are commonly resold or "handed down" for use by other children over a period of years. In the NPR, the Commission proposed to amend 16 CFR part 1130 to include Infant Support Cushions as durable infant or toddler products. Section 1130.2(a)(20) is being finalized as proposed in the NPR.

X. Incorporation by Reference

The rule incorporates by reference ANSI Z535.4–2011(R2017), *American National Standard for Product Safety Signs and Labels*, and ASTM D3359–23, *Standard Test Methods for Rating Adhesion by Tape Test*. In accordance with the regulations of the Office of the Federal Register, 1 CFR part 51, section VII.H of this preamble summarizes the requirements of the ANSI Z535.4–2011(R2017) and ASTM D3359–23.

Both standards are reasonably available to interested parties in several

ways. Interested persons may purchase a copy of ANSI Z535.4–2011(R2017) from the National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: www.nema.org. This standard is also available from ANSI via its website, www.ansi.org, or by mail from ANSI, 25 West 43rd Street, 4th Floor, New York, NY 10036, telephone: (212)–642–4900. Once the rule takes effect, a read-only copy of ANSI Z535.4–2011(R2017) will be available for viewing, at no cost, on the ANSI website at: <https://ibr.ansi.org/Standards/nema.aspx>. Interested individuals may purchase a copy of ASTM D3359–23 from ASTM, through its website, www.astm.org, or by mail from ASTM International, 100 Barr Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428–2959. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: www.astm.org/READINGLIBRARY/. Alternatively, interested parties may inspect a copy of the standards at CPSC's Office of the Secretary by contacting Alberta E. Mills, Commission Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; phone: (301) 504–7479; email: cpsc-os@cpsc.gov.

XI. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). In the NPR the Commission proposed an effective date of 180 days after publication of the final rule in the **Federal Register**. This amount of time is typical for rules issued under section 104 of the CPSIA. We note that the 180-day effective date is the same amount of time that JPMA typically allows for products in their certification program to shift to a new standard once that standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this time frame. We noted in the NPR that a 180-day effective date should also be sufficient for manufacturers to comply with this rule because the proposed requirements do not demand significant preparation by testing laboratories. For example, no new complex testing instruments or devices would be required to test infant support cushions for compliance with this rule. Based on the urgency of addressing the hazards associated with infant support cushions, the 180-day effective date proposed in

the NPR is appropriate and is being finalized as proposed.

XII. Regulatory Flexibility Act

When an agency is required to publish a notice of proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. 601–612) generally requires that the agency prepare an IRFA for the NPR and a final regulatory flexibility analysis (FRFA) for the final rule. 5 U.S.C. 603, 604. These analyses must describe the impact that the rule would have on small businesses and other entities. The FRFA must contain:

- (1) a statement of the need for and objectives of the rule;
- (2) significant issues raised by commenters on the IRFA, the agency's assessment of those issues, and changes made to the result as a result of the comments;
- (3) a response to any comments filed by the Chief Counsel for Advocacy of the U.S. Small Business Administration (Advocacy), and changes made as a result of those comments;
- (4) a description and estimate of the number of small entities to which the rule will apply;
- (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; and
- (6) steps the agency has taken to minimize the significant economic impact on small entities, consistent with the objective of the applicable statute, including the factual, policy, and legal reasons for selecting the alternative in the final rule and why other alternatives were rejected.

Staff prepared an IRFA for this rulemaking that was summarized in the NPR and provided in full Tab E of the Staff's NPR Briefing Package. The FRFA is provided below.

A. Need for and Objectives of This Rule

Section I of this preamble describes the reasons and legal basis for this final rule. As discussed in sections VI and VII of this preamble, the rule sets mandatory requirements for infant support cushions to address the suffocation, entrapment, and fall hazards associated with these products; adds infant support cushions to the list of products for which a registration card is required; and adds infant support cushions to the list of durable infant products for which an NOR is required.

B. Comments and Responses Concerning Impact on Small Entities

Comment: Boppy and Heroes Technology state that the maximum incline angle requirement, which limits product height to approximately 1.9 inches, would eliminate most products subject to this rule from the market, resulting in a significant loss of utility to consumers for compliant products, far in excess of CPSC's estimates.

Response: The IRFA stated that consumers might not purchase the redesigned compliant products and estimated a significant impact on a substantial number of small businesses. The commenters did not provide any data on their assertion that consumers might not want to buy products with a shorter side height. Given the number of playmats and similar items with no sides or short sides on the market, there is ample evidence that consumers are willing to purchase such items. The Commission has considered the significant impact on small entities in the IRFA, and it is discussed in the possible alternatives analysis in this FRFA and thus has taken this impact into account as required by the RFA.

Comment: JPMA states that this rule would require significant costly changes to make products compliant.

Response: JPMA did not provide quantitative estimates of supplier costs or consumer utility impacts to support a change in the burden estimates. The IRFA provided specific estimates of labor and materials costs for redesign. The scope of staff's analysis of burden, as required by 5 U.S.C. 603, was the impact on small U.S. businesses, and none of the comments provided information to support changing the estimates of impact on small U.S. businesses. The Commission has, however, considered the significant impact on small entities in finalizing this rule.

C. Issues Raised by the Small Business Administration

The Small Business Administration (SBA) did not submit a comment on the proposed rule.

D. Small Entities to Which the Rule Would Apply

The SBA sets size standards for what constitutes a U.S. small business for the purpose of various Federal Government programs,³⁴ 750 employees for manufacturers (NAICS code 314120) and 100 to 150 employees for wholesalers (NAICS codes 424350,

423990, and 424990).³⁵ Based on staff's assessment of prominent online and brick-and-mortar retail sources for infant support cushions in the Spring of 2023, there appear to be more than 2,000 suppliers of infant support cushions to the U.S. market, including small U.S. crafters, small importers, small manufacturers, and direct foreign shippers. Staff estimates that a significant number of these firms are small U.S. businesses based on the SBA thresholds cited above.

E. Compliance, Reporting, Paperwork, and Recordkeeping Requirements of the Rule

Suppliers will be required to comply with the performance requirements of the rule; provide a warning label, a consumer registration card, and user instructions; and conduct third-party testing to demonstrate compliance. Suppliers must demonstrate that they meet the performance requirements of the rule by providing certificates of compliance. As specified in 16 CFR part 1109, suppliers who are not the original manufacturer, such as importers, wholesalers, and retailers may rely on a certificate of conformity provided by their suppliers. Suppliers must also provide product registration cards. Recordkeeping and compliance documentation do not require specialized expertise. CPSC's public website provides instructions and examples for how to develop the certificates of compliance and product registration cards.³⁶ Similarly, because the final rule provides the text and graphics for the required labels and instructions, specialized graphics design expertise will not be required to develop the warnings and instructions.

F. Impact of the Rule on Small Entities

The rule will likely have a significant impact on a substantial number of U.S. small entities, based on the estimated costs of modifying the product to achieve compliance, and the ongoing cost of testing to demonstrate compliance. Staff considers one percent of annual revenue to be a "significant"

³⁵ The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For more information, see www.census.gov/naics/. Some programs use 6-digit NAICS codes, which provide more specific information than programs that use more general 3 or 4-digit NAICS codes.

³⁶ See for example: www.cpsc.gov/Business—Manufacturing/Testing-Certification/Childrens-Product-Certificate; and www.cpsc.gov/Business—Manufacturing/Business-Education/Durable-Infant-or-Toddler-Products/FAQs-Durable-Infant-or-Toddler-Product-Consumer-Registration.

³⁴ The size standards are in listed in the Code of Federal Regulations. See 13 CFR part 121.

economic impact on a company, consistent with economic analysis from other Federal Government agencies. Nearly all of the more than 2,000 suppliers of infant support cushions to the U.S. are small entities, although their products often are not manufactured in United States.

Most products on the market will require redesign to meet the requirements in the rule and no products on the market currently have the specific labels, customer registration forms, warnings, and third-party testing required by the rule. The effort required for a one-time redesign of a product is estimated to be 200 hours of professional staff time per model, including in-house testing of the prototypes and development of labels, customer registration forms, and instruction materials. Using the Bureau of Labor Statistics Employer Costs of Employee Compensation as of March 2024³⁷ the estimated cost per model is \$13,648, at a current cost for professional labor of \$68.24 per hour, rounded for the purpose of analysis to \$14,000 per model. Materials costs for prototyping are estimated to be minimal, likely under \$1,000, given that pillows are typically made of fabric and stuffing materials. Third-party testing for infant support cushions will be an additional cost for all suppliers and is estimated to be between \$600 and \$1,100 per model, per year, depending on where the testing takes place and whether manufacturers' associations or groups add infant support cushions to their certification programs to receive volume discounts for third-party testing. The total first year costs of redesign are estimated to be approximately \$16,000 per model (\$14,000 for labor, \$1,000 for materials, and \$1,000 for third-party testing).

Staff considers one percent of annual revenue to be a "significant" economic impact on a small business. Applying the one percent threshold to the estimated redesign and testing costs from this rule, the threshold for a small business that would incur a significant impact are those small firms with less than \$1.6 million in revenue (\$16,000 costs ÷ 1 percent of revenue), assuming they only sell one product model. This cost estimate will scale with the number of different models each firm manufactures. With an estimated 2,000 models from firms that sell to the U.S. needing to be redesigned, the total cost for the entire industry could be as high

as \$32 million for redesign in the first year after the rule is published.³⁸

As suppliers will need to redesign their products to comply with this rule, both small and large companies may raise prices to cover costs. Given this uniformity, these costs would not necessarily place small businesses at a competitive disadvantage. JPMA, Boppy, and Heroes Technology questioned whether a small retail price increase would be acceptable to consumers, or could cover compliance costs, but these commenters did not provide an alternative quantitative estimate of compliance costs or probable retail price increases.

In summary, given that all U.S. suppliers will have to redesign products to comply with this rule, and that these costs will likely be significant to many small businesses, this FRFA finds that this final rule will have a significant impact on a substantial number of U.S. small businesses.

G. Other Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rule

CPSC has not identified any other Federal rules that duplicate, overlap, or conflict with the final rule.

H. Alternatives Considered To Reduce the Impact on Small Entities

The Commission considered alternatives to the final rule to reduce the impact on small businesses. The Commission considered using a public education campaign that would result in no regulatory impact on small businesses. However, given the education campaigns on safe sleep practices that CPSC and others have been undertaking for years, this approach would likely result in little to no mitigation of the current rates of deaths and injuries from infant support cushions. The Commission also considered allowing the voluntary standards process additional time to develop a voluntary standard to address the hazards posed by infant support cushions. However, there is no certainty that such a voluntary standard would be adopted, and a potential voluntary standard, if published, may not adequately address the identified hazards to infants. For example, the current ASTM draft voluntary standard for infant loungers would only cover infant loungers whereas the Commission's rule covers all infant support cushions and has more

stringent performance requirements and warnings.

XIII. Paperwork Reduction Act

This rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). The preamble to the NPR discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of CPSC's estimates. 89 FR 2530 (January 16, 2024). The NPR described the provisions of the proposed rule and provided an estimate of the annual reporting burden for the rule under the PRA. See 89 FR 2542. The estimated burden of this collection of information is unchanged from the NPR. CPSC did not receive any comments regarding the information collection burden in the NPR through OMB. OMB has assigned control number 3041–0202 to this information collection.

XIV. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as consumer product safety rules. Therefore, the preemption provision of section 26(a) of the CPSA apply to this final rule for infant support cushions.

XV. Environmental Considerations

Certain categories of CPSC actions normally have "little or no potential for affecting the human environment" and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for consumer products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The final rule for infant support cushions falls within the categorical exclusion.

³⁷ www.bls.gov/news.release/ecec.t02.htm. The estimated costs in the link reflect the employers' cost for salaries, wages, and benefits for civilian workers.

³⁸ As noted earlier, this estimate is slightly higher than the estimate in the IRFA, because the relevant labor rate as reported by the Bureau of Labor Statistics has risen since the NPR was published.

XVI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a major rule. The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a major rule.

Pursuant to the CRA, OMB's Office of Information and Regulatory Affairs has determined that this rule does not qualify as a major rule, as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects**16 CFR Part 1112**

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1243

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Pillows, Toys.

For the reasons discussed in the preamble, the Commission amends chapter II of title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

- 1. The authority citation for 16 CFR part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063.

- 2. Amend § 1112.15 by adding paragraph (b)(57) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(57) 16 CFR part 1243, Safety Standard for Infant Support Cushions.

* * * * *

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

- 3. The authority citation for 16 CFR part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

- 4. Amend § 1130.2 by adding paragraph (a)(20) to read as follows:

§ 1130.2 Definitions.

* * * * *

(a) * * *

(20) Infant support cushions.

* * * * *

- 5. Add part 1243 to read as follows:

PART 1243—SAFETY STANDARD FOR INFANT SUPPORT CUSHIONS

Sec.

1243.1 Scope, purpose, application, and exemptions.

1243.2 Definitions.

1243.3 General requirements.

1243.4 Performance requirements.

1243.5 Test methods.

1243.6 Marking and labeling.

1243.7 Instructional literature.

1243.8 Incorporation by reference.

Authority: 15 U.S.C. 2056a.

§ 1243.1 Scope, purpose, application, and exemptions.

(a) *Scope and purpose.* The consumer product safety standard in this part prescribes requirements to reduce the risk of death and injury from hazards associated with *infant support cushions*, as defined in § 1243.2. This includes but is not limited to *infant positioners*, nursing pillows with a dual use for lounging, *infant loungers*, and infant props or cushions used to support an infant. All *infant support cushions* must be tested according to the requirements of § 1243.5 and comply with all requirements of this part.

(b) *Application.* All infant support cushions manufactured after May 5, 2025, are subject to the requirements of this part.

(c) *Exemptions.* Products subject to another standard listed in 16 CFR 1130.2(a) are exempt from this part. Nursing pillows that also meet the definition of infant lounger in § 1243.2, however, are not exempt from this part.

§ 1243.2 Definitions.

Conspicuous means visible, when the product is in each manufacturer's recommended use position, to a person while placing an infant into or onto the product.

Infant lounger means an infant support cushion with a raised perimeter, a recess, or other area that

provides a place for an infant to recline or to be in a supine, prone, or recumbent position.

Infant positioner means a product intended to help keep an infant in a particular position while supine or prone.

Infant support cushion means an infant product that is filled with or comprised of resilient material such as foam, fibrous batting, or granular material or with a gel, liquid, or gas, and which is marketed, designed, or intended to support an infant's weight or any portion of an infant while reclining or in a supine, prone, or recumbent position. This definition includes any removable covers, or slipcovers, sold on or together with an infant support cushion.

Occupant support surface (OSS) means the area that holds up and bears the infant or any portion of the infant.

Seat bight line means the intersection of the seat back surface with the seat bottom surface.

Sidewall means any wall at the edge of the occupant support surface.

§ 1243.3 General requirements.

(a) *Hazardous sharp edges or points.* There shall be no hazardous sharp points or edges as determined by 16 CFR 1500.48 and 1500.49 before or after the product has been tested.

(b) *Small parts.* There shall be no small parts as determined by 16 CFR part 1501 before testing or presented as a result of testing.

(c) *Lead in paints.* All paint and surface coatings on the product shall comply with the requirements of 16 CFR part 1303.

(d) *Toys.* Toy accessories attached to, removable from, or sold with an infant support cushion, as well as their means of attachment, shall comply with the applicable requirements of 16 CFR part 1250.

(e) *Removal of components.* When tested in accordance with § 1243.5(k), any removal of components that are accessible to an infant while in the product or from any position around the product shall not present a small part, sharp point, or sharp edge as required in paragraphs (a) and (b) of this section.

(f) *Permanency of labeling and warnings.* (1) Warning labels, whether paper or non-paper, shall be permanent when tested in accordance with § 1243.5(b)(1) through (3).

(2) Warning statements applied directly onto the surface of the product by hot stamping, heat transfer, printing, wood burning, or any other method shall be permanent when tested in accordance with § 1243.5(b)(4).

(3) Non-paper labels shall not liberate small parts when tested in accordance with § 1243.5(b)(5).

(4) Warning labels that are attached to the fabric of the product with seams shall remain in contact with the fabric around the entire perimeter of the label when the product is in all manufacturer-recommended use positions and when tested in accordance with § 1243.5(b)(3).

(g) *Convertible products.* If the infant support cushion can be converted into another product for which a consumer product safety standard exists, the product also shall comply with the applicable requirements of that standard.

§ 1243.4 Performance requirements.

(a) *Restraint.* The product shall not include a restraint system.

(b) *Seam strength.* When tested in accordance with § 1243.5(j), fabric/mesh seams and points of attachment shall not fail such that a small part, sharp point, or sharp edge is presented, as required in § 1243.3(a) and (b).

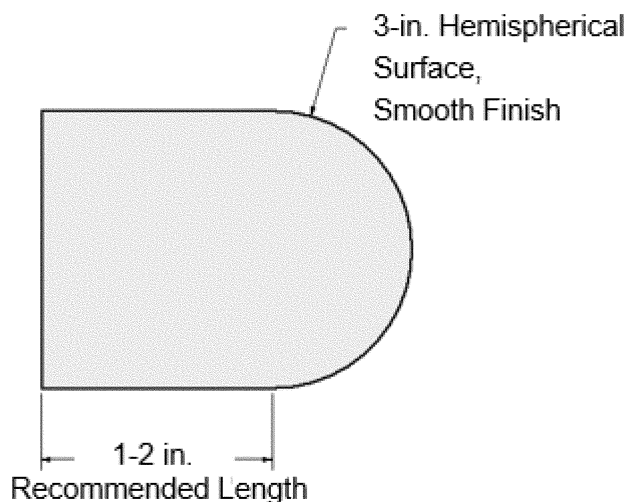
(c) *Bounded openings.* When tested to § 1243.5(c), all completely bounded openings that exist in the front, sides, or back of the occupant lounging area, or that are created when an accessory is attached to the product, shall not allow complete passage of the small head

probe unless it allows the complete passage of the large head probe.

(d) *Maximum incline angle.* The maximum incline angle shall not exceed 10 degrees when tested in accordance with § 1243.5(d).

(e) *Firmness—(1) Occupant support surface firmness.* When the 3-inch diameter (figure 1 to this paragraph (e)(1)) hemispherical head probe is applied according to the test method for occupant support surface firmness, § 1243.5(f), the force required for a one-inch displacement shall be greater than 10 Newtons (N).

Figure 1 to paragraph (e)(1)—3-inch Head Probe



(2) *Sidewall firmness.* For products with a sidewall, when the 3-inch diameter hemispherical head probe is applied according to the test method for sidewall firmness in § 1243.5(g), the force required for a one-inch displacement shall be greater than 10 N.

(3) *Firmness at intersection of sidewall and occupant support surface.* For products with a sidewall, when the 3-inch diameter hemispherical head probe is applied according to the test method for firmness at the intersection of sidewall and occupant support surface in § 1243.5(h), the force required for a one-inch displacement shall be greater than 10 N.

(f) *Sidewall angle.* For products with a sidewall, the sidewall angle shall be greater than 90 degrees when determined according to the sidewall angle determination in § 1243.5(i).

§ 1243.5 Test methods.

(a) *Test conditions.* Condition the product for 48 hours at 23 °C $\pm$ 2 °C (73.4 °F $\pm$ 3.6 °F) and a relative humidity of 50% $\pm$ 5%.

(b) *Permanence of labels and warnings.* (1) A paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed, it tears into pieces upon removal, or such action damages the surface to which it is attached.

(2) A non-paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed or such action damages the surface to which it is attached.

(3) A warning label attached by a seam shall be considered permanent if it does not detach when subjected to a 15-lbs (67-N) pull force applied in any direction using a 3/4-inch diameter clamp surface.

(4) Adhesion test for warnings applied directly onto the surface of the product.

(i) Apply the tape test defined in Test Method B, Cross-Cut Tape Test of ASTM D3359 (incorporated by reference, see § 1243.8), eliminating parallel cuts.

(ii) Perform this test once in each different location where warnings are applied.

(iii) The warning statements will be considered permanent if the printing in the area tested is still legible and attached after being subjected to this test.

(5) A non-paper label, during an attempt to remove it without the aid of tools or solvents, shall not be removed or shall not fit entirely within the small parts cylinder defined in 16 CFR part 1501 if it can be removed.

(c) *Head entrapment test.* For all applicable openings, rotate the small head probe (figure 1 to this paragraph (c)) to the orientation most likely to fail and gradually apply an outward force from the occupant lounging area of 25 lbs (111 N). Apply the force to the probe in the direction most likely to fail within a period of 5 seconds and maintain it for an additional 10 seconds. If the small head probe can pass entirely through the opening in any orientation, determine if the large head probe (figure 2 to this paragraph (c)) can be freely inserted through the opening.

Figure 1 to paragraph (c)—Small Head Probe

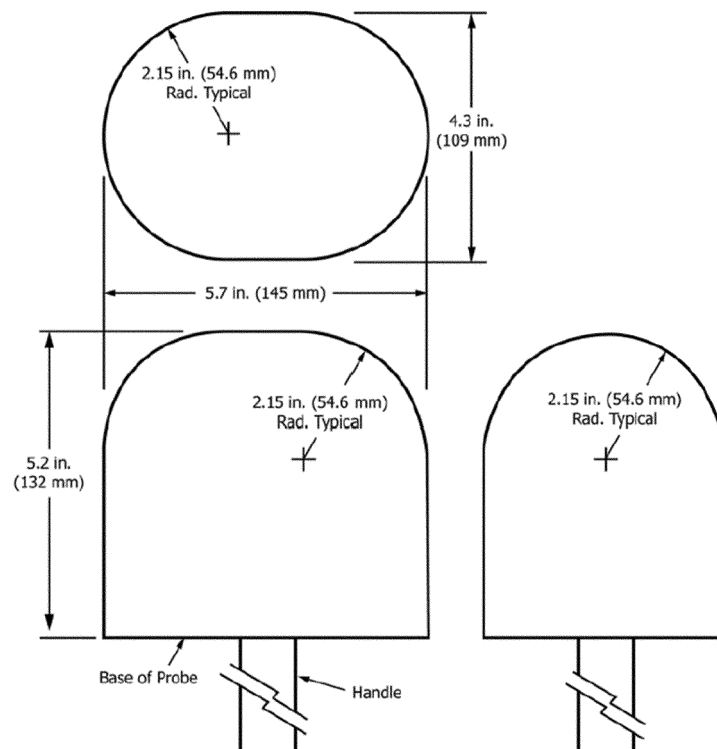
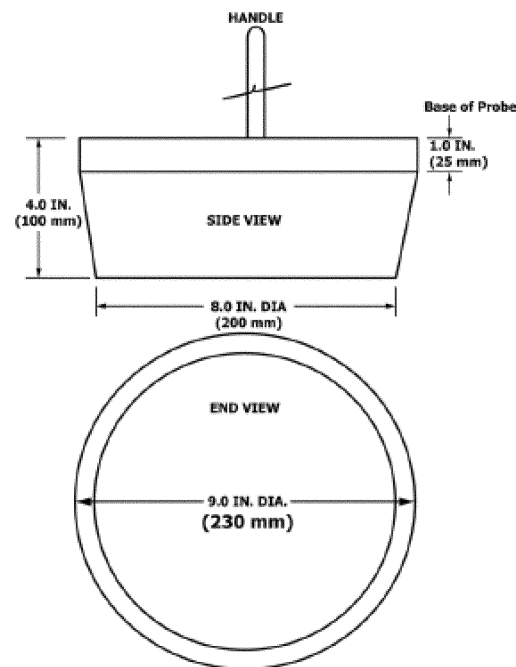


Figure 2 to paragraph (c)—Large Head Probe



(d) *Maximum incline test.* (1) Equipment shall include:

(i) Digital protractor with accuracy ± 1 degree;

(ii) Hinged weight gauge—newborn, requirements for part masses and

assembly (figure 3 to this paragraph (d)(1)(ii));

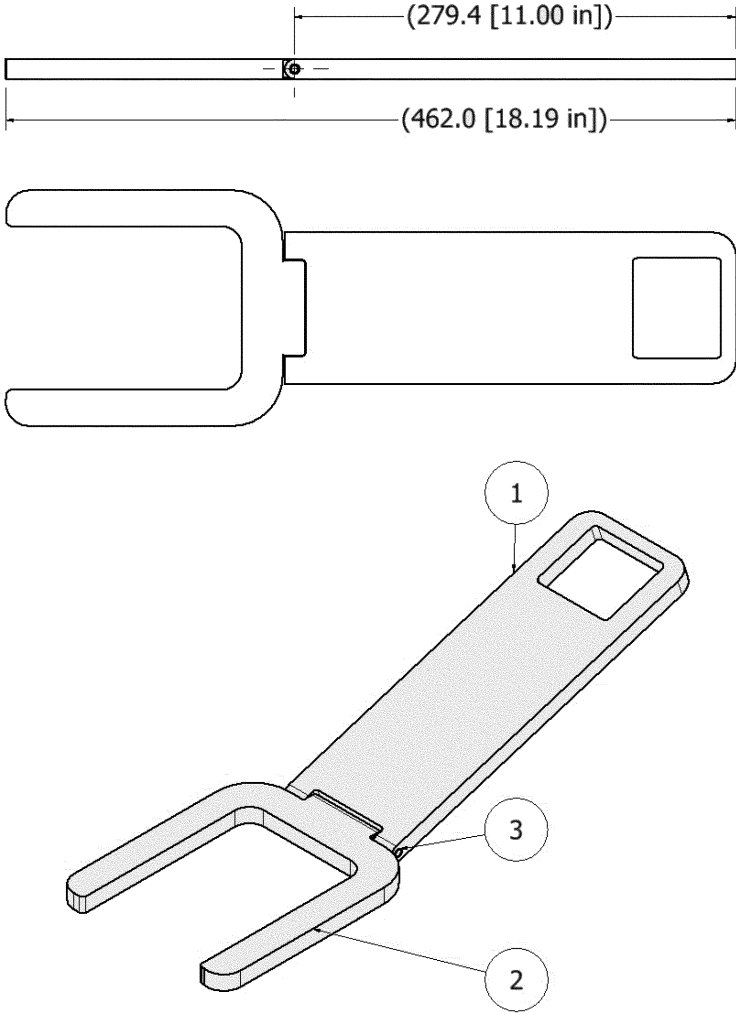
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Figure 3 to paragraph (d)(1)(ii)—Hinged
Weight Gauge—Newborn,

Requirements for Part Masses and
Assembly

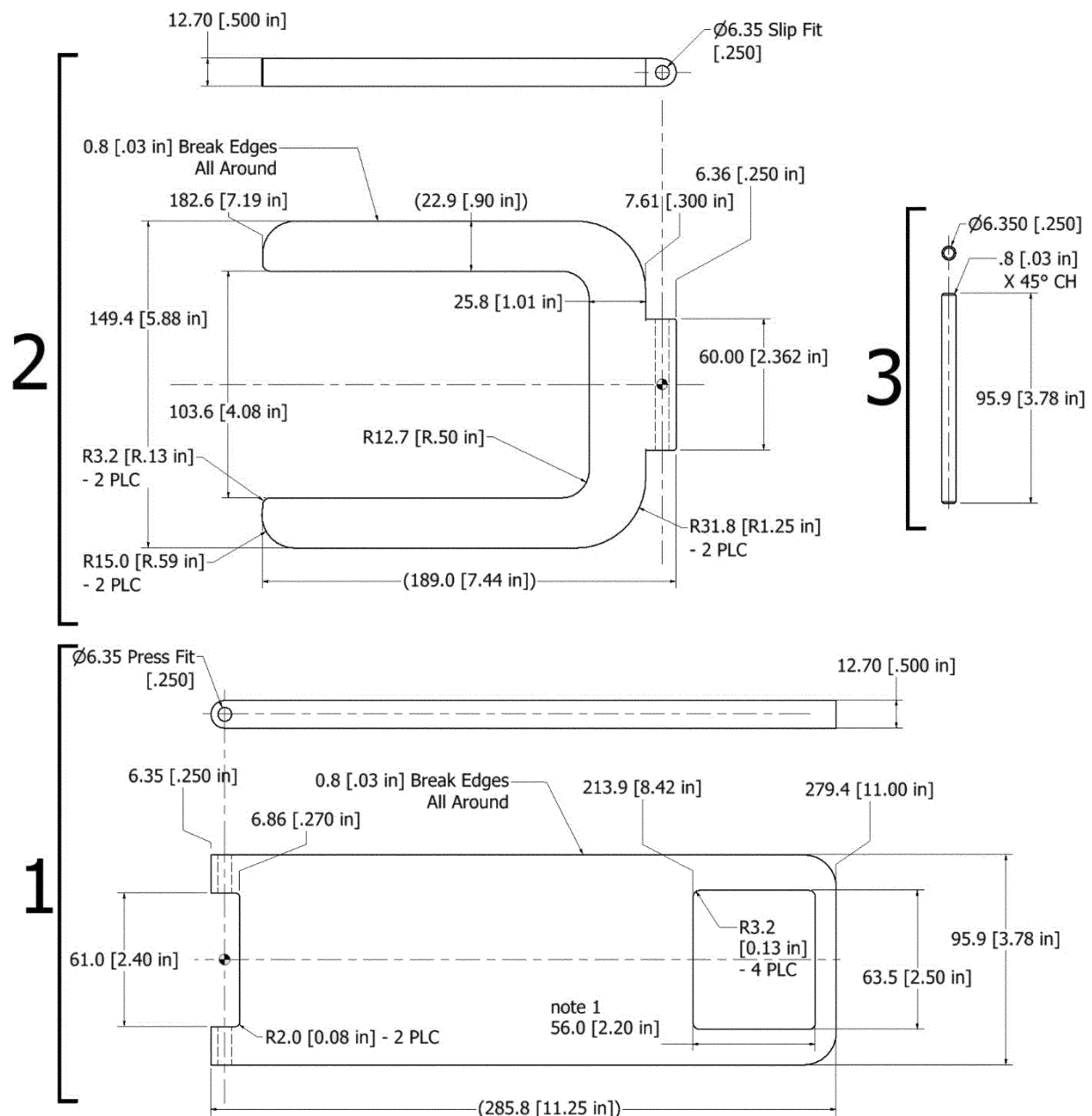
PARTS LIST			
ITEM	DESCRIPTION	MASS (1)	VOLUME
Assembly		3.378 ± .02 kg (7.447 ± .05 lb.)	
1	Upper Plate	2.275 kg (5.016 lb)	289.8 cm^3 (17.68 in^3)
2	Lower Plate	1.079 kg (2.379 lb)	137.4 cm^3 (8.385 cm^3)
3	Pin	0.024 kg (0.053 lb)	3.03 cm^3 (0.185 in^3)

Note 1. Part mass is calculated as Volume divided by the density for mild steel of 7.85 g/cm^3 (0.283 lbs/in^3).



(iii) Hinged weight gauge-newborn,
requirements for part dimensions (figure
4 to this paragraph (d)(1)(iii)); and

**Figure 4 to paragraph (d)(1)(iii)—
Hinged Weight Gauge—Newborn,
Requirements for Part Dimensions**



BILLING CODE 6355-01-C

(iv) A test base that is horizontal, flat, firm, and smooth.

(2) If applicable, place the product in the manufacturer's recommended highest seat back angle position intended for lounging.

(3) If applicable, place the hinged weight gauge—newborn in the product

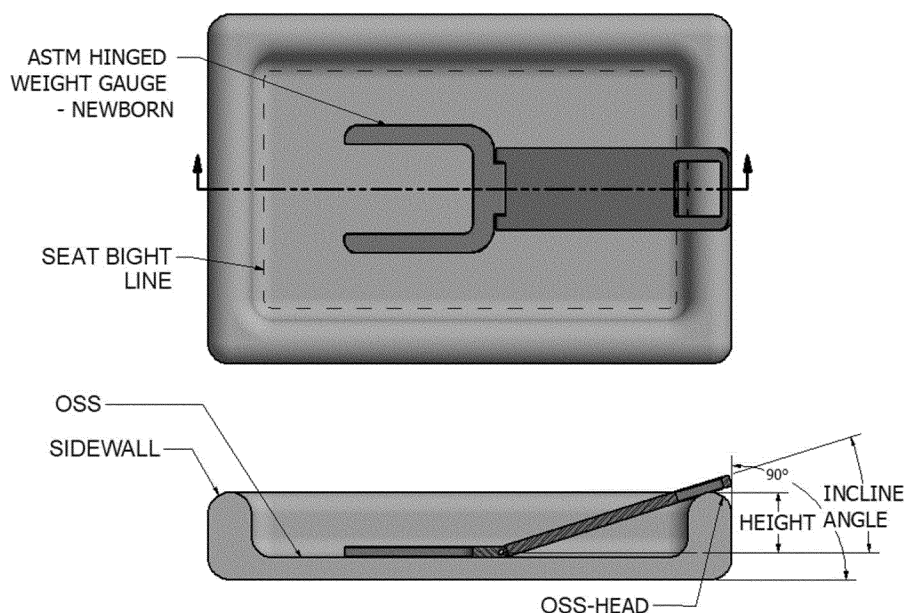
and position the gauge with the hinge centered over the seat bight line and the upper plate of the gauge back. Place a digital protractor on the upper torso/head area lengthwise and measure the incline angle.

(4) Place the head/torso portion of the newborn hinged weight gauge on the

product according to the manufacturer's recommended use position with the seat portion of the gauge, depending on the product design, allowed to lay freely on the product or on the test base (figure 5 to this paragraph (d)(4)).

Figure 5 to paragraph (d)(4)—Test Fixture Configuration to Measure

Incline Angle on an Infant Support Cushion Product



(5) Move and rotate the newborn hinged weight gauge the minimum amount necessary such that the head/torso portion rests on an OSS that could foreseeably support an infant's head, and place the head/torso portion of the gauge according to all situations that apply:

(i) In tests on products with an OSS for the infant's body, align the top edge of the head/torso portion of the gauge to coincide with a plumb line to the outermost edge of the OSS-head.

(ii) In all tests, place the seat portion of the gauge on the test base, adjust the newborn gauge to the greatest incline angle in which the top edge of the gauge maintains contact with the top surface of the product.

(6) If a product's seating bight area prevents reasonable positioning of the head/torso portion to the outermost edge, then position the seat portion of the newborn hinged weight gauge as far forward as possible towards the outermost edge and allow the head/torso portion of the gauge to rest on the product.

(7) Place a digital protractor lengthwise on the head/torso portion of the gauge and measure the incline angle.

(8) Measure the incline angle at the manufacturer's recommended use location(s), at feasible locations such as perpendicular to the recommended use location(s), and at least one location likely to fail in which the newborn gauge seat is supported on the test surface.

(9) Determine the maximum incline angle from the incline angle measurements.

(e) *Firmness test setup.* (1) Equipment shall include:

(i) Force gauge with accuracy ± 0.05 N (0.01 lbs).

(ii) Distance gauge with accuracy ± 0.01 inches (0.03 cm).

(2) Align the axis of the 3-inch head probe (figure 1 to paragraph (e)(1) of § 1243.4) with a force gauge and parallel to a distance measurement device or gauge.

(3) Use a lead screw or similar device to control movement along a single direction.

(4) Support the firmness fixture to a test base such that the head probe does not deflect more than 0.01 inches (0.025 cm) under a 10.0 N (2.24 lbs) load applied in each orientation required in the test methods.

(f) *Occupant support surface firmness test method.* Perform the following steps to determine the occupant support surface firmness of the product as received from the manufacturer. For products sold with a slipcover on or together with the product, products shall be tested as assembled with the slipcover on the product. All products, including products one inch or less in thickness, are required to be tested. See figure 6 to this paragraph (f).

(1) Orient the axis of the 3-inch head probe perpendicular to the surface of the product at each test location that is oriented greater than five degrees relative to the test base or align the axis

of the probe perpendicular to the test base (vertically) at each test location that is oriented equal to or less than five degrees to the test base.

(2) The first test location shall be at the location of maximum thickness of the surface being tested, perpendicular to the test base.

(3) Lay the product, with the occupant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

(4) Prevent movement of the product in a manner that does not affect the force or deflection measurement of the product surface under test. Provide no additional support beneath the product.

(5) Advance the probe into the product and set the deflection to 0.0 inches when a force of 0.1 N (0.02 lbs) force is reached.

(6) Continue to advance the head probe into the product at a rate not to exceed 0.1 inch per second and pause when the force exceeds 10.0 N (2.24 lbs), or the deflection is equal to 1.00 inches (2.54 cm).

(7) Wait 30 seconds. If the deflection is less than 1.00 inches and the force is 10.0 N or less, repeat the steps in paragraphs (f)(6) and (7) of this section.

(8) Record the final force and deflection when the deflection has reached 1.00 inches or when the force has exceeded 10.0 N.

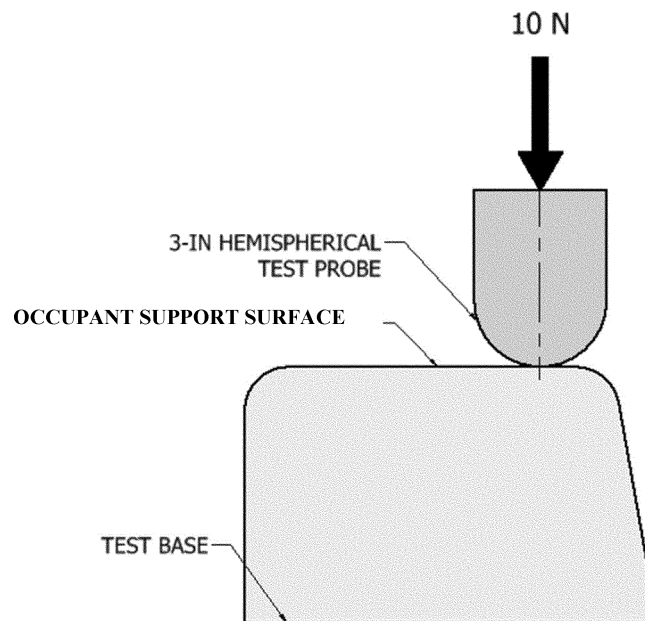
(9) If the maximum thickness of the OSS is greater than 1.0 inches (2.54 cm), perform additional tests, space permitting, at the geometric center of the OSS, at four locations along the product's longitudinal and lateral axes

therefrom, 1.5 inches (3.8 cm) towards center from the intersection of the sidewall and OSS, and at one location most likely to fail.

(10) Repeat the occupant support surface firmness tests on any other occupant support surface and in all intended and feasible configurations that could affect an occupant support

surface, such as the folding or layering of parts of the product.

Figure 6 to paragraph (f)—Test Configuration for Occupant Support Surface Firmness Test



(g) *Sidewall firmness test method.* For products with a sidewall, perform the steps in paragraphs (f)(1) through (8) of this section to determine the sidewall firmness of the product as received from the manufacturer and then perform the following:

(1) Perform a minimum of four additional tests, located at intervals not to exceed 6 inches along the entire top perimeter of the sidewall, starting from the maximum side height location, and at one additional location most likely to fail.

(2) Repeat the sidewall firmness test in all the intended or feasible configurations that could affect the sidewall firmness, such as the folding or layering of parts of the product.

(h) *Intersection of sidewall and occupant support surface firmness.* For products with a sidewall, perform the following steps to determine the intersection firmness of the product as received from the manufacturer (figure 7 to this paragraph (h)).

(1) Orient the axis of the 3-inch head probe perpendicular to the sidewall perimeter at an angle from horizontal that bisects the angle determined in sidewall angle determination with the axis directed at the intersection of the occupant support surface and the sidewall.

(2) The first test location shall be at the location of maximum product thickness parallel to the test base.

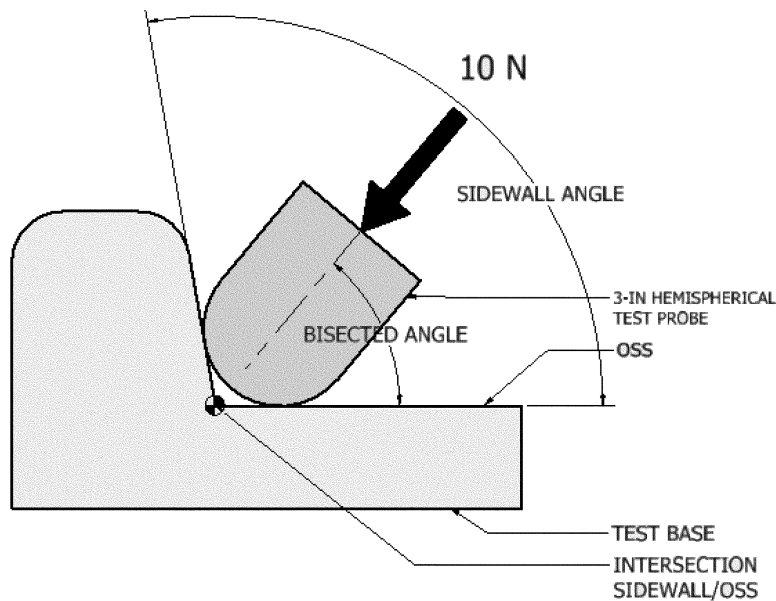
(3) Perform the steps in paragraphs (f)(3) through (8) of this section.

(4) Perform a minimum of four additional tests, located at intervals not to exceed six inches along the entire inside perimeter of the intersection of the sidewall and OSS, and at one additional location most likely to fail.

(5) Repeat the intersection of sidewall and occupant support surface firmness test in all the intended or feasible configurations that could affect the intersection firmness, such as the folding or layering of parts of the product.

Figure 7 to paragraph (h)—Test Configuration for Intersection of

Sidewall and Occupant Support Surface Firmness



(i) *Sidewall angle determination.* For products with a sidewall, perform the following steps to determine if the angle between the sidewall and OSS is 90 degrees or less, or to measure the angle above 90 degrees. See figure 8 to this paragraph (i).

(1) Orient the 3-inch (7.62 cm) diameter hemispherical head probe vertically and place it over the OSS with the cylindrical surface of the probe tangent to the intersection of the sidewall and the OSS. Advance the probe into the product until a

downward force of 10 N (2.2 lbs) force is reached.

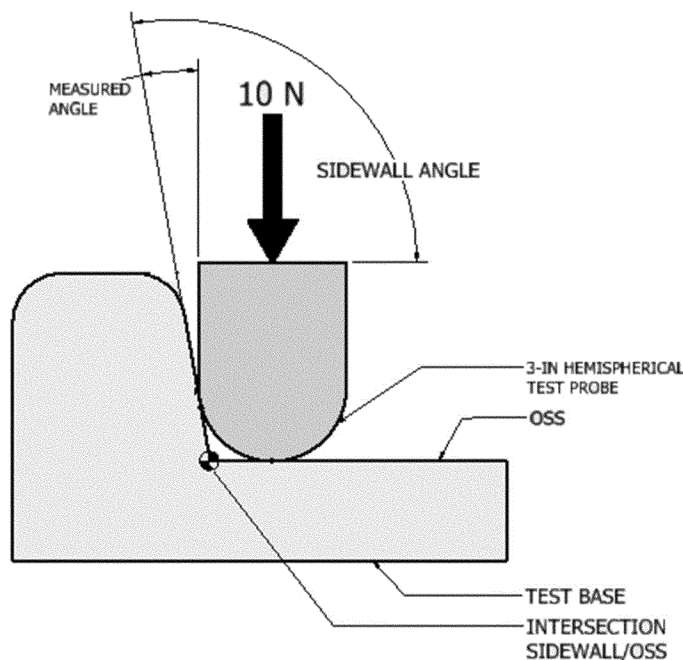
(2) After 30 seconds, determine whether the sidewall is in contact with the cylindrical side of the 3-inch head probe. If the sidewall contacts the cylindrical part of the probe, the sidewall angle is equal to or less than 90 degrees.

(3) For sidewall angles greater than 90 degrees, calculate the sidewall angle as 90 degrees plus the measured angle between the cylindrical side of the 3-inch head probe and the sidewall.

(4) Determine a minimum of four sidewall angles at locations not to exceed 6-inch (15.2 cm) intervals along the intersection of the sidewall and OSS.

(5) Measure the angle with a protractor or gauge placed to the depth of and in contact with the cylindrical side of the 3-inch probe side and the sidewall.

Figure 8 to paragraph (i)—Test Fixture Configuration for Sidewall Angle Measurement



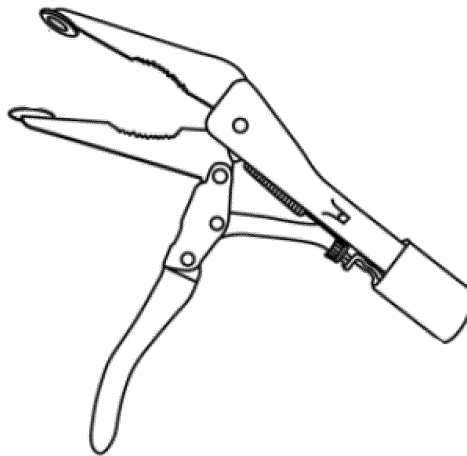
(j) *Seam strength test method.* (1) Equipment shall include:

(i) Clamps with 0.75 inches (1.9 cm) diameter clamping surfaces capable of

holding fabric and with a means to attach a force gauge. *See* figure 9 to this paragraph (j)(1), or equivalent.

(ii) A force gauge, accuracy ± 0.5 lbs (1.1 N).

Figure 9 to paragraph (j)(1)—Seam Clamp



(2) Clamp the fabric of the infant support cushion on each side of the seam under test with the 0.75 inches clamping surfaces placed not less than 0.5 inches (1.2 cm) from the seam.

(3) Apply a tension of 15 lbs (67 N) evenly over 5 seconds and maintain for an additional 10 seconds.

(4) Repeat the test on every distinct seam and every 12 inches (15 cm) along each seam.

(k) *Removal of components test method*—(1) *Suitable devices.* For

torque and tension tests, any suitable device may be used to grasp the component that does not interfere with the attachment elements that are stressed during the tests.

(2) *Torque test.* Gradually apply a 4 lbs-in (0.4 N-m) torque over 5 seconds in a clockwise rotation to 180 degrees or until 4 lbs-in has been reached. Maintain for 10 seconds. Release and allow component to return to relaxed state. Repeat the torque test in a counterclockwise rotation.

(3) *Tension test.* For components that can reasonably be grasped between thumb and forefinger, or teeth, apply a 15 lbs (67 N) force over 5 seconds, in a direction to remove the component. Maintain for 10 seconds. A clamp such as shown in figure 10 to this paragraph (k)(3) may be used if the gap between the back of the component and the base material is 0.04 inches (0.1 cm) or more.

Figure 10 to paragraph (k)(3)—Tension Test Adapter Clamp



§ 1243.6 Marking and labeling.

(a) *General markings.* Each product and its retail package shall be marked or labeled clearly and legibly to indicate the following:

(1) The name, place of business (city, state, and mailing address, including zip code), and telephone number of the manufacturer, distributor, or seller.

(2) A code mark or other means that identifies the date (month and year as a minimum) of manufacture.

(3) The marking or labeling in paragraphs (a)(1) and (2) of this section

are not required on the retail package if they are on the product and are visible in their entirety through the retail package. When no retail packaging is used to enclose the product, the information provided on the product shall be used for determining compliance with paragraphs (a)(1) and (2) of this section. Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(b) *Permanency.* The marking and labeling on the product shall be permanent.

(c) *Upholstery labeling.* Any upholstery labeling required by law shall not be used to meet the requirements of this section.

(d) *Warning design for product.* (1) The warnings shall be easy to read and understand and be in the English language at a minimum.

(2) Any marking or labeling provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

(3) The warnings shall be conspicuous and permanent.

(4) The warnings shall conform to ANSI Z535.4–2011(R2017) (incorporated by reference, see § 1243.8) sections 6.1–6.4, 7.2–7.6.3, and 8.1, with the following changes.

(i) In sections 6.2.2, 7.3, 7.5, and 8.1.2, replace “should” with “shall.”

(ii) In section 7.6.3, replace “should (when feasible)” with “shall.”

(iii) Strike the word “safety” when used immediately before a color (for example, replace “safety white” with “white”).

Note 1 to paragraph (d)(4)(iii): For reference, ANSI Z535.1, American National Standard for Safety Colors, provides a system for specifying safety colors. See note 1 to § 1243.8(a) for ANSI contact information.

(5) The safety alert symbol and the signal word “WARNING” shall be at least 0.2 inches (5 mm) high. The remainder of the text shall be in characters whose upper case shall be at least 0.1 inches (2.5 mm), except where otherwise specified.

Note 2 to paragraph (d)(5): For improved warning readability, typefaces with large height-to-width ratios, which are commonly identified as “condensed,” “compressed,” “narrow,” or similar, should be avoided.

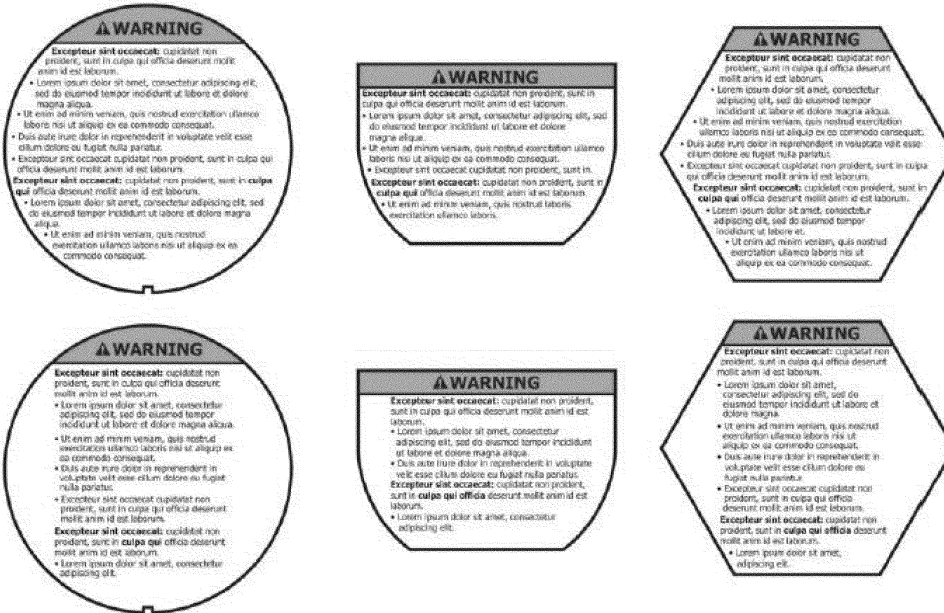
(6) The message panel shall have the following text layout requirements:

(i) The text shall be left-aligned, ragged-right for all but one-line text messages, which can be left-aligned or centered. See figure 1 to this paragraph (d)(6) for examples of left-aligned text.

Note 3 to paragraph (d)(6)(i): Left-aligned means that the text is aligned along the left margin, and in the case of multiple columns of text, along the left side of each individual column.

(ii) The text in each column should be arranged in list or outline format, with precautionary (hazard avoidance) statements preceded by bullet points. Multiple precautionary statements shall be separated by bullet points if paragraph formatting is used.

Figure 1 to paragraph (d)(6)—Examples of Left-Aligned Text



Note 4 to figure 1 to paragraph (d)(6): The text shown for the warnings in figure 1 to this paragraph (d)(6) is filler text, known as lorem ipsum, commonly used to demonstrate graphic elements.

(7) All infant support cushions are required to contain a warning with the content and format depicted in this section as figure 2 (for products without

tummy time) or figure 3 (if the product has a tummy time feature) to this paragraph (d)(7).

Figure 2 to paragraph (d)(7)—Warning
for Product Without Tummy Time

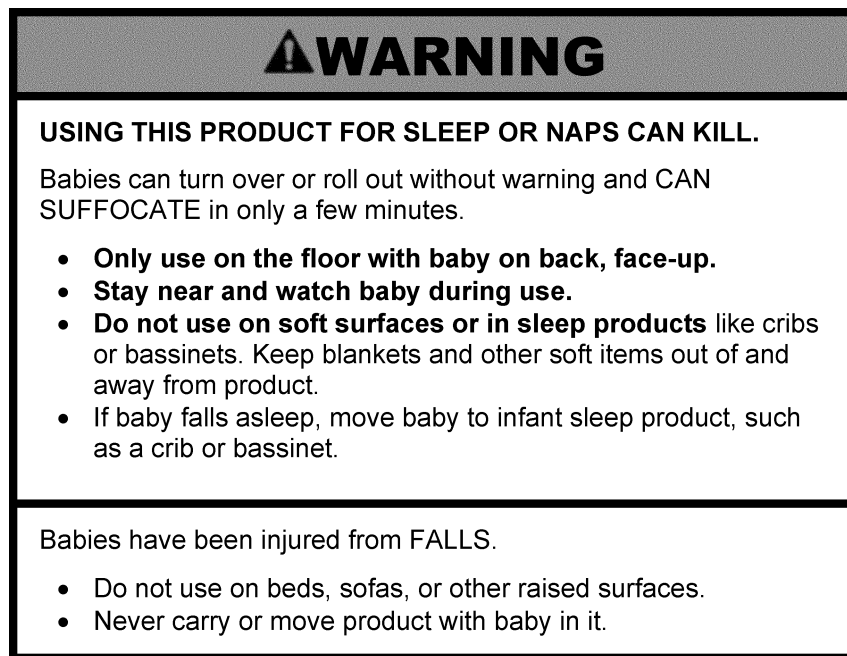
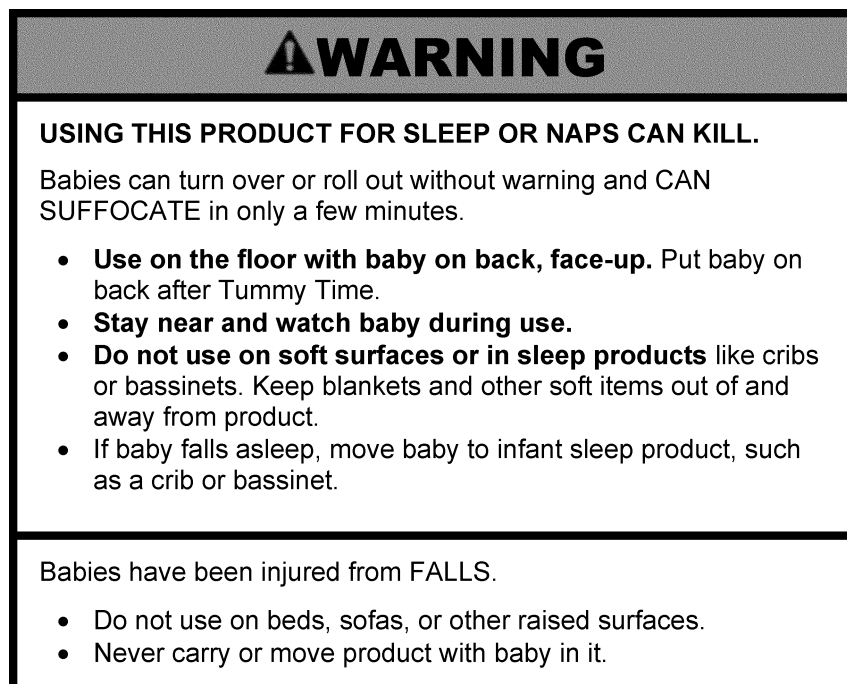


Figure 3 to paragraph (d)(7)—Warning
for Tummy Time Product



(e) *Warning statements.* Each product shall contain the warning statements shown on figure 2 (for products without tummy time) or figure 3 (if the product has a tummy time feature) to paragraph (d)(7) of this section, at a minimum.

Slipcovers sold on, or together with the product, shall contain the warning statement shown on figure 2 or 3 to paragraph (d)(7) of this section, as applicable.

§ 1243.7 Instructional literature.

(a) Instructions shall be provided with the product and shall be easy to read and understand and shall be in the English language at a minimum. These instructions shall include information

on assembly, maintenance, cleaning, and use, where applicable.

(b) The instructions shall address the following additional warnings:

(1) Read all instructions before using this product.

(2) Keep instructions for future use.

(3) Do not use this product if it is damaged or broken.

(4) Instructions shall indicate the manufacturer's recommended maximum weight, height, age, developmental level, or combination thereof, of the occupant for which the infant support cushion is intended. If this product is not intended for use by a child for a specific reason, the instructions shall state this limitation.

(c) The cautions and warnings in the instructions shall meet the requirements specified in § 1243.6(d)(4) through (6), except that section 6.4 and sections 7.2–7.6.3 of ANSI Z535.4–2011(R2017) (incorporated by reference, see § 1243.8) need not be applied. However, the signal word and safety alert symbol shall contrast with the background of the signal word panel, and the cautions and warnings shall contrast with the background of the instructional literature.

Note 1 to paragraph (c): For example, the signal word, safety alert symbol, and the warnings may be black letters on a white background, white letters on a black background, navy blue letters on an off-white background, or some other high-contrast combination.

(d) Any instructions provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

§ 1243.8 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; phone (301) 504–7479; email: cpsc-os@cpsc.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from the following sources:

(a) National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: www.nema.org.

(1) ANSI Z535.4–2011(R2017), *American National Standard for Product Safety Signs and Labels*, approved October 20, 2017; approved for §§ 1243.6 and 1243.7.

(2) [Reserved]

Note 1 to paragraph (a): NEMA standards are also available from the American National Standards Institute (ANSI), which provides a free, read-only copy of the standard at <https://ibr.ansi.org/Standards/nema.aspx>. Contact ANSI by mail at American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036, USA; phone: (212) 642–4900; website: www.ansi.org.

(b) ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–2959; phone: (800) 262–1373; website: www.astm.org.

(1) ASTM D3359–23, *Standard Test Methods for Rating Adhesion by Tape Test*, approved February 1, 2023; approved for § 1243.5.

(2) [Reserved]

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–25181 Filed 11–1–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0745]

RIN 1625–AA09

Drawbridge Operation Regulation; Sacramento River, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the draw of the California Department of Transportation Rio Vista (State Route 12) highway bridge across the Sacramento River, mile 12.8, at Rio Vista, CA. This action is necessary to allow the bridge owner to complete rehabilitation of the bridge.

DATES: This temporary interim rule is effective from November 4, 2024 through 5 p.m. on August 29, 2025.

Comments and related material must reach the Coast Guard on or before December 4, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG–2024–0745) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call or email Carl Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–219–4366, email D11Bridges@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

Caltrans	California Department of Transportation
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
MHW	Mean High Water
NOTD	Notice of Temporary Deviation
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under the authority in 5 U.S.C. 553(b)(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.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest due to Caltrans Headquarters continuing to add projects to the ongoing rehabilitation project, which will require extending the length of time for advance notice for opening the span. The current NOTD expires November 1, 2024 and the Coast Guard cannot add additional dates to that NOTD because it will extend the NOTD beyond the allowed 180 days. The continuation of the temporary deviation is necessary for the safety of the work crews on the bridge.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because Caltrans has allocated funds for additional rehabilitation work on the

bridge, necessary to keep the bridge functional for the foreseeable future.

On May 1, 2024, the Coast Guard issued a General Deviation pursuant to 33 CFR 117.5, which allowed the bridge owner, Caltrans, to deviate from the current operating schedule to conduct major mechanical, electrical, and structural rehabilitation of the bridge. The General Deviation expires on November 1, 2024. Currently, the bridge will open on signal if at least 4-hours' notice is given to the drawtender. As of this date, new traffic gates have been installed, up-haul and down-haul wire ropes replaced, new primary and secondary drives have been installed, and new vertical clearance gauges mounted. Caltrans' Headquarters continues to allocate more funding for new projects to continue bridge rehabilitation. Projects that will be started in the calendar year 2024 and 2025 include: installing new tower elevators, repairing the east bridge portal, upgrading the traffic barriers hydraulic power units, repairing the span's cable reel and replacing the lift span roadway deck. These projects will require workers to be constantly on the lift span and towers of the bridge. For the safety of the workers on and around the mechanical workings of the bridge, Caltrans has requested the 4-hour advance notice for openings be extended through August 29, 2025. Due to Caltrans' Headquarters continuously allocating additional funds for rehabilitation projects, there is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499.

The Coast Guard is modifying the operating schedule that governs the draw of the California Department of Transportation Rio Vista (State Route 12) highway bridge across the Sacramento River, mile 12.8, at Rio Vista, CA. The Rio Vista bridge has a vertical clearance of 17 feet at MHW in the closed-to-navigation position and 144 feet at MHW in the fully open-to-navigation position.

The existing drawbridge regulation, 33 CFR 117.5, states "Except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart". The bridge is currently operating under a temporary deviation from the operating regulations, allowing the

bridge to open on signal if at least 4-hours' notice is given to the drawtender. Caltrans, the bridge owner, has requested to extend the 4-hour advance notification in order to safely complete bridge rehabilitation.

IV. Discussion of the Temporary Interim Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the draw of the California Department of Transportation Rio Vista (State Route 12) highway bridge across the Sacramento River, mile 12.8, at Rio Vista, CA. This rule allows the bridge to open on signal if at least 4-hours' notice is given to the drawtender through 5 p.m. on August 29, 2025.

As the bridge rehabilitation continues, Caltrans has the following projects to complete: installing new tower elevators, repairing the east portal, upgrading the barriers hydraulic power units, repairing the span's cable reel and replacing the lift span roadway deck. This work will require workers to be in or around the towers' working machinery and in or around the lift span of the bridge. For the safety of the workers, Caltrans is requesting this temporary change so the workers can safely demobilize before the lift span operates. It is anticipated the rehabilitation work will be completed by August 29, 2025.

V. Regulatory Analyses

We developed this temporary interim 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.

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 as amended by Executive Order 14094. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small

entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 bridge 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 contact 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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 Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. In § 117.189, add new paragraph (e) to read as follows:

§ 117.189 Sacramento River.

* * * * *

(e) The draw of the California Department of Transportation Rio Vista (State Route 12) highway bridge, mile 12.8, at Rio Vista, shall open on signal through August 29, 2025 if at least 4 hours' notice is given to the drawtender.

Dated: October 28, 2024.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 2024–25603 Filed 11–1–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0016; FRL–12094–02–R3]

Air Plan Approval; Delaware; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three state implementation plan (SIP) revisions submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) on March 13, 2023. The revisions amend Delaware's emission inspection and maintenance (I/M) program statewide, for the purpose of updating the SIP to include several state rule revisions as amendments to the prior approved SIP. The purpose of these updates is to incorporate regulatory changes that are the result of state law changes, as well as to improve the I/M program and to harmonize the programs operated throughout the state. EPA finds that these revisions to the SIP comply with applicable requirements of the CAA and EPA regulations and that these revisions to the SIP will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS). EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective December 4, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2024–0016. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some

information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 13, 2023, DNREC submitted to EPA three revisions to the Delaware SIP pertaining to Delaware's enhanced I/M program applicable to the Delaware portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2015 ozone NAAQS (*i.e.*, Kent and New Castle Counties) and the SIP-strengthening (akin to basic) I/M program applicable to Sussex County. On August 15, 2024 (89 FR 66295), EPA published a notice of proposed rulemaking (NPRM) proposing to approve these three revisions to the Delaware SIP. In the NPRM, EPA proposed to approve state amendments to the prior SIP-approved versions of 7 DE Admin. Code 31, now recodified at 7 DE Admin Code 1131 (pertaining to the enhanced I/M program in Kent and New Castle Counties) and to 7 DE Code 1126 (pertaining to Sussex County), as well as Delaware's *Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*. The PFI contains additional supporting materials for inclusion into the SIP that is related to I/M program implementation, enforcement, and other non-regulatory program requirements to satisfy Federal I/M requirements set forth at 40 CFR part 51, subpart S not addressed by the revised Regulations 1126 and 1131.

These SIP revisions apply to both the federally mandated enhanced I/M program applicable to Kent and New Castle Counties that comprise Delaware's portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE ozone nonattainment area, and also

to the Sussex County program, where I/M is not federally required but where Delaware has a prior approved, SIP strengthening I/M program (similar in design to a basic I/M program, as defined by the Clean Air Act and EPA's I/M program rules). The SIP revisions to Delaware's I/M program being approved herein include: a change in program coverage to expand exemptions for new vehicles to seven years (from five years); the addition of vehicle on-board diagnostic (OBD) testing requirements in the Sussex County program; expanded vehicle coverage to include vehicles weighing between 8,501 to 14,000 pounds gross vehicle weight rating (GVWR), for those vehicles model year 2008-and-newer; harmonization of I/M test requirements applicable to older vehicles to include curb idle exhaust and gas cap pressure tests for vehicles 1995-and-older (replacing existing two-speed idle tests on those vehicles previously performed in Kent and New Castle Counties); the phase-in of increased minimum repair cost thresholds for obtaining a repair waiver in Sussex County; and the addition of a statewide prohibition on tampering-related repairs in qualifying for an emissions repair waiver.

II. Summary of Delaware's March 2023 SIP Revisions and EPA's Analysis

A. Overview of Delaware's March 13, 2023 SIP Revisions

Delaware submitted three SIP revisions on March 13, 2023, serving to update the Delaware SIP to harmonize with amendments made to the state I/M program regulations and plan for implementation. These March 2023 SIP revisions pertain to both of Delaware's I/M programs—the enhanced I/M program applicable to Kent and New Castle Counties and the SIP-strengthening (akin to basic) I/M program in Sussex County. The first of these SIP revisions is an amendment to 7 DE Admin. Code 1131, pertaining to the low enhanced I/M program operated in Kent and New Castle Counties (referred to as the “Wilmington I/M program” or as the “Regulation 1131” I/M program).

The second of the March 2023 SIP submittals amends 7 DE Admin. Code 1126 pertaining to the SIP-strengthening I/M program applicable to Sussex County (referred to as the “Sussex County I/M program” or “Regulation 1126” program). DNREC revised Regulations 1126 and 1131 to optimize the I/M programs and to harmonize the requirements of the two programs, as well as to align Delaware's regulations with a change in state law (*i.e.*, House

Bill 246 of the 2017 Delaware General Assembly legislative session), which altered subject vehicle applicability of the program by changing the exemption for new vehicles from five to seven years.¹

Delaware's third March 2023 SIP submittal serves to correct an error made by the state in a 2012 state regulatory action, which inadvertently incorporated *Delaware's Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131* into Regulation 31.² Delaware never requested that EPA incorporate the 2012 version of Regulation 1131 into the SIP, so that error did not translate to the SIP. However, Delaware's March 2023 SIP revision requests that EPA incorporate the now non-regulatory PFI as additional supporting materials for inclusion into the SIP, for the purpose of meeting Federal I/M requirements at 40 CFR part 51, subpart S not addressed by the revised Regulations 1126 and 1131.

In accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference Delaware's revised Title 7, Regulation 1126 entitled “Motor Vehicle Emissions Inspection Program—Sussex County,” as published as a final rule in the Delaware Register on January 1, 2023 (effective January 11, 2023). This revised 7 DE Admin Code Regulation 1126 takes the place of the prior SIP-approved version of Regulation 1126 in its entirety. The effect is to incorporate by reference amended sections of Regulation 1126, including sections 1.0 (including 1.1 through 1.6), 2.0 (including revised definitions³), 4.0

(including 4.1 through 4.5), 5.0 (including 5.1 through 5.4), 6.0 (including 6.1 through 6.2), 7.0 (including 7.1 and 7.2), 8.0 (including 8.1 through 8.4), and 9.0 (including 9.1 through 9.3). Section 3.0 of Regulation 1126 and Technical Memorandum 1 and 2 to Regulation 1126 are removed and reserved, as these sections were removed as part of Delaware's January 1, 2023 state rule revisions.

In accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference Delaware's revised Title 7, Regulation 1131 entitled “Motor Vehicle Emissions Inspection Program—Kent and New Castle Counties,” as published as a final rule in the Delaware Register on January 1, 2023 (effective January 11, 2023). Delaware's January 1, 2023 regulatory updates to 7 DE Admin Code Regulation 1131 serve to update the rules to reflect changes made by Delaware to revise its low-enhanced I/M program as described earlier (*i.e.*, to increase new vehicle I/M program exemptions to seven years, to expand vehicle coverage to include medium-duty vehicles; to change idle testing requirements to curb idle testing, etc.) Additionally, the January 1, 2023 version of Regulation 1131 being incorporated by reference replaces the prior SIP-approved Regulation 31 program to reflect a state regulatory format change made since EPA last approved the SIP, essentially recodifying that program. The revised 7 DE Admin. Code Regulation 1131 being incorporated by reference was state adopted on January 1, 2023 (state effective January 11, 2023). This action incorporates by reference the January 1, 2023 state revisions to 7 DE Admin. Code 1131, including: sections 1.0, 2.0 (including 2.1 through 2.6), 3.0 (including revised definitions),⁴ 4.0

¹ See 21 Delaware Code 2143.

² Delaware revised its Regulation 31 on June 12, 2012, but did not request that EPA revise the SIP at the time to incorporate those amended provisions. Among those rule changes was a change in state rule format, changing the Regulation number from 31 to 1131. The March 2023 SIP revision incorporated state rule amendments made in January 2023 that build on those 2012 state rule amendments. EPA is taking final action on the March 2023 SIP revision, inclusive of prior state rule amendments made since the last update to Chapter 31.

³ EPA's final action updates definitions under 7 DE Admin Code 1126, section 2.0, adding definitions for the terms: “alternative fuel vehicle,” “ASE L1,” “certified emission repair technician,” “carbon dioxide (CO₂),” “carbon monoxide (CO),” “curb-idle test,” “director,” “dual fuel vehicle,” “exhaust emission test,” “evaporative system integrity,” “farm vehicles,” “flexible fuel vehicle,” “gross vehicle weight,” “high emitting vehicle,” “hybrid electric vehicle,” “hydrocarbon,” “inspection period,” “invalid test condition,” “I/M subject vehicle,” “kit car,” “light duty vehicle,” “malfunction indicator lamp,” “motor vehicle associate,” “new model year exemption,” “OBD diagnostic trouble code,” “on-board diagnostics (OBD),” “on-board diagnostics test,” “reconstructed vehicle,” “registration denial,” “repair waiver,” “repair waiver expenditure limit,” “sale or sell,” “secretary,” “standards,” “subject fleet vehicle,”

“subject vehicle,” “tampering,” “unsafe condition,” “vehicle,” “vehicle type,” and “visual catalyst inspection.” The action incorporates revised definitions under 7 Admin Code 1126, Section 2.0 for the terms: “emissions,” “emission standards,” “failed motor vehicle,” and “official inspection station.”

⁴ This action includes revision to definitions in Title 7 DE Admin Code Regulation 1131, section 3, adding definitions for the following terms: “Alternative fuel vehicle,” “ASE L1,” “Certified emission repair technician,” “Carbon dioxide (CO₂),” “Carbon monoxide (CO),” “Curb-idle test,” “Department,” “Director,” “Division,” “Dual-fuel vehicle,” “Emissions,” “Emission inspection area,” “Emissions standards,” “Exhaust emission test,” “Evaporative system integrity test,” “Failed motor vehicle,” “Farm vehicle,” “Flexible fuel vehicle,” “Gross vehicle weight,” “High emitting vehicle (HEV),” “Hybrid electric vehicle,” “Hydrocarbon (HC),” “I/M subject vehicle,” “Inspection period,” “Invalid test connection,” “Kit car,” “Light duty vehicle,” “Malfunction indicator lamp (MIL),” “Model year,” “Motor vehicle” “Motor vehicle

(including 4.1 through 4.5), 5.0 (including 5.1 through 5.4), 6.0 (including 6.1), 7.0 (including 7.1 and 7.2), 8.0 (including 8.1 through 8.4), and 9.0 (including 9.2). With the substitution in the SIP of the January 2023 state revision of 7 DE Admin Code Regulation 1131 for the previously SIP-approved Regulation 31, sections 10 through 13 of 7 DE Admin. Code 31 are removed from the SIP, along with Appendices 1(d), 3(a)(7), 3(c)(2), 4(a), 5(a), 5(f), 6(a), 6(a)(5), 6(a)(8), 6(a)(9), 7(a), 8(a), and 9(a).

In an August 11, 2010 action, EPA approved into the SIP Delaware's administrative recodification of 7 DE Code 1126.⁵ Delaware subsequently finalized a state administrative recodification of 7 DE Admin Code 1131 (previously Regulation 31) but did not then submit that administrative change as a SIP revision to EPA. As a result, EPA did not at that time approve into the SIP the state's recodification of Regulation 1131. Delaware's March 2023 SIP revision contains a January 2023 state regulation amendment to Regulation 1131, which is based on a prior 2012 revision of that rule that Delaware had not previously requested be approved as part of the SIP. The relevant regulation in the SIP was most recently approved by EPA in October 2001, when it was still Regulation 31 in the Delaware Code. The 2023 SIP revision serves to incorporate by reference the 2023 version of the state rule revision into the Delaware SIP. The effect of doing so will be to incorporate the latest 2023 state rule amendments, as well as the 2012 state amendments. The effect of approving the PFI SIP revision and incorporating the PFI by reference into the SIP would be to remove from Regulation 1131 some oversight and administrative provisions formerly contained in regulatory addendums and appendices to Regulation 1131 and instead to include them in the SIP as additional state materials for incorporation by reference as non-regulatory revision.

B. EPA's Evaluation of Delaware's SIP Revisions

EPA's rationale for the proposed approval of these three March 2023 SIP

associate," "New model year exemption," "OBD diagnostics trouble codes (DTCs)," "Official inspection station," "On-board diagnostics (OBD)," "On-Board Diagnostics (OBD) Test," "Reasonable cost," "Reconstructed vehicle," "Registration denial," "Registered gross vehicle weight (G.V.W.)," "Repair waiver," "Repair Waiver Expenditure Limit," "Sale or sell," "Secretary," "Standards," "Subject vehicle," "Tampering," "Unsafe condition," "Vehicle," "Vehicle type," "Visual catalyst inspection," and "Waiver."

⁵ See 75 FR 48566 (August 11, 2010).

revisions was presented in the August 15, 2024 (89 FR 66295), NPRM, referenced above, and will not be restated here. EPA received one public comment on the proposed rulemaking, which was not adverse in nature noting simply that Illinois has a program similar to Delaware's. Given that the comment was not adverse in nature, EPA is not responding to the comment in this final rule.

III. EPA's Response to Comments Received

The proposed action provided a 30-day public comment period. During this period, EPA received one public comment, which was not adverse in nature, with the commenter noting that Illinois has similar control measures. The comment provides no further explanation or context as to its relevancy to this action. Therefore, EPA is not responding to that public comment received, considering it neutral with respect to this action.

IV. Final Action

EPA is approving three SIP revisions submitted by DNREC in March 2023 as revisions to the Delaware SIP as described in the NPRM titled "Air Plan Approval; Delaware; Motor Vehicle Inspection and Maintenance Program" published in the August 15, 2024 (89 FR 66295) **Federal Register**. These revisions serve to amend Delaware's vehicle I/M program requirements applicable to the Delaware portion of the Philadelphia-Wilmington-Atlantic City nonattainment area, Delaware's sip-strengthening I/M program in Sussex County, and incorporation of non-regulatory implementation materials.

The SIP revisions to Delaware's I/M program being approved herein include: a change in program coverage to expand exemptions for new vehicles to seven years; the addition of vehicle OBD testing requirements in the Sussex County program; expanded vehicle coverage to include vehicles weighing between 8,501 to 14,000 pounds GVWR, for those vehicles model year 2008-and-newer; harmonization of I/M test requirements applicable to older vehicles to include curb idle exhaust and gas cap pressure tests for vehicles 1995-and-older (replacing existing two-speed idle tests on those vehicles previously performed in Kent and New Castle Counties); the phase-in of increased minimum repair cost thresholds for obtaining a repair waiver in Sussex County; and the addition of a statewide prohibition on tampering-related repairs in qualifying for an emissions repair waiver. EPA finds that these revisions to the SIP comply with

applicable requirements of the CAA and EPA regulations and that these revisions to the SIP will not interfere with attainment or maintenance of any NAAQS or result in an adverse impact to air quality. Please refer to the August 15, 2024 (89 FR 66295) NPRM for further detail on the basis for this final approval. EPA's authority to approve Delaware's I/M programs is set forth in sections 110 and 182 of the Clean Air Act.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of revisions to portions of Title 7 of the Delaware Administrative Code, Chapters 1126 and 1131. Revisions to Chapter 1126 include revised sections 1.0 through 9.0. Revisions to Chapter 1131 include revised sections 1.0 through 9.0. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to Delaware Title 7, Chapters 1126 and 1131, as described in section II of this preamble. The specific changes being made by these revisions are described in further detail in section II of this preamble.

EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not

⁶ 62 FR 27968 (May 22, 1997).

impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

In addition, this action, approving three March 13, 2023 Delaware SIP revisions related to the vehicle I/M program, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color,

national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Delaware DNREC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area.

Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and

shall not postpone the effectiveness of such rule or action. This action approving revisions to Delaware’s motor vehicle emissions inspection and maintenance program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart I—Delaware

■ 2. Amend § 52.420:

■ a. In the table in paragraph (c) by:

■ i. Removing the heading “Chapter 1126 Motor Vehicle Emissions Inspection Program” including the entries “Section 1.0” through “Technical Memorandum 2” and adding in its place the heading “1126 Motor Vehicle Inspection Program—Sussex County” including the entries “Section 1.0” through “Section 9.0”;

■ ii. Removing the heading “Regulation No. 31 Low Enhanced Inspection and Maintenance Program” including the entries “Section 1” through “Appendix 9(a)” and adding in its place the heading “1131 Motor Vehicle Emissions Inspection Program—Kent and New Castle Counties” including the entries “Section 1.0” through “Section 9.0”;

■ b. In the table in paragraph (e) by adding the entry “Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131” at the end of the table.

The additions read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1126 MOTOR VEHICLE INSPECTION PROGRAM—SUSSEX COUNTY				
Section 1.0	Applicability and General Provisions.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Regulation 1126 applies to Sussex County only, as of November 1, 1999.
Section 2.0	Definitions	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 4.0	Vehicle Inspection Requirements.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 5.0	Motor Vehicle Anti-Tampering Requirements.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 6.0	On-Road Inspection Standards and Test Procedures.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 7.0	Vehicle Emission Inspection Waivers.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 8.0	Certified Emission Repair Technicians.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 9.0	Enforcement and Registration Denial.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
*	*	*	*	*
1131 MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM—KENT AND NEW CASTLE COUNTIES				
Section 1.0	Purpose	1/1/23	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	REGULATION 1131 APPLIES TO KENT AND NEW CASTLE COUNTIES.
Section 2.0	Applicability and General Provisions.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 3.0	Definitions	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 4.0	Vehicle Inspection Requirements.	1/1/2023		
Section 5.0	Motor Vehicle Anti-Tampering Requirements.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 6.0	On-Road Inspection Standards and Test Procedures.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 7.0	Vehicle Emission Inspection Waivers.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 8.0	Certified Emission Repair Technician.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
Section 9.0	Enforcement and Registration Denial.	1/1/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
*	*	*	*	*

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131.	Statewide	03/13/2023	11/4/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	This Plan for Implementation applies to both 7 DE 1126 Motor vehicle Inspection Program—Sussex County; and to 7 DE 1131 Motor Vehicle Emissions Inspection Program—Kent and New Castle Counties.

* * * * *

[FR Doc. 2024–25460 Filed 11–1–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0418; FRL–12225–02–R9]

Air Plan Revisions; California; San Diego County Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the San Diego County Air Pollution Control District (SDCAPCD) and Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP). These revisions concern negative declarations for the Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry (Oil and Natural Gas CTG).

DATES: This rule is effective December 4, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2024–0418. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Eugene Chen, EPA Region IX, 75 Hawthorne St., San Francisco, CA

94105. By phone: (415) 947–4304 or by email at chen.eugene@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On September 23, 2024, the EPA proposed to approve the California Air Resources Board’s (CARB) submittal of negative declarations for the Oil and Natural Gas CTG adopted by SDCAPCD and MDAQMD.¹ As discussed in our proposed action, these negative declarations should provide reasonable assurances that no sources subject to the CTG’s requirements currently exist in the relevant ozone nonattainment areas. Based on our review, we did not identify any sources that would be subject to the Oil and Natural Gas CTG and agreed with the SDCAPCD and MDAQMD negative declarations. We therefore proposed approval of these negative declarations for the Oil and Natural Gas CTG.

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Document	Adopted	Submitted to EPA
SDCAPCD	2020 Reasonably Available Control Technology Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County (“2020 RACT SIP”)—Negative Declaration for Oil and Natural Gas CTG.	10/14/2020	12/29/2020
MDAQMD	70 ppb Ozone Standard Implementation Evaluation: RACT SIP Analysis; Federal Negative Declarations; and Emission Statement Certification—Negative Declaration for Oil and Natural Gas CTG.	10/28/2019	12/20/2019

As discussed in our September 23, 2024 (89 FR 77467) proposal, we only proposed action on the negative declaration for the Oil and Natural Gas CTG in Attachment B of the SDCAPCD submittal and did not propose action on

any other elements of the submittal. Similarly, for the MDAQMD submittal, we only proposed action on the negative declaration for the Oil and Natural Gas CTG in table 2 and did not propose action on any other elements of the

submittal. In both cases, the negative declarations for the Oil and Natural Gas CTG were submitted for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS).^{2,3}

¹ 89 FR 77467.

² Page 10 of MDAQMD 70 ppb O3 Evaluation, Final Staff Report.

³ Page B–10 of SDCAPCD 2020 RACT SIP, Attachment B.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received four comments. We have summarized these comments and included our responses below.

Comment 1: One commenter inquired about grants for the electrification of equipment on small farms and included information regarding a certain model of electric tractor deployed in Europe.

Response 1: Our proposed action is related to oil and natural gas sources located in certain California air districts. We do not consider this comment to be germane because it is beyond the scope of our proposed action.

Comment 2: One commenter expressed general support for the proposed action and urged the EPA to adopt the proposed rulemakings.

Response 2: The EPA acknowledges the comment.

Comment 3: One commenter urged the EPA to take action to regulate cannabis growth. The commenter asserts that cannabis cultivation is responsible for significant emissions of greenhouse gases and that cannabis plants themselves are a source of terpenes, which are VOCs that "when mixed with nitrogen oxide and sunlight, form ozone-degrading aerosols."

Response 3: We acknowledge the information provided by the commenter regarding the potential for the cannabis cultivation industry to be a source of greenhouse gas emissions and VOCs. As noted in our response to Comment 1 of this preamble above, our proposed action is related to oil and natural gas sources located in certain California air districts. As a result, we do not consider this comment to be germane because it is beyond the scope of our proposed action.

Comment 4: One commenter opposes the EPA action on the proposed rulemakings. The commenter notes the need for ozone regulation in southwest California under the 2008 and 2015 ozone NAAQS because "the ozone emitted by the oil and natural gas industries has a stronger impact than in more temperate regions." The commenter suggests that "providing a bulwark against accelerated ozone production from [these] sources is paramount" and concludes by stating "if the SDCAPCD, MDAQMD and EPA sign onto the negative decision to include oil and natural gas industries in these portions of the California SIP, the problem of ground-level ozone will not be fully resolved."

Response 4: We acknowledge the commenters concerns regarding ozone

levels in southwest California and attainment of the 2008 and 2015 ozone NAAQS for the areas at issue in the EPA's proposed action. However, we disagree with the commenter that the proposed action will negatively impact ozone emissions in the areas at issue.

We wish to clarify that the EPA's proposed action involves a negative declaration, not a negative decision. As discussed above and in our proposed action, the negative declarations from SDCAPCD and MDAQMD represent their certifications that there are no sources subject to the Oil and Natural Gas CTG present in their jurisdictions. A negative declaration does not exempt sources from regulation, and if sources subject to the Oil and Natural Gas CTG subsequently came to exist in either of the Districts, CAA sections 182(b)(2) and (f) would require that District to adopt control measures implementing RACT for the CTG.⁴

III. EPA Action

None of the comments submitted change our assessment of the SIP revision as described in the proposed action at issue. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving SDCAPCD's and MDAQMD's negative declarations for the Oil and Natural Gas CTG because they fulfill the relevant requirements in CAA sections 110(a), 110(l), and 182(b)(2). In addition, our approval of SDCAPCD's negative declaration terminates the EPA's obligation to promulgate a Federal Implementation Plan (FIP) for SDCAPCD arising from our November 16, 2020 finding of failure to submit for the Oil and Natural Gas CTG.⁵

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

⁴ In a separate action earlier this year, the EPA proposed to approve a California statewide regulation into the California SIP for those areas that need to regulate sources covered by the Oil and Natural Gas CTG. See 89 FR 36729 (May 3, 2024).

⁵ November 16, 2020. 85 FR 72963. Our November 16, 2020 finding of failure to submit also triggered offset sanctions and highway funding sanctions. These sanctions clocks were extinguished by SDCAPCD's December 29, 2020 submittal and our May 6, 2021 letter determining that the District's negative declaration submittal was complete. See Docket Item B-01.

approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines 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 Districts 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. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 29, 2024.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Amend § 52.222 by adding paragraph (a)(1)(x) and revising paragraphs (a)(5)(ii) and (iii) to read as follows.

§ 52.222 Negative declarations.

* * * * *

(a) * * *

(1) * * *

(x) The following negative declaration for the 2008 ozone standard and 2015 ozone standard was adopted by the District on October 28, 2019, and submitted to EPA on December 20, 2019: EPA Control Techniques Guidelines for the Oil and Natural Gas Industry (453/B–16–001).

* * * * *

(5) * * *

(ii) The following negative declarations for the 2008 ozone NAAQS were adopted by the San Diego County Air Pollution Control District.

CTG document No.	Title	Adopted: 12/14/2016 Submitted: 4/12/2017 SIP approved: 12/03/2020	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 6/29/2022	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 1/17/2023	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 11/4/2024
(A) EPA–450/2–77–008	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks (Automobiles, and light-duty truck coatings only).	X			
(B) EPA–450/2–77–025	Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.	X			
(C) EPA–450/2–77–032	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture.	X			
(D) EPA–450/2–77–033	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.	X			
(E) EPA–450/2–77–034	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances.	X			
(F) EPA–450/2–78–029	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.	.....	X		

CTG document No.	Title	Adopted: 12/14/2016 Submitted: 4/12/2017 SIP approved: 12/03/2020	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 6/29/2022	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 1/17/2023	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 11/4/2024
(G) EPA-450/2-78-030	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.	X			
(H) EPA-450/2-78-032	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling.	X			
(I) EPA-450/2-78-036	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.	X			
(J) EPA-450/3-82-009	Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.	X			
(K) EPA-450/3-83-006	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.	X			
(L) EPA-450/3-83-007	Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.	X			
(M) EPA-450/3-83-008	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.	X			
(N) EPA-450/3-84-015	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.	X			
(O) EPA-450/4-91-031	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.	X			
(P) EPA-453/R-97-004	Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations. Aerospace MACT, <i>see the Federal Register</i> of 6/6/94.	X			
(Q) EPA-453/R-06-004	Control Techniques Guidelines for Flat Wood Paneling Coatings.	X			
(R) EPA 453/R-07-004	Control Techniques Guidelines for Large Appliance Coatings.	X			
(S) EPA 453/R-07-005	Control Techniques Guidelines for Metal Furniture Coatings.	X			
(T) EPA-453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings Tables 3–6.	.....	X		
(U) EPA-453/R-08-004	Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials.	.....	X		
(V) EPA-453/R-08-006	Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings.	X			
(W) —N/A—	Major non-CTG VOC sources .....	.....	.....	X	
(X) EPA-453/B-16-001). ...	Control Techniques Guidelines for the Oil and Natural Gas Industry.	.....	.....	.....	X

(iii) The following negative declarations for the 2015 ozone NAAQS were adopted by the San Diego County Air Pollution Control District.

CTG document No.	Title	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 6/29/2022	Adopted: 10/14/2020 Submitted: 12/29/2020 SIP approved: 11/4/2024
(A) EPA-450/2-78-029	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.	X	
(B) EPA-453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings Tables 3-6.	X	
(C) EPA-453/R-08-004	Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials	X	
(D) EPA-453/B-16-001)	Control Techniques Guidelines for the Oil and Natural Gas Industry .....	.....	X

* * * * *

[FR Doc. 2024-25560 Filed 11-1-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2023-0397; FRL-12201-01-OCSPP]

Mefenoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mefenoxam in or on Palm, oil. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 4, 2024. Objections and requests for hearings must be received on or before January 3, 2025, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2023-0397, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and for the OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: RDfRNtices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2023-0397 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 3, 2025. Addresses for mail and hand delivery of objections and hearing

requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2023-0397, by one of the following methods:

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

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

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 12, 2023 (88 FR 62499) (FRL-10579-07-OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E9048) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide mefenoxam, in or on palm oil at 0.02 parts per million (ppm). That document referenced a summary of the petition

prepared by Syngenta Crop Protection, LLC., the registrant, which is available in the docket, <https://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for mefenoxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with mefenoxam follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections of the rule that repeat what has been previously published in tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a tolerance rulemaking for mefenoxam in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would

result from aggregate exposure to mefenoxam and established tolerances for residues of that chemical. EPA is incorporating previously published sections from that rulemaking as described further in this rule, as they remain unchanged.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mefenoxam (metalaxyl-m) is a systemic phenylamine fungicide which inhibits protein synthesis in fungi. Mefenoxam is an R-isomer enriched formulation. Metalaxyl is the racemic R/S isomer formulation. The Agency compared the available chemistry and toxicity data for mefenoxam and metalaxyl and concluded that metalaxyl data may be used in support of mefenoxam regulatory actions because the two chemicals have similar toxicity.

Specific information on the studies received and the nature of the adverse effects caused by mefenoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in Unit III.A. of the final rule published in the **Federal Register** of December 21, 2018 (83 FR 65541) (FRL-9985-52).

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence

of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides>.

A summary of the toxicological endpoints for mefenoxam used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of December 21, 2018 (83 FR 65541) (FRL-9985-52).

C. Exposure Assessment

Much of the exposure assessment remains the same although updates have occurred to accommodate exposures from petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C. of the December 2018, rulemaking.

1. *Dietary exposure from food and feed uses.* EPA's dietary exposure assessments have been updated to include the additional exposure from the petitioned-for tolerances of mefenoxam on the crops requested in this action. In evaluating dietary exposure to mefenoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing mefenoxam and metalaxyl tolerances in 40 CFR 180.546 and 180.408, respectively.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary assessment is based on tolerance levels adjusted to account for all of the residues of concern and assumes 100 percent crop treated (PCT). The assessment was conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID) Version 4.02, EPA with 2005–2010 food consumption information from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). Empirical processing factors were included where available. Otherwise, DEEM-FCID default processing factors were used.

ii. *Chronic exposure.* There is no increase in hazard from repeat exposures to mefenoxam. Therefore, a chronic dietary POD was not selected. The acute endpoint and acute dietary

exposure assessment are protective of potential effects from chronic duration dietary exposures.

iii. *Cancer.* EPA has concluded that mefenoxam does not pose a cancer risk to humans based on no evidence of carcinogenicity observed in the relevant studies. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* Drinking water exposure modeling for mefenoxam is not necessary because exposure estimates for metalaxyl are expected to exceed those for mefenoxam and are therefore protective. Maximum annual application rates for metalaxyl, up to 12.3 lb ai/A, were modeled. These rates are approximately twice those of mefenoxam. The maximum estimated drinking water concentrations (EDWCs) based on metalaxyl are 350 µg/L for acute exposure (which is based on surface water sources) and 135 µg/L for chronic exposure (which is based on groundwater sources).

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). There are no residential uses for mefenoxam being proposed as part of this action or that have been added since the most recent risk assessment that would impact the residential (non-occupational) or residential post-application exposure and risk estimates found in the most recent risk assessment of mefenoxam; therefore, EPA relied on the previously assessed residential exposure for assessing aggregate risk.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to mefenoxam and metalaxyl with any other substances and mefenoxam and metalaxyl do not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that mefenoxam and metalaxyl have a common mechanism of toxicity with

other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA continues to conclude that there are reliable data to support the reduction of the (FQPA) (SF) to 1X. See Unit III.D. of the December 2018, rulemaking for a discussion of the Agency’s rationale for that determination.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). Short-, intermediate-, and chronic-term aggregate risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* The acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water is 27% of the acute population-adjusted dose (aPAD) for the general U.S. population, and 55% of the aPAD for the highest exposed population group, all infants. Because there are no acute residential exposures from mefenoxam, the acute aggregate exposure and risk is equal to the acute dietary exposure and risk. As these levels are below the Agency’s level of

concern (LOC) of 100% of the aPAD, the Agency concludes that aggregate exposure to mefenoxam will not pose an acute risk.

2. *Chronic risk.* No hazard endpoint was selected for chronic dietary exposure for mefenoxam; therefore, a chronic dietary analysis was not warranted. However, chronic dietary exposure was estimated for inclusion in the short-term aggregate analysis.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus average chronic exposure to food and water (considered to be a background exposure level). Mefenoxam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to mefenoxam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 270 for children 1 to 2 years old, the most highly exposed group. Because EPA’s level of concern for mefenoxam is 100, which means any MOE below 100 may indicate risks of concern, this MOE is not of concern.

4. *Intermediate-term risk.* There are no intermediate-term residential exposures for mefenoxam, and therefore an intermediate-term aggregate exposure assessment was not warranted.

5. *Aggregate cancer risk for U.S. population.* Mefenoxam is classified as “not likely to be carcinogenic to humans”, therefore, EPA concludes that exposure to mefenoxam will not pose an aggregate cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to mefenoxam residues.

More detailed information on this action can be found in the document titled “Metalaxyl-M (Mefenoxam)”. Human Health Risk Assessment for Establishment of a Tolerance without U.S. Registration for use on Palm Oil.” in docket ID number EPA-HQ-OPP-2023-0397.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available enforcement analytical methods, see Unit IV.A. of the December 21, 2018, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. Tolerances/maximum residue limits (MRLs) to support uses of mefenoxam in Canada are established for residues of metalaxyl, including metabolites that can be converted to the 2,6-DMA moiety, each expressed as metalaxyl equivalents. However, no MRLs are established for palm fruit in Codex and Canada; thus, harmonization is not an issue for this commodity.

C. Response to Comments

Three comments were received in response to the notice of filing. One comment was received from an anonymous commenter applauding the government's process to petition for new uses. The other two comments were criticizing chemicals that are not relevant to this action.

V. Conclusion

Therefore, tolerances are established for residues of mefenoxam [methyl N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-D-alaninate], in or on palm, oil at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66

FR 28355, May 22, 2001), or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 23, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.546, amend table 1 to paragraph (a) by adding, in alphabetical order, an entry for "Palm, oil" to read as follows:

§ 180.546 Mefenoxam; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Palm, oil ¹	0.02
* * * * *	

¹ There is no U.S. registration as of November 4, 2024.

* * * * *

[FR Doc. 2024-25564 Filed 11-1-24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R04-RCRA-2024-0116; FRL-11972-04-R4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: On June 26, 2023, North Carolina submitted to the

Environmental Protection Agency (EPA) a complete program revision application seeking authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. On July 15, 2024, the EPA published both a direct final action granting North Carolina final authorization for revisions to its federally authorized hazardous waste program, along with a companion proposed rule announcing the EPA's proposal to grant such final authorization. The EPA received two comments during the public comment period. On September 11, 2024, the EPA published a withdrawal of the direct final action so it could respond to the comments before the action went into effect. Today's action responds to comments and publishes the EPA's final determination granting North Carolina authorization of its hazardous waste program revisions.

DATES: This final authorization will become effective on November 4, 2024.

FOR FURTHER INFORMATION CONTACT:

Leah Davis; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8562; fax number: (404) 562-9964; email address: davis.leah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR), parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time they take effect in unauthorized States. Thus, the EPA will implement those requirements and

prohibitions in North Carolina, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

II. What is the background for this final action?

On June 26, 2023, North Carolina submitted to the EPA a complete program revision application seeking authorization of changes to North Carolina's hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. On July 15, 2024, the EPA published both a direct final action (89 FR 57364) granting North Carolina final authorization for revisions to its federally authorized hazardous waste program, along with a companion proposed rule (89 FR 57381) announcing the EPA's proposal to grant such final authorization. The EPA announced in both notices that the direct final action and the proposed rule were subject to a thirty-day public comment period. The EPA stated in both documents that if it received adverse public comment, it would withdraw the direct final action, base any further decision on the authorization of the State's program changes on the proposed rule, and address all public comments in a later final action. The public comment period ended on August 14, 2024. The EPA received two comments during the public comment period. On September 11, 2024, the EPA published a withdrawal of the direct final action (89 FR 73592) so it could respond to the comments before the action went into effect.

Today's action responds to the comments the EPA received and publishes the EPA's final determination granting North Carolina authorization of revisions to its hazardous waste program. The issues raised by the commenters are summarized and responded to in section III below. No further opportunity for comment will be provided.

III. What comments were received on North Carolina's proposed authorization and how is the EPA responding to these comments?

During the public comment period for the direct final action and proposed rule, the EPA received two comments. The comments are provided in the docket for this action. See Docket ID No. EPA-R04-RCRA-2024-0116 at www.regulations.gov. A summary of the comments and the EPA's responses are provided below.

Comment: The first comment is general in nature. The commenter does not oppose or support the EPA's authorization of revisions to the North Carolina hazardous waste program; rather, the commenter states that revisions to the State hazardous waste program must be no less stringent than the Federal program.

Response: As discussed in the EPA's direct final action, the EPA has reviewed all of the North Carolina hazardous waste program revisions submitted in its June 26, 2023 application, and has determined that they are equivalent to, consistent with, and no less stringent than the Federal program, which is the statutory standard set forth in RCRA section 3006(b), 42 U.S.C. 6926(b). The EPA has also concluded that some provisions of North Carolina's revised program are more stringent than the Federal program. These more stringent requirements will also become part of the federally enforceable RCRA program in North Carolina. Therefore, the EPA has determined that there is no basis to withdraw or deny authorization of the State program revisions based on this comment.

Comment: The second comment relates to a discrete provision of North Carolina law. Specifically, the commenter objects to 15A NCAC 13A .0108(c), which requires a transporter to submit to the North Carolina Department of Environmental Quality (DEQ) a letter describing a significant manifest discrepancy and to make attempts to reconcile it with a copy of the manifest or shipping paper at issue. The commenter states that the generator should have to provide the letter to DEQ addressing the discrepancy instead of shifting the burden to the transporter.

Response: As discussed in the EPA's direct final action, the revisions for which the State is seeking authorization are already effective and enforceable as a matter of State law, including this particular provision. The effect of the EPA's authorization decision is to make these changes part of the federally authorized State hazardous waste program and therefore federally enforceable. This action does not impose additional requirements on the regulated community because the regulations, including 15A NCAC 13A .0108(c), for which the EPA is authorizing North Carolina are already effective under State law and are not changed by the EPA's authorization decision. Therefore, the EPA has determined that there is no basis to withdraw or deny authorization of this provision based on this comment.

IV. What decisions has the EPA made in this action?

North Carolina submitted a complete program revision application, dated June 26, 2023, seeking authorization of changes to its hazardous waste program corresponding to certain Federal rules promulgated between October 27, 1987, and October 1, 2021 (including HSWA Cluster¹ II (Checklists² 39.1, 50.1, and 66.1), RCRA Cluster IV (Checklist 126.1), RCRA Cluster VI (Checklist 152), RCRA Cluster VIII (Checklist 167C.1), RCRA Cluster XIX (Checklists 219 and 221³), RCRA Cluster XX (Checklist 243), RCRA Cluster XXVII (Checklists 240 and 241), RCRA Cluster XXVIII (Checklist 242), RCRA Cluster XXIX (Checklist 243), and Cluster XXX (Checklist 244)). The EPA concludes that North Carolina's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants North Carolina final authorization to operate its hazardous waste program with the

changes described in the program revision application, and as outlined below in Section VI of this document.

North Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country, as defined at 18 U.S.C. 1151) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

V. What is the effect of this authorization decision?

The effect of this decision is that the changes described in North Carolina's program revision application will become part of the authorized State hazardous waste program and will therefore be federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA will maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;

- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and

- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing North Carolina are already effective under State law and are not changed by this action.

VI. What changes is the EPA authorizing with this action?

The EPA has determined that the North Carolina hazardous waste program revisions included in its June 26, 2023 application are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA grants final authorization to North Carolina for the following program changes:

Description of Federal requirement	Federal Register date and page	Analogous state authority ¹
Checklist 39.1, ² California List Waste Restrictions.	52 FR 41295, 10/27/1987 ...	15 NCAC 13A .0101(e).
Checklist 50.1, ² Land Disposal Restrictions for First Third Scheduled Wastes.	54 FR 8264, 2/27/1989	15A NCAC 13A .0112(b).
Checklist 66.1, ² Land Disposal Restrictions; Corrections to the First Third Scheduled Wastes.	55 FR 23935, 6/13/1990	15A NCAC 13A .0112(a).
Checklist 126.1, ² Testing and Monitoring Activities.	59 FR 47980, 9/19/1994	15A NCAC 13A .0112(a).
Checklist 152, ³ Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	61 FR 16290, 4/12/1996	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0107(a) and (f); 15A NCAC 13A .0108(a)–(d), 15A NCAC 13A .0109(c) and (f); 15A NCAC 13A .0110(b) and (e); 15A NCAC 13A .0111(b); 15A NCAC 13A .0119(b), (c), (d) and (f).
Checklist 167C.1, ² Land Disposal Restrictions Phase IV—Corrections.	63 FR 31266, 6/8/1998	15A NCAC 13A .0112(f).
Checklist 219, ⁴ Revisions to the Definition of Solid Waste, as amended by Checklist 233 (2015 and 2018).	73 FR 64668, 10/30/2008 ...	15A NCAC 13A .0102(b); 15A NCAC 13A .0103(c); 15A NCAC 13A .0106(a) and (f); 15A NCAC 13A .0113(g).
Checklist 240, Safe Management of Recalled Airbags.	83 FR 61552, 11/30/2018 ...	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0107(a).
Checklist 241, Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	84 FR 5816, 2/22/2019	15A NCAC 13A .0106(a) and (d); 15A NCAC 13A .0107(a); 15A NCAC 13A .0109(b); 15A NCAC 13A .0110(a); 15A NCAC 13A .0111(g); 15A NCAC 13A .0112(a) and (e); 15A NCAC 13A .0113(a); 15A NCAC 13A .0119(g) and (g)(1).
Checklist 242, Universal Waste Regulations: Addition of Aerosol Cans.	84 FR 67202, 12/9/2019	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0109(b); 15A NCAC 13A .0110(a); 15A NCAC 13A .0112(a); 15A NCAC 13A .0113(a); 15A NCAC 13A .0119(a)–(c).
Checklist 243, Modernizing Ignitable Liquids Determinations.	85 FR 40594, 7/7/2020	15A NCAC 13A .0101(e); 15A NCAC 13A .0106(c) and (m).

¹ A “cluster” is a grouping of hazardous waste rules that the EPA promulgates from July 1st of one year to June 30th of the following year.

² A “checklist” is developed by the EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each

Federal rule and are presented and numbered in chronological order by date of promulgation.

³ Although the State requested authorization for Checklists 221 and 224 in its program revision application, the EPA is not authorizing North Carolina for these two checklists because they

correspond to Federal rules that have been vacated. This vacatur was documented in Checklist 234. The EPA previously authorized North Carolina for Checklist 234 on October 10, 2019 (84 FR 54516).

Description of Federal requirement	Federal Register date and page	Analogous state authority ¹
Checklist 244, Canada Import Export Recovery and Disposal Code Changes.	86 FR 54381, 10/1/2021	15A NCAC 13A .0107(f); 15A NCAC 13A .0109(c); 15A NCAC 13A .0110(b).

Notes

¹ The North Carolina regulatory citations are from the North Carolina Administrative Code (NCAC), effective August 6, 2020.

² Checklists 39.1, 50.1, 66.1, 126.1, and 167C.1 amended the underlying Federal rules. North Carolina properly adopted the required changes made by the underlying Federal rules and was previously authorized for those changes.

³ Most of the provisions contained in Checklist 152 were amended or removed by subsequent checklists, for which the EPA has previously authorized North Carolina.

⁴ The EPA authorized North Carolina for Checklist 233, Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, on October 10, 2019 (84 FR 54516). Checklist 233 included certain provisions from Checklist 219, the 2008 Federal Revisions to the Definition of Solid Waste Rule, as amended on January 13, 2015, and May 30, 2018. For clarity and completeness, the EPA is authorizing Checklist 219, as amended by Checklist 233.

VII. Where are the revised State rules different than the Federal rules?

When revised State rules differ from the Federal rules in the RCRA State authorization process, the EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, States cannot receive Federal authorization for such regulations, and they are not federally enforceable. There are no State requirements in the program revisions listed in the table above that are considered to be broader in scope than the Federal requirements. The EPA has determined that certain regulations included in North Carolina's program revisions listed in the table above are more stringent than the Federal program. These more stringent requirements will become part of the federally enforceable RCRA program in North Carolina when authorized.

North Carolina's program is more stringent at 15A NCAC 13A .0108(c) and (d), insofar as these provisions require transporters to reconcile significant manifest discrepancies with the waste generator.

North Carolina's program is more stringent at 15A NCAC 13A .0111(b), insofar as these provisions require off-site recycling facilities that receive materials described in 40 CFR 266.70(a) to label containers and tanks holding recyclable materials with the words "Recyclable Material."

It should be noted that States cannot receive authorization for certain Federal regulatory functions involving international shipments (*i.e.*, import and

export provisions) such as those associated with the Canada Import Export Recovery and Disposal Code Changes Rule (Checklist 244) and the Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision Rule (Checklist 152). Although North Carolina has adopted these rules to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references. *See* 15A NCAC 13A .0101(b).

VIII. Who handles permits after the authorization takes effect?

North Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that the EPA issued prior to the effective date of authorization until they expire or are terminated. The EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. The EPA will continue to implement, and issue permits for HSWA requirements for which North Carolina is not yet authorized. The EPA has the authority to enforce State-issued permits after the State is authorized.

IX. How does today's action affect Indian Country in North Carolina?

North Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Indian lands associated with the Eastern Band of Cherokee Indians. Therefore, this action has no effect on Indian country. The EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

X. What is codification and is the EPA codifying North Carolina's hazardous waste program as authorized in this action?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not codifying the authorization of North Carolina's revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart II, for the authorization of North Carolina's program changes at a later date.

XI. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 14094 (88 FR 21879, April 11, 2023) regulatory action because actions such as the authorization of North Carolina's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates

Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high, and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Executive Order 14096 (88 FR 25251, April 26, 2023) directs the Federal government to build upon and strengthen its commitment to deliver environmental justice to all communities across America through an approach that is informed by scientific research, high-quality data, and measuring Federal engagement with communities with environmental justice concerns. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this action is not subject to Executive Orders 12898 and 14096.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final action will be effective November 4, 2024.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as

amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: October 16, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–25602 Filed 11–1–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 22–238, 11–42, 21–450; FCC 23–96; FR ID 258272]

Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform Modernization

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: On December 5, 2023, the Federal Communications Commission (Commission) revised Commission rules. That item showed the Commission’s adoption of new rules to implement the Safe Connections Act of 2022. When published in the **Federal Register**, however, an additional change was made that was different from the item adopted by the Commission. This correction reverts the language of the rule to the language as adopted by the Commission.

DATES: Effective on November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Nicholas Page, *Nicholas.Page@fcc.gov*, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This summary corrects the rules published December 5, 2023, 88 FR 84406 (FR Doc. 2023–25835). Accordingly, paragraph (s), which was added to § 54.400 in the first column on page 84446, is corrected to remove ‘and’ at the end of paragraph (s)(3). Compliance with these rules began upon announcement in the **Federal Register** (89 FR 70119, August 29, 2024) (FR Doc. 2024–18938).

List of Subjects in 47 CFR Part 54

Communications, Communication common carriers, Privacy, Telecommunications, Reporting and recordkeeping requirements.

Accordingly, 47 CFR part 54 is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Amend § 54.400 by revising paragraph (s)(3) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(s) * * *
(3) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the

participating provider verifies eligibility under § 54.1806(a)(2);

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–25531 Filed 11–1–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 89, No. 213

Monday, November 4, 2024

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 902

[Docket No. FR-6356-P-01]

RIN 2577-AD17

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Performance Deficiencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: The Public Housing Assessment System (PHAS) governs the assessments, evaluation, and oversight of public housing agencies (PHAs) administering public housing. This proposed rule would revise the weight of PHAS performance indicators to emphasize the importance of occupancy, financial condition, and physical assessments. To the greatest extent possible, scoring indicators would be based on measurable program outcomes and data that is already available to HUD. Additionally, the proposed revisions would allow HUD to respond more quickly and effectively to performance deficiencies when they are first identified, to intervene based on trending performance data, and to delay scoring or assessments when appropriate.

DATES: *Comment Due Date:* January 3, 2025.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the

commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (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 all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Daniel Threet, Policy Advisor, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-0500, telephone (202) 402-7513 (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>.

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at www.regulations.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Last updated in February 2011, 24 CFR part 902 describes how HUD assesses and scores the performance of PHAs in essential public housing operations, on a program-wide and individual-project basis. PHAS assesses PHA performance based on indicators and subindicators described in part 902, which HUD then uses to determine a score or designation for each PHA. The four key indicators, described in 24 CFR 902 subparts B through E, are the physical condition indicator, the financial condition indicator, the management operations indicator, and the Capital Fund program indicator.

The current regulations define the purpose and applicability of the system, the general types of indicators used in assessment, the frequency of assessments, incentives for high performers, and how HUD will respond to PHAs with deficiencies or that are identified as Troubled performers.

In current regulations, the physical condition indicator measures the extent to which a PHA is ensuring that projects meet acceptable basic housing conditions. It draws on independent physical inspections of a PHA's projects provided by HUD and aims to ensure that all residents live in safe, habitable dwellings. The financial condition indicator measures a PHA's ability to maintain sufficient financial resources to support the operation of its Public Housing program. It draws on financial information reported to HUD by PHAs. The management operations indicator measures the PHA's ability to operate its Public Housing program in a way that assists as many households as possible and meets obligations to participants. It draws on unit-status data as well as financial information reported to HUD by PHAs. The Capital Fund program indicator measures the PHA's ability to meet requirements to obligate Capital Fund program grants in a timely fashion. It also measures occupancy rates on the assumption that high occupancy rates reflect success in addressing capital needs. It draws on PHA reporting of the obligation of Capital Fund program grants and unit-status data. Based on these four

indicators, a PHA receives a composite score and a corresponding performance designation (*i.e.*, a PHA may be designated as a High performer, a Standard performer, a Substandard performer, or Troubled performer based on its PHAS assessment).

A full PHAS assessment relies on components that are not simultaneously assessed, so HUD can receive information about poor performance months before a full performance designation status is determined. Under the current regulations, HUD is not able to require a PHA to take corrective action of any deficiency until the full PHAS assessment is complete. For example, problems may be identified during a physical inspection in December, but the PHA may not be identified as a Troubled performer until after audited financials are submitted nine months later. Greater flexibility is needed so that HUD can require, and PHAs can complete, corrective action more promptly.

Beginning in fall 2022, HUD held a series of in-person and virtual listening sessions with PHAs across the country, to solicit feedback from PHAs on what they felt were viable and informative metrics for the evaluation of PHA performance in managing Public Housing. In developing the new proposed subindicators, HUD considered this feedback, striking a balance between what it was important to measure, what is reasonably possible to measure, and what is a fair assessment of PHA performance. In considering various alternative indicators or subindicators, HUD examined whether alternative metrics would require additional information-collection burdens on PHAs, as well as whether alternative metrics could be collected reliably and objectively.

II. This Proposed Rule

This proposed rule would revise and restructure the PHAS indicators as well as adjust the weighting of indicators. It would also make several changes not directly related to scoring. For example, to correct the lag in timing and achieve the desired flexibility, this proposed rule would allow HUD to have broad, flexible authority to require interventions or corrective actions based on component scores as soon as those scores are issued; in advance of a full assessment; considering trending data; or in conjunction with a decision to withhold, deny, or rescind a score or designation, as HUD determines necessary. This proposed rule would also revise the performance indicators and subindicators on which scores are based, in order to better measure

performance and align incentives with the long-term viability of the program. Throughout this proposed rule, HUD has made several technical changes that do not substantively affect requirements.

Subpart A—General Provisions

a. Scope

The proposed rule would expand the scope of assessment tools HUD will use in § 902.1(d), adding other reviews or audits conducted on the PHA to the tools HUD will use to assess management operations. It would also allow HUD to advise PHAs of their performance designations in addition to their scores.

b. Definitions

The proposed rule would make several changes to definitions in § 902.3. First, it would remove the existing definition of “Assessed fiscal year” and add a definition for “Assessment year,” which is defined as the period of time for a single PHAS assessment including a schedule setting forth when component scores will be determined. For example, any property required to undergo a physical inspection once every three (3) years will retain the same PHAS physical condition indicator score it received in the first year of inspection for the second and third years for assessing the PHAS physical condition. In the fourth year, the physical condition score will be based on a new inspection. The financial condition, management operations, and Capital Fund program indicators will still be based on the PHA’s fiscal year for each assessment.

The proposed rule would revise the definition of “Capital Fund troubled” to refer to a PHA that does not satisfy the requirements to pass the Capital Fund indicator evaluation rather than one that does not meet a minimum passing score. This revision would align the definition with HUD’s proposal to determine Capital Fund troubled status based on a pass/fail rather than a numeric score. It would also revise the definition of “Corrective Action Plan” to note that such plan is developed in concert with HUD or by HUD, to introduce the concept that such plan may be based on an individual component score determined prior to the issuance of the overall PHAS score and designation, and that for small rural PHAs the equivalent term is “Corrective Action Agreement” as noted in § 902.105(c). The proposed rule would revise the definition of “Deficiency,” by changing the score for the Capital Fund indicator to a failing evaluation rather than below

50 percent. At § 902.73, the proposed rule specifies that a deficiency may be a finding or determination that requires corrective action in advance of the issuance of an overall PHAS score or performance designation. HUD would also remove the definition of “Dictionary of Deficiency Definitions.” The NSPIRE final rule (88 FR 30442) replaced this dictionary with the NSPIRE Standards and Scoring notices (see 24 CFR 5.709). The NSPIRE final rule revised and retained this definition to instead refer to the NSPIRE Standards and Scoring notices, but after further consideration, HUD has determined that term is no longer used and can be removed. HUD is therefore proposing to remove this definition.

The proposed rule would add a definition for “Designation” to mean a label given to a PHA—“High performer,” “Standard performer,” “Substandard performer,” or “Troubled performer”—based on its overall PHAS score. The definition would include the notion that a PHA that receives a failing evaluation under the Capital Fund program indicator would be designated as a “Capital Fund troubled performer.” Finally, the proposed rule would add a definition for “Score” to distinguish between an overall PHAS score and a component score (an indicator or subindicator score). The definition would specify that the overall PHAS score is a number between 0 to 100 and is calculated by adding together the physical condition, financial condition, and management operations indicator scores. Small rural PHAs (as defined by § 902.101) would continue to be scored per § 902.103.

c. Applicability

The proposed rule would amend § 902.5(a)(3) to update the applicability of this part to Moving-to-Work (MTW) agencies. The proposed rule would eliminate language that PHAS scores do not apply to MTW agencies and would instead state that MTW agencies operating under the Standard MTW Agreement will not be scored in PHAS unless the PHA elects to be scored. The proposed rule would also state that MTW agencies operating under the MTW Operations Notice will be subject to scoring in PHAS.

At the final rule stage, HUD does not plan to have an immediate effective date. Instead, HUD plans to set an effective date one full assessment cycle after the publication of the final rule so that PHAs have time to learn about revised criteria prior to being assessed under them. For example, if the final rule is published in September 2025, the regulations in this part will be

applicable to PHAs beginning with the September 30, 2026 fiscal year end date.

d. Scoring and Designations

In § 902.9, the proposed rule would provide that each PHA will receive an overall PHAS score determined by adding the physical condition indicator (accounts for 40 points), the financial condition indicator (accounts for 30 points), and the management operations indicator (accounts for 30 points). The financial condition and management operations indicators each contain subindicators. The Capital Fund program indicator will no longer be awarded points in the overall PHAS score and will only be evaluated on a pass/fail basis. If a PHA fails the Capital Fund program indicator, its overall performance designation will be Capital Fund troubled. The proposed rule adds a clarification that a PHA will not receive an overall PHAS score nor a performance designation if all of its projects are mixed-finance projects. Part 902 already provides that mixed-finance projects are subject to the physical condition inspections (§ 902.22) but are excluded from the financial condition indicator (§ 902.30) and management operations indicator (§ 902.40).

The proposed rule would amend § 902.11 to allow HUD to withhold a designation altogether if HUD exercises its authority at § 902.66 to do so (as described further in the changes to Subpart F). To receive a High performer or Standard performer designation, a PHA would need to receive a passing evaluation under the Capital Fund program indicator along with the existing percentage of available points available in its overall PHAS score. This change is required to accommodate the move to evaluating the Capital Fund program indicator on a pass/fail basis, which is discussed in Subpart E below. The current regulation requires that High performers and Standard performers receive at least 50 percent of the points available under the Capital Fund indicator. For Standard performers, HUD may elect to craft Corrective Action Plans rather than have a PHA submit a Corrective Action Plan. Further assistance from HUD in crafting Corrective Action Plans will benefit smaller PHAs or those with capacity-related challenges, allowing for the collective development of plans quickly. Except for small rural PHAs subject to § 902.105, a PHA designated as a Troubled performer would be subject to the remedies provided in 42 U.S.C. 1437d(j)(4). The proposed rule would remove paragraph (d)(2) of this section and replace it with a new paragraph (e) to § 902.11—Capital Fund troubled

performer—explaining that if a PHA receives a failing evaluation under the Capital Fund program indicator, it will be designated as a Capital Fund troubled performer and be subject to corrective actions separate from or in addition to the requirements of a memorandum of agreement.

e. Frequency

This proposed rule would amend § 902.13 to allow HUD to suspend or skip assessments and allow PHAs to request that HUD extend the time between PHAS assessments in accordance with requirements HUD may issue by Notice. HUD may grant such extension requests for good cause when it deems it appropriate. HUD specifically seeks comment on what should constitute good cause for HUD to approve a PHA delay request (*see* “Questions for public comment,” *infra.*, Section III, #9). For example, public input may suggest that PHAs need to request an extension when they experience a natural disaster or other emergency that affects their properties (*e.g.*, severe localized flooding), or if supply chain delays or staffing shortages prevent maintenance work. A new paragraph (a)(4) would be added to § 902.13 noting that properties of small PHAs would be inspected per § 5.705(c), which describes the timing of inspection cycles for various HUD programs and how inspection scores affect those cycles.

This proposed rule would revise paragraph (b)(2) of § 902.13 to indicate that if projects are not inspected in accordance with the cycle laid out in § 5.705, the assessment year will be extended just for the physical condition indicator, to ensure that old inspection scores are not rolled forward inappropriately. For example, if a new inspection is required within 3 months of an anniversary date of March 1 and the inspection is not performed until July 1, HUD will not issue the overall PHAS score until those inspections are completed and will use the July inspections, along with inspections of other PHA properties completed on time, to determine the PASS score and the overall PHAS score for that assessment year. HUD further proposes to revise 902.13(b)(2) to note that HUD may exercise discretion to skip the PHA’s assessment year, should a delayed physical condition inspection occur 6 months after the end of the assessment year. This means that the PHA would not receive an overall PHAS score for that assessment year, and the late physical inspection would be used for the subsequent PHAS assessment instead. In the example above, should

the inspection that was due within 3 months of March 1 not be performed until the following January, HUD would choose to not issue an overall PHAS score for the PHA for that assessment year. The inspection performed in January would be used for the overall PHAS score for the next assessment year. This would ensure that HUD does not inappropriately reuse inspection scores for the purpose of determining overall PHAS scores. Other indicator scores will continue to be issued as they are determined in either situation.

This proposed rule would revise paragraph (b)(4) of § 902.13 to specify that in years subsequent to the baseline year, the physical inspection schedule in § 5.705(c) will determine whether a property’s physical condition score is based upon a new inspection or the previous inspection. The baseline year refers to the year in which a physical inspection takes place and in which HUD determines whether a property needs to be inspected again in one, two, or three years as outlined in § 5.705(c). The baseline year will also be used to determine the next PHAS assessment for PHAs subject to small PHA deregulation.

Subpart B—Physical Condition Indicator

This proposed rule would add language to paragraph (b) of § 902.25 to clarify that indicator scores will be issued in advance of an overall PHAS score and that, as with the financial condition and management operations indicator scores, a PHA may be subject to appropriate oversight and action as soon as project scores or the overall physical condition indicator score is issued. The proposed language would also note that indicator scores issued in advance of an overall PHAS score are subject to revision by HUD.

Subpart C—Financial Condition Indicator

This proposed rule would add language to paragraph (b) of § 902.35 describing the subindicators that will be used to determine the financial condition indicator score. The language notes that the formulas for these subindicators will be provided by Notice and that MTW agencies will have variant formulas to account for the flexibilities of the MTW Demonstration.

The proposed rule would amend the description of the Quick Ratio (QR) subindicator, which compares quick assets—cash and assets that are easily convertible to cash—to current liabilities. Specifically, the proposed rule clarifies that neither quick assets nor current liabilities include inter-

program balances due to or due from other PHA projects, programs, and activities of a temporary nature. This is because HUD has found that inclusion of inter-program balances in the QR may overstate liquidity. The proposed rule would change the Months Expendable Net Assets Ratio subindicator to the Months Operating Reserve (MOR) subindicator. The MOR measures adequacy of reserves as a unit of time. It is the ratio of current assets less current liabilities to average monthly operating expenses and is the number of months a project can operate using currently available, unrestricted resources, before reaching insolvency. The proposed rule would change the Debt Service Coverage Ratio subindicator to the Expense Management (EM) subindicator, which would measure the efficiency of operations. The EM is the ratio of operating revenues—tenant rents and Operating Fund grants less transfers from the Capital Fund—to operating expenses as defined by the HUD Financial Data Schedule. In general, the expense management indicator is targeted to provide an assessment of how well a PHA is managing its expenses given their revenues. PHAs would be evaluated on the basis of how well they effectively ramp up or down expenses as revenue streams change. (In the PHAS scoring notice, HUD may indicate that this measurement takes place over a rolling 3–5 year period.) The benefit of this change will be that PHAs will be incentivized to improve budgeting work, and to ensure operations are right sized to annual revenues, while also providing tools to HUD to work with PHAs to address such deficiencies sooner in the process.

The proposed rule would add language to paragraph (c) of § 902.35 noting that, as with the physical condition and management operations indicator scores, the financial condition indicator score will be issued in advance of an overall PHAS score, will be subject to revision by HUD, and may subject a PHA to appropriate oversight and action as soon as it is issued.

Paragraph (d) of § 902.35 specifies how many points make up the financial condition indicator score. The proposed rule would change the maximum number of points on which this score is based from 25 to 30. The proposed rule would provide that a score of at least 18 points is needed for a PHA to receive a passing score under the financial condition indicator.

Subpart D—Management Operations Indicator

The proposed rule would replace paragraphs (a)(2) and (3) of § 902.43, which describe management operations subindicators. The Tenant Accounts Receivable subindicator and Accounts Payable subindicator would be removed, as a PHA's performance on these issues is already indirectly reflected in the financial condition indicator. Paragraph (a)(2) would assess a PHA's "timely reexaminations" of tenants based on the PHA's approved reexamination schedule. This subindicator would rely on tenant data already provided to HUD by PHAs. Paragraph (a)(3) would measure "audit compliance" by using findings in independent audits or HUD audits or reviews. The audit compliance subindicator would measure the extent to which the PHA is meeting program compliance requirements. In paragraph (b) of § 902.43, the proposed rule would allow HUD to assess the management operations indicator through other information available to HUD, in addition to information electronically submitted to HUD through FDS.

As noted above, HUD considered a wide range of alternative subindicators (e.g., work-order fulfillment), but found that many would require additional information-collection burdens or would be difficult for HUD to collect in a reliable, consistent manner.

The proposed rule would remove and reserve § 902.44, which would mean that the management operations indicator would no longer be adjusted for physical condition and neighborhood environment (PCNE). Analysis of the pattern of adjustments between 2015 and 2019 indicates that nearly all properties received points for physical condition (which reflects only the age of the housing stock), so the adjustment does not highlight exceptional challenges for select PHAs. Likewise, a diminishing minority of PHAs received points for neighborhood environment, which is an adjustment made if the project is in a census tract in which at least 40% of families have an income below the poverty rate, suggesting it is no longer an issue that requires adjustment.

This proposed rule would add language to paragraph (b) of § 902.45 to clarify that, as with the financial and physical condition indicators, the management operations indicator score will be issued in advance of an overall PHAS score, will be subject to revision by HUD and may subject a PHA to appropriate oversight and action as soon as it is issued. The proposed rule would

change the maximum number of points for the management operations indicator from 25 points to 30 points. A PHA must achieve at least 18 points to receive a passing score under the management operations indicator.

Subpart E—Capital Fund Program Indicator

The proposed rule would make several changes to the Capital Fund program indicator meant to improve the performance indicator system and remove duplication. The current Capital Fund program indicator measures occupancy according to different standards from the management operations indicator. The proposed rule would revise paragraph (a) of § 902.50 to remove the occupancy subindicator from the Capital Fund program indicator and limit what the indicator examines to the time taken by a PHA to obligate funds in relation to statutory deadlines. It would also restructure PHA evaluation under the paragraph (c) of § 902.50 to remove subindicators. Instead, PHAs would be evaluated on a pass/fail basis based on whether they satisfied the timeliness of fund obligation required by statute. Because assessments would now be pass/fail rather than scored, the proposed rule would revise references to "scores" throughout this subpart. It would also change the language in paragraph (b) of § 902.53 to reflect that in order to achieve a passing evaluation under the Capital Fund program indicator, a PHA must obligate at least 90 percent of Capital Fund program grants or receive HUD approved extensions as documented by the system of record within the time required by statute.

The proposed rule would also remove an unnecessary mention of HOPE VI and Choice Neighborhoods program funds in paragraph (a) of § 902.50.

Subpart F—PHAS Scoring

The proposed rule would revise paragraph (a) of § 902.60, to require a PHA to wait three full fiscal years after the effective date of the final rule before it is allowed to change its fiscal year-end, unless such change is approved by HUD for good cause. For example, PHAs may need to request a change due to a merger with another PHA or another significant organizational change. PHAs or the public may recommend other circumstances that provide good cause.

The proposed rule would require that PHAs submit their written request for a waiver of their audited financial information submission due date to HUD rather than specifying it must be submitted to their local field office in paragraph (c)(1) of § 902.60. HUD

intends to provide a mechanism for the waiver process via notice and update such process by notice as required.

The proposed rule would also remove existing paragraph (e) from § 902.60 and make several revisions to § 902.62. These changes would be prompted by the revision of the management operations indicator to include a subindicator for audit compliance. Because the findings in audit compliance will inform the management operations score, HUD proposes revisions to allow HUD to reduce the management operations score for failure to submit financial statements timely. Paragraphs (a)(2), (a)(3), and (b)(1) of § 902.62 would be revised so that the responsive actions may apply to the management operations indicator, just as they currently apply to the financial condition indicator.

Currently, HUD may only withhold, deny, or rescind a High Performer or Standard designation and does not have flexibility to require corrective action when withholding a score or designation. This proposed rule would give HUD the authority to withhold any score or designation if it determines the circumstances necessitate HUD not issuing that score or designation. In exceptional circumstances (e.g., when gross malfeasance is discovered that would not be identified by PHAS), withholding a score or designation would help avoid any miscommunication about HUD's assessment of the PHA. Withholding a low score or troubled designation may be appropriate in rare circumstances when corrective action should be undertaken without first engaging in a two-year Memorandum of Agreement. Paragraph (a)(2) of § 902.64 would be revised to allow HUD to withhold, deny or rescind a PHAS score in addition to changing it, as is currently allowed. Section 902.66 would add paragraph (a)(1), which would allow HUD to withhold, deny, or rescind a score as well as a designation of any level from troubled performer to high performer. A designation may be withheld even when all component scores have been issued. Paragraph (a)(2) of § 902.66 would allow HUD to withhold, deny or rescind incentives or high performer designation or standard performer designation and add that it may do so, among other reasons, if a PHA demonstrates egregious performance issues not reflected in its PHAS score. Paragraph (a)(3) of § 902.66 would allow HUD to withhold, deny or rescind substandard performer or troubled performer designations at its discretion. Paragraph (a)(4) of § 902.66 would allow HUD to withhold, deny or rescind

component scores or an overall PHAS score at its discretion. When scores are withheld, denied or rescinded, HUD would need to notify the PHA, provide the basis for the decision, and allow for an appeal as described in § 902.69.

The proposed rule would also permit HUD to require corrective action while a score or designation is being withheld if performance deficiencies are identified. Paragraph (b) of § 902.64 would be revised to describe the new notification timeline: HUD will issue component scores for indicators and subindicators after they are determined and in advance of the overall PHAS score. Such scores would be provisional and subject to revision by HUD, and PHAs would be subject to oversight and action as soon as a component score is issued. The overall PHAS score would be issued one month after the indicator scores for the assessment year have been finalized unless HUD withholds a component score or overall score. Paragraph (a)(3) of § 902.66 would allow HUD to substitute corrective requirements when deemed necessary, and under paragraph (a)(4) of § 902.66 HUD could require a PHA to exercise appropriate oversight and take corrective actions as specified in § 902.73, requiring a PHA to correct deficiencies within a specified time period.

Paragraph (b) of § 902.66 would give HUD discretion to re-designate a PHA where that PHA's designation has been denied or rescinded. HUD may also decide not to assign the PHA a new designation.

The proposed rule would revise 902.69 to remove potentially confusing language that there are multiple distinct processes—one to appeal a designation and another to petition to remove a designation. These revisions to 902.66, 902.69, and 902.73 would not limit a PHA's ability to appeal HUD decisions or to make second order appeals when compared to the current regulatory language.

Subpart G—PHAS Incentives and Remedies

The proposed rule would revise § 902.73 to expand HUD's authority to subject a PHA to appropriate oversight and corrective action as soon as a component score is issued or considering trending data, in advance of issuance of a PHAS designation category. Paragraph (a) would provide HUD the authority to require corrective actions when scores or designations are withheld, denied, or rescinded, as HUD determines appropriate and would also provide HUD greater authority to determine the appropriate time for

corrective action and progress reports. It would allow required corrective actions to be incorporated into a Memorandum of Agreement (MOA) or Corrective Action Plan (CAP) if the PHA is later designated as a troubled or substandard performer. Paragraphs (b) and (d) would be amended to allow HUD to relay deadlines by means other than through a CAP because there may not always be a CAP depending on when HUD requires corrective action under paragraph (a).

The proposed rule would revise paragraph (b) of § 902.75 to clarify that an executed MOA for a troubled performer is an enforceable contract, the material breach of which by a PHA, is the basis, among other remedies available under law, for determination of substantial default.

The proposed rule would amend the example in paragraph (g)(3) of § 902.75 to align with the proposed changes to part 902. The example provides a scenario in which a troubled performer PHA fails to execute a MOA with HUD or fails to show a substantial improvement.

The proposed rule would add a new § 902.76 to distinguish Capital Fund troubled as its own designation rather than as one dependent on a designation of "Troubled." The new section would describe remedies with respect to the Capital Fund troubled performer designation and provide HUD authority to require a PHA to correct deficiencies within a time period specified by HUD. The requirements to correct deficiencies, and consequences for failure to correct deficiencies so identified, will otherwise be the same as for substandard performers as described in § 902.73. Separating the Capital Fund troubled performer designation from the troubled performer designation will allow the PHA to avoid entering into a MOA when the only performance deficiency is with respect to the Capital Fund, and the underlying deficiency can be resolved upon the next timely obligation. The Capital Fund troubled performer designation would also allow HUD to combine such designation with the substandard performer designation or the troubled performer designation.

The proposed rule would add a sentence to the end of § 902.81 making clear that a resident is not restricted from communicating any complaint or concern about a PHA to HUD in writing at any time. This addition is not a change to the current regulations and is being added only for clarification.

Subpart H—Assessment of Small Rural Public Housing Agencies

The proposed rule would revise sections of 24 CFR 902 subpart H—Assessment of small rural Public Housing Authorities to conform with the revisions in the rest of part 902. The proposed rule would delete references to PCNE from paragraph (a) of 902.103 to parallel the removal of that concept in § 902.44. Paragraphs (c), (c)(5) and (d) of § 902.105 would be revised to align with § 902.75. Changes would be made throughout §§ 902.107 and 902.109 to conform with §§ 902.66 and 902.69, with variations where necessary to reflect the differences between the PHAS assessment and the Small and Rural assessment. Section 902.111 would be renamed “Remedies for troubled small rural PHAs” to align with § 902.83.

Additionally, among the changes this proposed rule would make to small PHAs, it would remove paragraph (c)(4) from § 5.705 applying a triennial inspection cycle for small PHAs per 24 CFR 902.13(a).

III. Questions for Public Comments

HUD welcomes comments on all aspects of this proposed rule. In addition, HUD specifically requests comments on the following topics:

Question for Comment #1: PHAS Metrics—The proposed rule would revise indicators and subindicators to allow HUD to conduct a more accurate PHAS assessment. Do the proposed metrics accurately assess a PHA’s performance or are there other metrics that would be appropriate for inclusion in PHAS? Do the new proposed subindicators for the financial condition indicator appropriately measure the PHA’s financial performance? Do the new proposed subindicators for the management operations indicator appropriately measure the PHA’s ability to manage its Public Housing program? Would scoring PHAs for the proposed subindicators create incentives to maintain and improve the quality of housing for families in the Public Housing program?

The proposed rule would also make minor modifications to the relative weight of the indicators in the overall PHAS score. Are the proposed weights of the Physical Condition, Financial Condition, and Management Operations indicators appropriate?

Question for Comment #2: MTW Agencies—MTW Expansion agencies operate under the MTW Operations Notice and will be scored in PHAS. Given the flexibilities available to MTW agencies, variant formulas or

subindicators may be necessary to properly evaluate such agencies. What are the appropriate indicators and subindicators for MTW agencies? If any of the proposed indicators and subindicators for non-MTW PHAs are not appropriate for MTWs, what would serve as a suitable replacement? Do other considerations need to be made for incentives and remedies for MTW agencies?

Question for Comment #3: Capital Fund program indicator—This proposed rule would change several aspects of the Capital Fund program indicator. The Capital Fund program indicator would no longer be scored but would be evaluated on a pass/fail basis; however, Capital Fund Troubled performers could still be subject to oversight. The Capital Fund Troubled performer designation would be revised such that it could be combined with the Substandard or Troubled Performer designation, and requirements to correct deficiencies due to Capital Fund Troubled status would otherwise be the same as for Substandard performers. HUD solicits feedback on the extent to which removing points from the obligation indicator and making it a pass/fail standard improves its usefulness as a metric. HUD also solicits feedback on whether it should maintain the Capital Fund-troubled designation.

Question for Comment #4: Reserves—This proposed rule does not provide specific scoring criteria for the subindicators, but it does propose a subindicator for Months of Operating Reserve (MOR). When specific scoring criteria are defined, should HUD set upper and lower limits on reserves held? Would that answer be different if PHAs had specific accounts into which they could put reserves that would be treated differently (e.g., Capital Replacement Reserve accounts)? Should scoring upper or lower reserve limits interact with other features of the financial, physical, or management performance? For the Months of Operating Reserve subindicator and all other financial subindicators, how should HUD take into consideration other sources of funds (i.e., those generated through entrepreneurial activities or other actions by the PHA) that PHAs secure to pay for expenses? How can HUD ensure that PHAs are not penalized for entrepreneurial activity that secures additional sources of funding? Additionally, HUD would like to solicit comment with respect to MTW and non-MTW agencies alike on the topic of a reserve calculation. If HUD establishes such a calculation, what should be included?

Question for Comment #5: Expense management—This proposed rule replaces the Debt Service Coverage Ratio with the Expense Management subindicator. Should the Expense Management subindicator include other sources of Public Housing operating revenue, such as program income? Should it exclude any specific operating expenses? Is there value to looking only at Public Housing subsidy plus rent rather than looking at all sources of revenue?

Question for Comment #6—Physical Condition and Neighborhood Assessment—HUD has proposed eliminating the PCNE adjustment to the management operations indicator. Will the removal of those adjustments improve HUD’s ability to accurately assess a PHA’s performance? If there are strong reasons not to eliminate the PCNE adjustment, would moving the PCNE adjustment to the physical condition indicator be a better location for such adjustments?”

Question for Comment #7—Risk assessment and other models of assessment—The indicators and subindicators that are appropriate to measuring a PHA’s performance in operating its Public Housing program may not provide a full picture of the long-term health of that program, or some criteria may not be appropriate for inclusion in PHAS although they are informative for assessing future risks. Are there any indicators that are not appropriate for performance assessment but valuable for a separate system of risk assessment? How should HUD act upon findings from a separate system of risk assessment? More generally, should HUD consider other models for assessing PHA management of Public Housing, as an alternative or complement to PHAS?

Question for Comment #8: Interventions—This proposed rule would make it explicit that HUD may require corrective action as soon as component scores are issued or in response to multi-year downward trends in performance. It would also make explicit that HUD may withhold a designation or score and require corrective action. When HUD does withhold, deny, or rescind a designation or score, how should HUD notify the PHA and what is the appropriate process for a PHA to appeal such a decision?

Question for Comment #9: PHA requests for delay—The proposed rule allows PHAs to request a delay in inspection timing. What should constitute good cause for HUD to approve a PHA delay request? How

should HUD evaluate requests to delay inspections or assessments?

Question for Comment #10: SEMAP—Should HUD seek to better align PHAS and SEMAP (Section Eight Management Assessment Program), and if so, how? What would be the benefits and potential problems of such an alignment? Do PHAs who operate both Public Housing and the Housing Choice Voucher program face challenges because of differences between PHAS and SEMAP?

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

This rule has been determined to be a “significant regulatory action” as defined in Section 3(f) of Executive Order 12866, but not significant under section 3(f)(1) of the Order. HUD has prepared an initial regulatory impact analysis and has assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and has determined that the benefits would justify the costs. The analysis is available at www.regulations.gov and is part of the docket file for this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), 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. This rule revises the performance indicators in HUD’s PHAS regulations. The changes allow HUD to base scores more on measurable program data rather than process. Revisions would allow HUD to respond more quickly and effectively to performance deficiencies when they are first identified, to intervene based on trending performance data, and to delay scoring or assessments when appropriate. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at <http://www.regulations.gov>.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule 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.

Paperwork Reduction Act

The information collection requirements contained in this rule are currently approved by OMB and have been given OMB Control Numbers 2502–0369, 2535–0107, 2577–0083, and 2577–0157. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule will not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs—housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs—housing and community development; Low and moderate income housing; Mortgage insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

24 CFR Part 902

Administrative practice and procedure; Public housing; Reporting and recordkeeping requirements.

For the reasons stated above, HUD proposes to amend 24 CFR parts 5 and 902 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.*; 34 U.S.C. 12471 *et seq.*; Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

§ 5.705 [Amended]

■ 2. Amend § 5.705 by removing paragraph (c)(4) and redesignating paragraphs (c)(5) through (8) as paragraphs (c)(4) through (7), respectively.

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

■ 3. The authority citation for part 902 continues to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d), 1437z–10.

Subpart A—General Provisions

■ 4. Amend § 902.1 by revising paragraphs (b), (d), and (f) to read as follows:

§ 902.1 Purpose, scope, and general matters.

* * * * *

(b) *Scope.* PHAS is a strategic measure of the essential housing operations of projects and PHAs. PHAS does not evaluate the compliance of a project or PHA with every HUD-wide or program-specific requirement or objective. Although not specifically evaluated through PHAS, PHAs are responsible for complying with nondiscrimination and equal opportunity requirements, including but not limited to those specified in 24 CFR 5.105, requirements under the Fair Housing Act (42 U.S.C. 3601–19), the obligation to affirmatively further fair housing, requirements under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), requirements under title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), requirements under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), and requirements of other federal programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable statutes, program regulations and the PHA's Annual Contributions Contract (ACC).

* * * * *

(d) *Assessment tools.* HUD will make use of uniform and objective criteria for the physical inspection of projects and PHAs and for the financial confidence of projects and PHAs and will use data from appropriate PHA data systems, as well as from other reviews or audits conducted on the PHA to assess management operations. For the Capital Fund program indicator, HUD will use information provided in the electronic Line of Credit Control System (eLOCCS) or successor systems. Based on this data, HUD will assess and score the results, advise PHAs of their scores and performance designations, and identify low-scoring and poor-performing projects and PHAs so that these projects and PHAs will receive the appropriate consideration and assistance.

* * * * *

(f) *Scoring procedures.* HUD's scoring procedures will be published from time to time in the **Federal Register** for public comment.

■ 5. Amend § 902.3 as follows:

■ a. Remove the definition of “Assessed fiscal year”;

■ b. Add in alphabetical order the definition of “Assessment year”;

■ c. Remove the definition of “Capital-fund troubled”;

■ d. Add in alphabetical order the definition of “Capital-fund troubled performer”;

■ e. Revise the definitions of “Corrective action plan” and “Deficiency”;

■ f. Remove the definition of “Dictionary of Deficiency Definitions”; and

■ g. Add in alphabetical order the definitions of “Designation” and “Score”.

The revisions and additions read as follows:

§ 902.3 Definitions.

* * * * *

Assessment year is the period of time evaluated for a single PHAS assessment, in which all component scores and an overall PHAS score are generated. Component scores are based on the PHA's fiscal year for the financial condition, management operations, and Capital Fund program indicators, and are based on physical inspections completed prior to score generation, as determined by 24 CFR 5.705(c) for the physical condition indicator.

* * * * *

Capital fund troubled performer refers to a PHA that does not satisfy the requirements to pass the Capital Fund indicator evaluation.

Corrective Action Plan (CAP) means a plan, as provided in § 902.73(a), that is developed by a PHA in concert with HUD or by HUD that specifies the actions to be taken, including timeframes, that shall be required to correct deficiencies identified under any of the PHAS indicators and subindicators, and identified as a result of a PHAS assessment or on the basis of individual component scores determined prior to issuance of the overall PHAS score and designation, when a memorandum of agreement (MOA) is not required. For small rural PHAs, the equivalent term is *Corrective Action Agreement (CAA)*, as noted in § 902.105(c).

* * * * *

Deficiency means any finding or determination that requires corrective action, or any score below 60 percent of the available points for the physical condition, financial condition, or management operations indicators, and any failing evaluation for the Capital Fund indicator. In the context of

physical condition and physical inspection in subpart B of this part, “deficiency” means a specific problem, as described in the documents published in the **Federal Register** that contain the inspection standards and scoring values pursuant to 24 CFR part 5, subpart G, such as a hole in a wall or a damaged refrigerator in the kitchen that can be recorded for inspectable items.

Designation means the performance category or label given to a PHA (*i.e.*, “High performer,” “Standard performer,” “Substandard performer,” or “Troubled performer”) based on their overall PHAS score. A PHA that receives a failing evaluation under the Capital Fund program indicator will be designated as a “Capital Fund troubled performer.”

* * * * *

Score means the overall PHAS score, which is a number from 0 to 100 calculated by adding the physical condition indicator score, the financial condition indicator score, and the management operations indicator score, except as provided in § 902.103 for small rural PHAs. By contrast, “component score” refers to an indicator score itself (*e.g.*, the financial condition indicator score) or to a subindicator score (*e.g.*, the number of points awarded for the Quick Ratio subindicator).

* * * * *

■ 6. Amend § 902.5 by revising paragraphs (a)(2) introductory text and (a)(3), and removing and reserving paragraph (b) to read as follows:

§ 902.5 Applicability.

(a) * * *

(2) *ACC.* The ACC assigns legal responsibility for all public housing operations to the PHA, except where DF—RMC assumes management operations.

* * * * *

(3) Moving to Work (MTW) PHAs operating under the MTW Standard Agreement shall not be scored in PHAS unless the PHA elects to be scored. If the PHA elects to be scored, the agency shall continue to be scored for the duration of the demonstration. MTW PHAs operating under the MTW Operations Notice shall be subject to this rule.

(b) [Reserved]

■ 7. Revise § 902.9 to read as follows:

§ 902.9 PHAS Scoring.

(a) *Indicators and subindicators.* Each PHA will receive an overall PHAS score, rounded to the nearest whole number, and designation based on three

indicators: Physical condition, financial condition, and management operations. The financial condition and management operations indicators contain subindicators, and the scores for the subindicators are used to determine a single score for each of these PHAS indicators. Individual project scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. A fourth indicator, the Capital Fund program indicator, does not contribute to the overall PHAS score but can affect the performance designation. The Capital Fund program indicator is entity-wide and evaluated on a pass/fail basis. If all of a PHA's projects are mixed-finance projects, they will not receive an overall PHAS score nor a performance designation.

(b) *Overall PHAS score and indicators.* The overall PHAS score is determined by adding the score values for three of the four indicators, as follows:

(1) The physical condition indicator accounts for 40 percent (40 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart B of this part.

(2) The financial condition indicator accounts for 30 percent (30 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart C of this part.

(3) The management operations indicator accounts for 30 percent (30 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart D of this part.

(4) The Capital Fund program indicator is not awarded points in the overall PHAS score, though when a PHA fails the Capital Fund program indicator, they will be designated as a Capital Fund troubled performer. The evaluation for this indicator is obtained as indicated in subpart E of this part.

■ 8. Amend § 902.11 by revising the introductory text and paragraphs (a)(1), (b), and (d), and adding paragraph (e) to read as follows:

§ 902.11 PHAS performance designation.

All PHAs that receive a PHAS assessment shall receive a performance designation, unless HUD exercises authority at § 902.66 to withhold a designation. The performance designation is based on the overall PHAS score and the four indicators, as set forth below.

(a) * * *

(1) A PHA that achieves a score of at least 60 percent of the points available under the financial condition, physical condition, and management operations indicators, receives a passing evaluation

under the Capital Fund program indicator, and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

* * * * *

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if the PHA achieves an overall PHAS score of at least 60 percent, and at least 60 percent of the available points for the physical condition, financial condition, and management operations indicators, and a passing evaluation for the Capital Fund program indicator.

(2) At HUD's discretion, a standard performer may be required to submit and operate under a Corrective Action Plan. At HUD's discretion, HUD may elect to craft Corrective Action Plans rather than to have the PHA submit a Corrective Action Plan.

* * * * *

(d) *Troubled performer.* A PHA that achieves an overall PHAS score of less than 60 percent shall be designated as a troubled performer, except for those PHAs subject to § 902.105. A PHA designated as a troubled performer will be subject to the remedies provided in section 6(j)(4) of the Act (42 U.S.C. 1437d(j)(4)).

(e) *Capital Fund troubled performer.* In accordance with section 6(j)(2)(A)(i) of the Act (42 U.S.C. 1437d(j)(2)(A)(i)), a PHA that receives a failing evaluation under the Capital Fund program indicator under subpart E of this part will be designated as a Capital Fund troubled performer. A PHA designated as a Capital Fund troubled performer will be subject to corrective actions separate from or in addition to the requirements of a memorandum of agreement.

■ 9. Amend § 902.13 by revising the introductory text and paragraph (a)(3), adding paragraph (a)(4), and revising paragraphs (b)(2) and (4) as follows:

§ 902.13 Frequency of PHAS assessments.

The frequency of a PHA's PHAS assessment is determined by the size of the PHA's Low-Rent program and its PHAS designation. HUD may, due to unforeseen circumstances or other cause as determined by HUD, extend the time between assessments or suspend or skip assessments by direct notice to the PHA and relevant resident organization or resident management entity, and any other general notice that HUD deems appropriate. PHAs may request that HUD extend the time between PHAS

assessments in accordance with such requirements as HUD may issue by Notice, and HUD may grant requests for good cause when HUD deems it appropriate.

(a) * * *

(3) All other small PHAs may receive a PHAS assessment every year, including a PHA that is designated as troubled in accordance with § 902.75.

(4) Properties of small PHAs will be inspected as described in § 5.705(c).

(b) * * *

(2) The physical condition score for each project will determine the frequency of inspections of each project in accordance with the inspection cycle laid out in § 5.705(c). The PHAS physical condition indicator score for an assessment year shall be calculated by taking the unit-weighted average of the most recent physical condition score for each project, except that, starting July 1, 2023, no new physical condition indicator will be issued for a PHA until every project under the PHA has been inspected on or after July 1, 2023. If projects are not inspected in accordance with the cycle laid out in § 5.705(c), the assessment year will be extended only for the physical inspection indicator until such time as the relevant inspections are performed to ensure that the last physical condition score of record will not be reused for future assessments. HUD may exercise discretion to skip the assessment should a delayed physical condition inspection occur 6 months after the assessment year ends. A PHA will not receive an overall PHAS assessment score until all inspections are completed.

* * * * *

(4) In the first, baseline year, each PHA will receive an evaluation on all four PHAS indicators (physical condition, financial condition, management operations, and Capital Fund program), which will be used to generate their overall PHAS score. In subsequent years, if the physical inspection schedule requires a new inspection for a PHA property, the physical condition score for that property will be based upon the new inspection. If a new physical inspection is not required that year, the physical condition score for that property will be based upon the most recent physical inspection. This baseline year will also be used to determine the next PHAS assessment for PHAs subject to small PHA deregulation.

* * * * *

Subpart B—Physical Condition Indicator

■ 10. Amend § 902.25 by revising paragraph (b) to read as follows:

§ 902.25 Physical condition scoring and thresholds.

* * * * *

(b) *Overall PHA physical condition indicator score.* The overall physical condition indicator score is a unit-weighted average of project scores. The sum of the unit-weighted values is divided by the total number of units in the PHA's portfolio to derive the overall physical condition indicator score. The overall physical condition indicator score will be issued after it is determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as project scores or the overall physical condition indicator score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

* * * * *

Subpart C—Financial Condition Indicator

■ 11. Amend § 902.35 by revising paragraphs (b) through (d) to read as follows:

§ 902.35 Financial condition scoring and thresholds.

* * * * *

(b) *Subindicators of the financial condition indicator.* The following subindicators will be used to determine the financial condition indicator score. The formulas for these subindicators will be provided by public notification. Please note that MTW agencies will have variant formulas, which will also be provided by public notification, to account for the flexibilities of the MTW Demonstration.

(1) *Quick Ratio (QR).* The QR compares quick assets to current liabilities. Quick assets are cash and assets that are easily convertible to cash and do not include inventory or inter-program balances due from other PHA projects, programs, and activities of a temporary nature. Current liabilities are those liabilities that are due within the next 12 months, not including inter-program balances due to other PHA projects, programs, and activities of a temporary nature. A QR of less than one indicates that the project's ability to make payments on a timely basis may be at risk.

(2) *Months Operating Reserve (MOR).* The MOR measures adequacy of reserves as a unit of time. The MOR is

the ratio of current assets less current liabilities to average monthly operating expenses. The result of this calculation is the number of months that a project can operate using currently available, unrestricted resources, before reaching insolvency.

(3) *Expense Management (EM).* The EM ratio measures the efficiency of operations. EM is the ratio of operating revenues to operating expenses. EM operating revenues are tenant rents and Operating Fund grants less transfers from Capital Fund. EM expenses are all operating expenses as defined by the HUD Financial Data Schedule (FDS).

(c) *Overall PHA financial condition indicator score.* The overall financial condition indicator score is a unit-weighted average of project scores. The sum of the weighted values is then divided by the total number of units in the PHA's portfolio to derive the overall financial condition indicator score. The overall financial condition indicator score will be issued after it is determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as the overall financial condition indicator score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

(d) *Thresholds.* (1) The PHA's financial condition score is based on a maximum of 30 points.

(2) In order for a PHA to receive a passing score under the financial condition indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator.

(3) A PHA that receives fewer than 18 points available under this indicator will be categorized as a substandard financial condition agency.

Subpart D—Management Operations Indicator

■ 12. Amend § 902.43 by revising paragraphs (a)(2) and (3) and paragraph (b) to read as follows:

§ 902.43 Management operations performance standards.

(a) * * *

(2) *Timely Reexaminations.* This subindicator measures the extent to which the PHA is performing regular reexaminations of family income and composition on time. Assessment will monitor timely reexamination based on the PHA's approved reexamination schedule (e.g., triennially where MTW waiver authority allows a PHA to delay reexamination up to three years).

(3) *Audit Compliance.* This subindicator measures the extent to which the PHA is meeting program compliance requirements, as measured by findings in independent audits or HUD audits or reviews.

(b) *Assessment under the Management Operations Indicator.* Projects will be assessed under this indicator through information that is electronically submitted to HUD through the FDS and other information available to HUD.

§ 902.44 [Removed and Reserved]

■ 13. Remove and reserve § 902.44.

■ 14. Amend § 902.45 by revising paragraphs (b) and (c) to read as follows:

§ 902.45 Management operations scoring and thresholds.

* * * * *

(b) *Overall PHA management operations indicator score.* The overall management operations indicator score is a unit-weighted average of project scores. The sum of the weighted values is divided by the total number of units in the PHA's portfolio to derive the overall management operations indicator score. The overall management operations indicator score will be issued after it is determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as the overall management operations indicator score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

(c) *Thresholds.* (1) The PHA's management operations score is based on a maximum of 30 points.

(2) In order to receive a passing score under the management operations indicator, a PHA must achieve a score of at least 18 points or 60 percent.

(3) A PHA that receives fewer than 18 points will be categorized as a substandard management operations agency.

Subpart E—Capital Fund Program Indicator

■ 15. Amend § 902.50 by revising paragraphs (a), (c), and (d) to read as follows:

§ 902.50 Capital Fund program assessment.

(a) *Objective.* The Capital Fund program indicator examines the period of time taken by a PHA to obligate funds in relation to statutory deadlines for obligation for all Capital Fund program

grants for which fund balances remain during the assessment year.

* * * * *

(c) *Capital Fund Indicator.*

Performance under the Capital Fund program indicator is evaluated on a pass or fail basis, determined by whether the PHA satisfied the timeliness of fund obligation requirement in section 9(j) of the Act. This examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the Act (42 U.S.C. 1437g(j)(1)).

(d) *Method of assessment.* The assessment required under the Capital Fund program indicator will be performed through analysis of obligated amounts in HUD's eLOCCS (or its successor) for all Capital Fund program grants that were open during the assessment year. This indicator measures a statutory requirement for the Capital Fund program. Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews under 24 CFR part 905.

(1) PHAs are responsible to ensure that their Capital Fund program information is submitted to eLOCCS by the submission due date.

(2) A PHA may not appeal its PHAS score, Capital Fund program indicator failure, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS and/or the PIC systems by the submission due date.

■ 16. Revise § 902.53 to read as follows:

§ 902.53 Capital Fund program assessment and thresholds.

(a) *Assessment.* The Capital Fund program indicator provides an assessment of a PHA's ability to obligate Capital Fund program grants in a timely manner on capital, modernization, development and financing needs.

(b) *Thresholds.* (1) The PHA's Capital Fund program indicator is not assigned points but assessed on a pass/fail basis.

(2) In order to receive a passing evaluation under the Capital Fund program indicator, a PHA must obligate at least 90 percent of Capital Fund program grants as documented in eLOCCS (or its successor) within the time required by statute or have HUD approved extensions under section 9(j)(2) of the Act (42 U.S.C. 1437g(j)(2)).

Subpart F—PHAS Scoring

■ 17. Amend § 902.60 by:

■ a. Revising paragraph (a);

■ b. In paragraph (c)(1), removing the words "its local field office", and adding, in their place, the word "HUD"; and

■ c. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

The revision to read as follows:

§ 902.60 Data Collection.

(a) *Fiscal year reporting period—limitation on changes after PHAS effective date.* To allow for a period of consistent assessments to refine and make necessary adjustments to PHAS, a PHA is not permitted to change its fiscal year end for the first 3 full fiscal years following [EFFECTIVE DATE OF FINAL RULE] unless such change is approved by HUD for good cause.

* * * * *

§ 902.62 [Amended]

■ 18. Amend § 902.62 by:

■ a. In paragraph (a)(2), removing the words "financial condition indicator score" and adding, in their place, the words "financial condition and management operations indicator scores";

■ b. In paragraph (a)(3), removing the words "financial condition indicator" and adding, in their place, the words "financial condition and management operations indicators"; and

■ c. In paragraph (b)(1), after the words "financial condition" adding the words "or management operations".

■ 19. Amend § 902.64 by:

■ a. In paragraph (a)(2) after the words "may be changed", adding the words "or withheld, denied, or rescinded"; and

■ b. Revising paragraph (b).

The revision to read as follows:

§ 902.64 PHAS scoring and audit reviews.

* * * * *

(b) *Issuance of a score by HUD.* (1) The component scores for individual indicators will be issued after they are determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as a component score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

(2) An overall PHAS score will be issued for each PHA one month after all indicator scores for the assessment year have been finalized, unless HUD uses the authority in § 902.66 to withhold a component score or overall PHAS score. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(d), 902.35(a), and 902.68; any adjustments resulting from the appeal process provided in § 902.69; and any

adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(3) Each PHA (or RMC) shall post a notice of its final PHAS score and designation in appropriate conspicuous and accessible locations in its offices within 2 weeks of receipt of its final PHAS score and designation. In addition, HUD will post every PHA's PHAS score and designation on HUD's internet site.

* * * * *

■ 20. Revise § 902.66 to read as follows:

§ 902.66 Withholding, denying, and rescinding score or designation.

(a) *Withholding, denying, and rescinding score or designation.* (1) If determined as appropriate or necessary by HUD, HUD may withhold, deny, or rescind a designation of any level, from troubled performer to high performer. A designation may be withheld or denied even when all component scores have been issued. HUD may conduct any review as it may determine necessary.

(2) HUD may withhold, deny or rescind incentives or high performer designation or standard performer designation, including in but not limited to circumstances in which a PHA:

(i) Is operating under a special agreement with HUD (e.g., a civil rights Conciliation or Voluntary Compliance Agreement);

(ii) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority;

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations; or

(vi) Demonstrates other egregious performance issues not reflected in

PHAS component scores that require significant corrective action, as HUD determines necessary.

(3) HUD may withhold, deny, or rescind substandard performer or troubled performer designation and accompanying requirements at its discretion. HUD may substitute other corrective requirements when HUD determines it is necessary.

(4) HUD may withhold, deny, or rescind component scores or an overall PHAS score at its discretion. HUD must notify the PHA when scores are withheld, denied, or rescinded, provide the basis for the decision, and allow for appeal as described in § 902.69. At the time of withholding, denying, or rescinding scores, HUD may also require the PHA to undertake corrective actions as specified in § 902.73.

(b) *Effect on designation.* If a high performer designation is denied or rescinded, the PHA may be designated a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a standard performer designation is denied or rescinded, the PHA may be designated as a substandard performer or troubled performer. Alternatively, HUD may choose not to assign the PHA a new designation status, as it deems appropriate.

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(2)(iv) of this section.

■ 21. Revise § 902.69 to read as follows:

§ 902.69 PHA right of appeal.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation;

(2) Appeal its final overall PHAS score; and

(3) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in any of the scores for its PHAS indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.*, as troubled performer, substandard performer, standard performer, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d), and (e) of this section. A significant change in a PHAS score is a change that would cause the

PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (*i.e.*, from troubled performer to substandard performer or standard performer, or from standard performer to high performer). Inspection appeals must be made in accordance with the requirements of § 5.711.

(2) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS or updated profile information in PIC or subsequent PIC replacement system by the submission due date.

(c) *Appeal procedures.* (1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to the PHA.

(2) An appeal of a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a PHAS score must be accompanied by the PHA's evidence that a material error occurred. An appeal submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation or score under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of appeals.* Upon receipt of an appeal of a final overall PHAS score, of a troubled performer designation, or appeal of action taken under § 902.66 from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material errors has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's

decision on appeal of a PHAS score, or issuance of a troubled performer designation will be final agency action.

(2) HUD will issue a written decision on all appeals made under this section.

Subpart G—PHAS Incentives and Remedies

■ 22. Amend § 902.71 by revising paragraph (a)(2) and the first sentence of paragraph (b) to read as follows:

§ 902.71 Incentives for high performers.

(a) * * *

(2) *Public recognition.* High performer PHAs and DF-RMCs or RMCs that receive a score of at least 60 percent of the points available for the physical condition, financial condition, and management operations indicators, and a passing score for the Capital Fund program indicator, and achieve an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer and will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the HUD field office.

* * * * *

(b) * * * Relief from any procedural requirement that may be provided under this section does not mean that a PHA is relieved from compliance with the provisions of federal law and regulatory requirements. * * *

* * * * *

■ 23. Revise § 902.73 to read as follows:

§ 902.73 PHAs with deficiencies.

(a) *Oversight and action.* Standard and substandard performers will be subject to appropriate oversight and action by HUD. PHAs may also be subject to appropriate oversight and action by HUD as soon as a component score is issued for the PHA or for a specific project, or in light of performance trends (*e.g.*, if overall PHAS scores or component scores notably decline for three years, even if the latest score would not classify the PHA as substandard), or when scores or designations are withheld, denied, or rescinded.

(1) HUD may require a PHA to correct deficiencies in performance within a time period as specified by HUD when HUD determines it is necessary to do so on the basis of a component score, overall PHAS score or performance designation, or performance trend. HUD may require such action as a result of performance at the Asset Management Project (AMP) or PHA level (*i.e.*, HUD may require corrective action for one AMP or across all a PHA's projects). HUD may require the PHA to undertake

such corrective actions in advance of issuance of an overall PHAS score or PHAS designation. If the PHA is subsequently identified as a troubled or substandard performer after being required to undertake corrective actions, such corrective actions may be later incorporated into a Memorandum of Agreement or Corrective Action Plan, as appropriate.

(2) When HUD exercises authority at § 902.66 to withhold, deny, or rescind a score or designation, HUD may also require a PHA to correct deficiencies in performance or undertake other corrective action, in a time period as specified by HUD. If the PHA is subsequently identified as a troubled or substandard performer after being required to undertake corrective actions, such corrective actions may be later incorporated into a Memorandum of Agreement or Corrective Action Plan, as appropriate.

(b) *Correction of deficiencies*—(1) *Time period for correction.* After a PHA's (or DF-RMC's or RMC's) receipt of its final overall PHAS score and designation as: A standard performer, within the range described in § 902.73(a)(1); or substandard performer, within the range described in § 902.73(a)(2), a PHA, DF-RMC or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD-executed Corrective Action Plan or as otherwise communicated by HUD, if required.

(2) *Notification and report to regional or field office.* A PHA shall notify the regional or field office, as identified by HUD, of its action to correct a deficiency. A PHA shall also forward an RMC's report of its action to the regional or field office to correct a deficiency. A DF-RMC shall forward directly to the regional or field office its report of its action to correct a deficiency.

(c) *Failure to correct deficiencies.* (1) If a PHA (or DF-RMC or RMC) fails to correct deficiencies within the time period noted in paragraph (b) of this section, or to correct deficiencies within the time specified in a Corrective Action Plan or as otherwise specified by HUD, or within such extensions as may be granted by HUD, the field office will notify the PHA of its noncompliance.

(2) The PHA (or DF-RMC or RMC) will provide the field office with its reasons for lack of progress in negotiating, executing, or carrying out the Corrective Action Plan or making the corrective actions otherwise required by HUD, within 30 days of the PHA's receipt of the noncompliance notification. HUD will advise the PHA

as to the acceptability of its reasons for lack of progress.

(3) If HUD determines that the reasons the PHA (or DF-RMC or RMC) has provided for lack of progress are unacceptable, HUD will notify the PHA (or DF-RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

■ 24. Amend § 902.75 by:

- a. Revising paragraphs (b) introductory text and (b)(5);
- b. In the second sentence of paragraph (c), adding the word “factual” before the word “discrepancies”; and
- c. Revising paragraphs (d)(1) and (2), and (g)(2) and (3).

The revisions read as follows:

§ 902.75 Troubled performers.

* * * * *

(b) *Memorandum of agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and draft an MOA. An MOA is required for a troubled performer. The executed MOA is an enforceable contractual agreement between HUD and a PHA. Material breach of the MOA by the PHA is a basis, among other remedies available under law, for determination of substantial default. The scope of the MOA may vary depending upon the extent of the problems present in the PHA. It shall include, but not be limited to:

* * * * *

(5) The PHA's commitment to take all prescribed actions to achieve the targets;

* * * * *

(d) * * *

(1) *Expiration of the first assessment year improvement period.* Upon the expiration of the one assessment year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA's designation as a troubled performer.

(2) *Expiration of 2 assessment year recovery period.* Upon the expiration of the 2 assessment year period that started on the date on which the PHA received the initial notice of a troubled performer

designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

* * * * *

(g) * * *

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each assessment year of this 2-year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example:

A PHA receives an overall PHAS score of 50 points; 60 points is a passing score. The PHA must achieve at least 55 points overall (50 percent of the 10 points necessary to achieve a passing score of 60 points) on the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points overall (a passing score) on the PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation. If the PHA fails to achieve the 5-point increase on the year-one assessment, or if the PHA achieves the 5 point increase on the year-one assessment, but fails to achieve the minimum passing score of 60 points on the year-two assessment, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

* * * * *

■ 25. Add § 902.76 to subpart G to read as follows:

§ 902.76 Capital Fund troubled performers.

Upon a PHA's designation as a Capital Fund troubled performer, the PHA will be subject to appropriate oversight and actions by HUD. HUD may require a PHA to correct deficiencies in performance within a time period as specified by HUD. The requirements to correct deficiencies, and consequences for failure to correct deficiencies so identified, will otherwise be the same as

for substandard performers as described in § 902.73 unless HUD exercises remedies and enforcement actions provided in 24 CFR part 905.

§ 902.79 [Amended]

■ 26. Amend § 902.79 by removing the final word of the paragraph, “period”, and adding, in its place, the word “year”.

§ 902.81 [Amended]

■ 27. Amend § 902.81 by adding, to the end of the paragraph, the words “Further, nothing in this section prohibits any resident from communicating to HUD in writing regarding their experience or complaint with the PHA at issue.”

§ 902.83 Remedies for troubled performer PHAs.

■ 28. Amend § 902.83 by removing, from the end of paragraph (a)(3), the words “for any other substantial default by a PHA”, and revising the section heading to read as shown above.

Subpart H—Assessment of Small Rural Public Housing Agencies

■ 29. Amend § 902.103 by revising paragraph (a) to read as follows:

§ 902.103 Public housing assessment of small rural PHAs.

(a) *Small rural public housing assessment.* The public housing program of small rural PHAs as defined in § 902.101 shall be assessed and scored based only on the physical condition of their public housing properties in accordance with 24 CFR part 5, subpart G. Such agencies shall not be subject to PHAS except as noted below.

* * * * *

■ 30. Amend § 902.105 by:

■ a. Revising paragraphs (c)

introductory text and (c)(5); and

■ b. In the second sentence of paragraph (d), adding the word “factual” before the word “discrepancies”.

The revisions read as follows:

§ 902.105 Troubled small rural PHAs.

* * * * *

(c) *Corrective Action Agreement (CAA).* Within 30 days of notification of a PHA’s designation as a troubled performer, HUD will initiate activities to negotiate and develop a CAA. A CAA is required for a troubled performer. The final executed CAA is an enforceable contractual agreement between HUD and a PHA. The scope of the CAA may vary depending upon the extent of the problems present in the PHA. The term of the CAA will not exceed one year and is subject to renewal at the discretion of

HUD if HUD determines that the circumstances requiring the CAA still exist at the expiration of the term of the CAA based on the annual assessment frequency as included in § 902.103. It shall include, but not be limited to:

* * * * *

(5) The PHA’s commitment to take all prescribed actions to achieve the targets;

* * * * *

■ 31. Revise § 902.107 to read as follows:

§ 902.107 Withholding, denying, and rescinding score or designation.

(a) *Withholding score or designation.*

(1) If determined as appropriate or necessary by HUD, HUD may withhold, deny, or rescind a designation of any level, from troubled performer to high performer. HUD may conduct any review as it may determine necessary.

(2) HUD may withhold, deny, or rescind incentives or high performer designation or non-troubled performer designation, including in but not limited to circumstances in which a PHA:

(i) Is operating under a special agreement with HUD (e.g., a civil rights Conciliation or Voluntary Compliance Agreement);

(ii) Is involved in litigation that bears directly upon the physical performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA’s certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor’s audit, or an investigation by any appropriate legal authority;

(v) Demonstrates substantial noncompliance in one or more areas of a PHA’s required compliance with applicable laws and regulations, including areas not assessed under the small rural assessment. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations; or

(vi) Demonstrates other egregious performance issues not reflected in PHAS component score that require significant corrective action, as HUD determines necessary.

(3) HUD may withhold, deny, or rescind non-troubled or troubled

performer designation and accompanying requirements at its discretion. HUD may substitute other corrective requirements when HUD determines it is necessary.

(4) HUD may withhold, deny, or rescind an overall PHAS score at its discretion. HUD must notify the PHA when scores are withheld, denied, or rescinded, provide the basis for the decision, and allow for appeal as described in § 902.109.

■ 32. Amend § 902.109 by revising the section heading, paragraph (a) and paragraphs (c) through (f) to read as follows:

§ 902.109 Right to appeal troubled designation.

(a) *Appeal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation; and

(2) Appeal any actions taken under § 902.107.

* * * * *

(c) *Appeal procedures.* (1) To appeal a troubled performer designation a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the score to the PHA.

(2) An appeal of a troubled performer designation must include the PHA’s supporting documentation and reasons for the appeal. An appeal of an assessment score must be accompanied by the PHA’s evidence that a material error occurred.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation or score under § 902.107 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of appeals.* Upon receipt of an appeal of a final overall assessment score, of a troubled performer designation, or appeal of action taken under § 902.107 from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA’s file and the evidence submitted by the PHA to determine whether an error occurred.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a

new inspection of the project, adjust the PHA's score, or perform other reexamination of information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of an assessment score, or issuance of a troubled performer designation will be final agency action.

(2) HUD will issue a written decision on all appeals made under this section.

■ 33. Revise § 902.111 to read as follows:

§ 902.111 Remedies for troubled small rural PHAs.

The remedies for small rural PHAs with troubled public housing programs that remain troubled under § 902.108 will be the same as those remedies for PHAs assessed under PHAS as described in § 902.83.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 386 and 387

[Docket No. FMCSA–2024–0280]

RIN 2126–AC76

Broker and Freight Forwarder Financial Responsibility; Extension of Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes to amend its November 16, 2023, final rule, “Broker and Freight Forwarder Financial Responsibility,” by extending the compliance date for certain provisions from January 16, 2025, to January 16, 2026. This action is being proposed because FMCSA has determined that only its forthcoming online registration system will be used to accept filings and track notifications, and this functionality will not be added to its legacy systems. As the new system is not expected to be available before January 16, 2025, FMCSA proposes to extend the compliance date to provide regulated entities time to begin using

and familiarizing themselves with the system before compliance is required.

DATES: Comments must be received on or before November 19, 2024. Comments should be limited to the proposed change in the compliance date.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0280 using any one of the following methods:

- **Federal Rulemaking Portal:** Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., 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.
- **Fax:** (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Ana Alvarez, Financial Analyst, Office of Registration, Financial Responsibility Filings Division, FMCSA, 1200 New Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590; (202) 366–0401; ana.alvarez@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this NPRM as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy
- II. Executive Summary
 - A. Purpose and Summary of the Regulatory Action
 - B. Costs and Benefits
- III. Abbreviations
- IV. Legal Basis
- V. Background
- VI. Discussion of Proposed Rulemaking
- VII. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act (Small Entities)
 - C. Assistance for Small Entities
 - D. Unfunded Mandates Reform Act of 1995
 - E. Paperwork Reduction Act
 - F. E.O. 13132 (Federalism)
 - G. Privacy
 - H. E.O. 13175 (Indian Tribal Governments)

I. National Environmental Policy Act of 1969

J. Rulemaking Summary

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2024–0280), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0280/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period.

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 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 the NPRM, 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 NPRM.

Submissions containing CBI should be sent to Mr. 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 rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0280/document> and choose the document to review. To view comments, click this NPRM, then click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., 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.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory 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—Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-recordsnotices>. The comments are posted without edit and are searchable by the name of the submitter.

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

FMCSA proposes to extend certain compliance dates in the 2023 final rule, "Broker and Freight Forwarder Financial Responsibility" (88 FR 78656, Nov. 16, 2023), from January 16, 2025, to January 16, 2026, creating a single compliance date for all provisions in the rule. This extension will ensure that parties required to comply with the regulations have sufficient opportunity to register in the new system and begin using it, and that FMCSA is able to properly process and respond to such filings. The provisions affected by this extension are:

1. Immediate suspension of broker/freight forwarder operating authority. When a broker or freight forwarder's available financial security falls below \$75,000, FMCSA shall suspend its operating authority registration.
2. Surety or trust responsibilities in cases of broker/freight forwarder

financial failure or insolvency. If a surety/trustee becomes aware that a broker or freight forwarder is experiencing financial failure or insolvency, it must notify FMCSA and initiate cancellation of the financial responsibility.

3. Enforcement authority and penalties for financial responsibility providers who do not comply with the regulations. FMCSA is incorporating the statutorily mandated penalties into its regulations. After notice and an opportunity for a hearing, surety companies or financial institutions who violate 49 CFR 387.307 will be ineligible to provide financial responsibility for 3 years and may also be subject to a civil penalty.

This extension is necessary so that FMCSA can implement its new online registration system and make it available to entities required to register and make filings in the system. This extension is also intended to provide users with an opportunity to begin using, and become familiar with, the new online registration system before compliance with the system becomes mandatory. The planned release for the new modernized registration system is 2025.

B. Costs and Benefits

The 2023 Broker and Freight Forwarder Financial Responsibility final regulatory impact analysis (RIA) estimated costs for compliance and implementation among brokers, freight forwarders, surety bond and trust fund providers, and the Federal government. This proposed rule would delay certain provisions requiring filings in the online registration system until January 16, 2026, resulting in all provisions of the rule becoming effective at the same time.

Despite the delayed compliance for certain provisions, FMCSA finds that the benefits stipulated in the 2023 final rule remain unchanged by this proposed rule. The provision mandating that brokers and freight forwarders maintain assets readily available in trust funds, will still take effect as originally scheduled, on January 16, 2026. Brokers and freight forwarders, surety bond and trust fund providers would incur cost savings by not being required to file documentation relating to certain other provisions until January 16, 2026. FMCSA would also incur cost savings in delaying the enforcement of several provisions of the 2023 final rule. In conclusion, the Agency finds that this proposed rule would maintain all benefits and reduce costs by a de minimis amount for all parties subject to the 2023 final rule.

III. Abbreviations

CBI Confidential Business Information
CE Categorical exclusion
CFR Code of Federal Regulations
DOT Department of Transportation
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PTA Privacy Threshold Assessment
RIA Regulatory Impact Analysis
URS Unified Registration System
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

IV. Legal Basis

The legal basis of the Broker and Freight Forwarder Financial Responsibility final rule, set forth at 88 FR 78658, also serves as the legal basis for this NPRM. The statutory authority identified in that discussion is 49 U.S.C. 13906, which contains requirements for the financial security of brokers and freight forwarders and directs the Secretary to issue regulations to implement and enforce these requirements. Authority to carry out and enforce these provisions has been delegated to the Administrator of FMCSA (49 CFR 1.87(a)(5)).

As discussed in the final rule, 49 CFR 387.403T(c) makes any requirements applicable to broker of property surety bonds and trust funds in § 387.307 applicable to the surety bond or trust fund required of freight forwarders as well.¹ Therefore, any time this NPRM refers to brokers, the same requirements are also applicable to freight forwarders.

V. Background

On November 16, 2023, FMCSA published a final rule adopting regulations to implement 49 U.S.C. 13906(b) and (c) (88 FR 78656). The final rule became effective 60 days later, on January 16, 2024. However, compliance with the provisions relating to immediate suspension, financial failure or insolvency, and penalties for trust or surety providers who fail to comply with the regulations is not required until January 16, 2025, and full compliance with all of the final rule's provisions is not required until 2 years after the effective date, beginning on January 16, 2026.

¹ Although 49 CFR 387.403 is currently suspended, it contains the same language making § 387.307 applicable to freight forwarders. Thus, when the suspension is ultimately lifted, it will have no effect on the analysis here.

VI. Discussion of the Proposed Rulemaking

FMCSA proposes to extend the compliance date for the provisions of the Broker and Freight Forwarder Financial Responsibility rule relating to immediate suspension, financial failure or insolvency, and penalties for trust or surety providers who fail to comply with the regulations from January 16, 2025, to January 16, 2026, by amending the expiration date of the temporary rule governing current practices, § 387.307T, and the compliance dates in § 387.307. This extension will create a single compliance date for all provisions in the rule, allow FMCSA to implement the new online registration system, and ensure that filers are familiar with the online registration system and able to perform all duties mandated by the rule prior to the compliance date.

The final rule discusses and requires online filing of documents. FMCSA always intended to build this functionality into its forthcoming online registration system.² After engaging with stakeholders and work developing the new platform, the Agency has determined that it would not be an efficient use of resources to add the functionality to the legacy registration system. Instead, the Agency is focused on implementing the new online registration system and publishing the NPRM concerning the new system, as described in the Unified Agenda (see Regulation Identification Number 2126–AB56), as expeditiously as possible. By extending the compliance date for the Broker and Freight Forwarder Financial Responsibility final rule, FMCSA intends to allow the regulated community sufficient time to begin utilizing the new system and become familiar with it before compliance is required.

In addition, FMCSA finds that without certain automated processes currently under development in the new system, effective compliance management would be compromised. Specifically, the Agency believes that tracking and processing drawdown notifications manually would be inefficient, leading to delays, higher administrative costs, and potential compliance risks for both FMCSA and the industry. The ability to efficiently suspend the operating authority of brokers and freight forwarders who fail to maintain the required financial security within the 7-day regulatory time frame depends upon both the regulated entities and the Agency being able to utilize a fully functional online

filing system. For more detailed information regarding the launching of the new online registration system, stakeholders are encouraged to visit <https://www.fmcsa.dot.gov/registration/resources-hub>.

For the reasons mentioned above, as well as to provide the public with the notice and opportunity for comment required by the Administrative Procedure Act (5 U.S.C. 553) FMCSA proposes to extend the compliance date for the provisions relating to immediate suspension, financial failure or insolvency, and penalties for trust or surety providers who fail to comply with the regulations. The new compliance date, January 16, 2026, would align with the date already set for the other provisions in the rule.

VII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and amended by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, as well as the impact under DOT regulatory policies and procedures (DOT Order 2100.6A, dated June 7, 2021). This NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as amended. Accordingly, OMB has not reviewed it under that E.O.

B. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996³ 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and

mandates that agencies strive to lessen any adverse effects on these businesses.

This proposed rule would extend the compliance date for specific provisions of the 2023 final rule, “Broker and Freight Forwarder Financial Responsibility,” to January 16, 2026. The provisions already scheduled for compliance on January 16, 2026, would not be affected. The rule would impact small entities such as surety bond and trust fund providers, brokers, and freight forwarders. The extension would provide small entities with additional time to register in the new online registration system and understand its operations and functionalities. By delaying the submission of documentation for certain provisions until January 16, 2026, these entities would also realize de minimis cost savings.

Consequently, I certify that this action would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its potential effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

² See 88 FR 78657 and 78666, Nov. 16, 2023.

³ Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by State, local, or Tribal government, in the aggregate, or by the private sector of \$200 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2023 levels) or more in any 1 year. This proposed rule would not result in such an expenditure, so the analytical requirements of UMRA do not apply.

E. Paperwork Reduction Act

Due to the proposed change of compliance date, the existing Information Collection Requirements pertaining to broker and freight forwarder financial responsibilities would be updated at a later date.

F. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “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.”

FMCSA has determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

G. Privacy

The Consolidated Appropriations Act, 2005,⁴ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not change any previously analyzed collections of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,⁵ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or

disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, FMCSA has not conducted a PIA for this proposed rule. However, FMCSA will publish a PIA and a System of Records Notice covering all information that will be collected in the new online registration system.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and will be submitted to DOT's Privacy Officer for review and final adjudication.

H. E.O. 13175 (Indian Tribal Governments)

This rulemaking does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

I. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), appendix 2, paragraphs (6.k) and (6.q). The categorical exclusions (CEs) in paragraphs (6.k) and (6.q) cover broker activities and implementation of record preservation. The proposed requirements in this rule are covered by these CEs and do not have any effect on the quality of the environment.

J. Rulemaking Summary

As required by 5 U.S.C. 553(b)(4), a summary of this proposed rule can be found on the FMCSA website at <https://www.fmcsa.dot.gov/regulations/broker-freight-forwarder-compliance-date-extension> and in the docket for this rulemaking, which is available online at www.regulations.gov.

List of Subjects

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Highway and roads, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR parts 386 and 387 as follows:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

- 1. The authority citation for part 386 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 49 U.S.C. 113, 1301 note, 31306a; 49 U.S.C. chapters 5, 51, 131–141, 145–149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

- 2. Amend appendix B by revising and republishing paragraph (g)(24) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

* * * * *

(g) * * *

(24) Beginning on January 16, 2026, a surety company or financial institution for a broker or freight forwarder pursuant to § 387.307 of this subchapter that violates 49 U.S.C. 13906(b) or (c) or § 387.307:

- (i) Is liable to the United States for a penalty of \$12,882 for each violation; and
- (ii) Will be ineligible to provide broker financial security for 3 years.

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

- 3. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

- 4. Amend § 387.307 as follows:
- a. Revise the introductory text and paragraphs (b) and (c)(6);
- b. Remove paragraph (c)(7); and
- c. Redesignate paragraph (c)(8) as paragraph (c)(7).

The revisions read as follows:

⁴ Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

⁵ Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

§ 387.307 Property broker surety bond or trust fund.

This section is effective January 16, 2026.

* * * * *

(b) *Acceptable assets.* Trust funds under this section must contain assets aggregating to \$75,000 that can be liquidated to cash within 7 calendar days. Acceptable assets included in any trust fund filed under this section are

limited to cash, irrevocable letters of credit issued by a federally insured depository institution, and Treasury bonds.

(c) * * *

(6) An insurance company; or

* * * * *

■ 5. Amend § 387.307T by revising the introductory text to read as follows:

§ 387.307T Property broker surety bond or trust fund.

This section will remain in effect until January 16, 2026.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87.

Vincent G. White,
Deputy Administrator.

[FR Doc. 2024–25517 Filed 11–1–24; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 89, No. 213

Monday, November 4, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the George Washington and Jefferson National Forests, consistent with the Federal Lands Recreation Enhancement Act.

DATES: A virtual meeting will be held on Tuesday, November 19, 2024, 1 p.m. to 4 p.m. Eastern Standard Time.

Written and Oral Comments: Anyone wishing to provide virtual oral comments must pre-register by 11:59 p.m. Eastern Standard Time on November 11, 2024. Written public comments will be accepted by 11:59 p.m. Eastern Standard Time on November 11, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held virtually. The public may join via TEAMS virtual meeting at: meeting ID 225 975 140 125 and passcode: RqCG7H. Dial in by phone: +1 202-650-0123, 642630862#. Committee information and meeting details can be found at the following website: <https://www.fs.usda.gov/main/gwj/workingtogether/advisorycommittees> by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent to the George Washington and Jefferson National Forests Public Affairs email box SM.FS.GWJNF-PA@usda.gov or via mail (postmarked) to Gwen Mason, Public Affairs Officer, George Washington and Jefferson National Forest, 5163 Valleypointe Parkway, Roanoke, Virginia 24019. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Eastern Standard Time on November 11, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to SM.FS.GWJNF-PA@usda.gov or via mail (postmarked) to Gwen Mason, Public Affairs Officer, George Washington and Jefferson National Forest, 5163 Valleypointe Parkway, Roanoke, Virginia 24019.

FOR FURTHER INFORMATION CONTACT: Gwen Mason, Designated Federal Officer, by phone at (540) 265-5173 or email at gwendolyn.mason@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect a Chairperson;
2. Hear a presentation on the Federal Lands Recreation Enhancement Act;
3. Review Title II fund balances and projects; and
4. Ethics training review.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments,

including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section, or contact USDA's TARGET Center at (202) 720-2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: October 16, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024-24410 Filed 11-1-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of Record of Decisions for Etowah River, Georgia; Pocasset River, Rhode Island; Odessa Subarea Special Study Project in Washington; and Cart Creek Site 1 of the North Branch Park River Watershed in North Dakota

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability; record of decision.

SUMMARY: Natural Resources Conservation Service (NRCS), an agency in the U.S. Department of Agriculture, has prepared a Notice of Availability for Record of Decisions (ROD) for Environmental Impact Statements (EIS) for Etowah River Watershed Dam No.13–A (Russel Creek Reservoir Multipurpose Project) in Dawson County, Georgia; Pocasset River, Rhode Island; Odessa Subarea Special Study Project in Adams, Franklin, Grant, and Lincoln counties, Washington; and Cart Creek Site 1 of the North Branch Park River Watershed in North Dakota.

ADDRESSES:

- You may request a copy of the Etowah River ROD from: Sharon Swagger, Assistant State Conservationist—Easements and Water Resources, 355 E Hancock Ave., Athens, GA 30601;
- You may also download a copy of the Etowah River ROD from: <https://www.etowahwaterra.gov/about/russell-creek-reservoir/>;
- You may request a copy of the Pocasset River ROD from: Darrell Moore, NRCS Rhode Island State Conservation Engineer, 60 Quaker Lane, Suite 40, Warwick, RI 02886;
- You may also download a copy of the Pocasset River ROD from: https://www.nrcs.usda.gov/sites/default/files/2024-09/RI_PocassetEIS_ROD_508.pdf;
- You may request a copy of the Odessa Subarea Special Study Project ROD: Jules Riley, USDA/NRCS, 11707 E Sprague Ave., Suite 301, Spokane Valley, WA 99206;
- You may also download complete text of the Odessa Subarea Special Study Project ROD and the FEIS from the project website at <https://www.ogwrp-programs.org/watershed-plan>; and
- You may request a copy of the Cart Creek Site 1 of the North Branch Park River Watershed in North Dakota ROD from: Dan Hovland, USDA–ND NRCS, 220 E Rosser Avenue, Bismarck, ND 58502–1458;

- You may also view a copy of the Cart Creek Site 1 of the North Branch Park River Watershed in North Dakota ROD from: <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/north-branch-park-river-watershed>.

FOR FURTHER INFORMATION CONTACT: For Etowah River, Georgia, contact Sharon Swagger; Assistant State Conservationist, at telephone 706–546–2272; or email: sharon.swagger@usda.gov. For Pocasset River, contact Darrell Moore; telephone: (401) 822–8812; or email: Darrell.Moore@usda.gov. For the Odessa Subarea Special Study Project in Washington, contact Jules Riley; telephone: (509) 507–0178; email: jules.riley@usda.gov. For the Cart Creek Site 1 of the North Branch Park River Watershed in North Dakota, contact Christi Fisher; telephone: (701) 530–2091 email: christi.fisher@usda.gov.

SUPPLEMENTARY INFORMATION: Through this document, NRCS announces the availability of EIS RODs for:

- Etowah River Watershed Dam No.13–A (Russel Creek Reservoir Multipurpose Project) in Dawson County, Georgia;
- Pocasset River Flood Damage Reduction Project in Rhode Island;
- Odessa Subarea Special Study Project in Adams, Franklin, Grant, and Lincoln counties, Washington; and
- Cart Creek Site 1 of the North Branch Park River Watershed in North Dakota.

Etowah River Watershed Dam No.13–A

NRCS completed the EIS titled “Etowah River Watershed Dam No.13–A (formerly known as Russell Creek Reservoir Multipurpose Project)” in partnership with Etowah Water & Sewer Authority, in Dawson County, Georgia. The NRCS NOI EIS was published in the **Federal Register** on April 8, 2022 (87 FR 20811–20813).

The Final EIS (FEIS #20230100) was made available for review through Environmental Protection Agency (EPA) Central Data Exchange (CDE) system as announced in the **Federal Register** on August 11, 2023 (88 FR 54612–54613).

Pocasset River Flood Damage Reduction Project

NRCS published the notice of intent to prepare the EIS titled “Pocasset River Flood Damage Reduction Project” in the **Federal Register** on July 10, 2009 (74 FR 33201–33202).

The Revised Final EIS (FEIS #20240084) was made available for review through EPA CDE system as announced in the **Federal Register** on May 24, 2024 (89 FR 45883).

Odessa Subarea Special Study Project in Adams, Franklin, Grant, and Lincoln Counties, Washington

NRCS completed the EIS titled “Odessa Subarea Special Study” in partnership with U.S. Bureau of Reclamation and the Washington State Department of Ecology, Adams, Franklin, Grant, and Lincoln Counties, Washington.

The Final EIS (FEIS #20230153) was made available for review through EPA CDE system as announced in the **Federal Register** on November 17, 2023 (88 FR 80300).

Cart Creek Site 1 of the North Branch Park River Watershed in Pembina County, North Dakota

NRCS has prepared a ROD for the EIS titled “Cart Creek Site 1 of the North Branch Park River Watershed” in Pembina County, North Dakota. NRCS published the notice of intent to prepare the EIS in the **Federal Register** on December 14, 2022 (87 FR 76453–76456).

The Final EIS (FEIS #20240125) was made available for review through EPA CDE system as announced in the **Federal Register** on July 19, 2024 (89 FR 58733).

Authority

NRCS involvement is through the Watershed Protection and Flood Prevention Act (Pub. L. 83–566, 16 U.S.C. 1001–1008).

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing¹ to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

¹ See <https://sam.gov/content/assistance-listings>.

Environmental Review

Each of the RODs summarizes the findings of the Plan-EIS; these are not programmatic. Each ROD provides the basis for the NRCS decision. NRCS is the lead Federal agency responsible for the content and quality of the Plan-EIS for the purposes of National Environmental Policy Act (NEPA), Principles, Requirements, and Guidelines (PR&G) for Federal Investments in Water Resources and National Historic Preservation Act (NHPA) compliance.

Each ROD is issued as specified by the NEPA process (42 U.S.C. 4321–4347) which follows the NRCS NEPA regulations in 7 CFR part 650, subpart A, and 7 CFR part 622. The NRCS NEPA regulations adopt the Council of Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508) in total.

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To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the

complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) Fax: (202) 690–7442; or (3) email: program.intake@usda.gov.

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Terrance Rudolph,

Georgia State Conservationist.

R. Phou Vongkhamdy,

Rhode Island State Conservationist.

Roylene Comes-At-Night,

Washington State Conservationist.

Daniel Hovland,

North Dakota State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2024–25582 Filed 11–1–24; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Missouri Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Thursday, November 14, 2024, at 2 p.m. central time. The purpose of the meeting is for the Committee to review, edit, and approve the report on Curriculum Censorship.

DATES: The meeting will take place on Thursday, November 14, 2024, at 2 p.m. central time.

ADDRESSES:

Public Call Information: Dial: (833) 435–1820, Confirmation Code: 160 352 4176.

Zoom Link: <https://www.zoomgov.com/j/1603524176?pwd=JJAYS9FS6KZ7rEHg8XHZuq9DOhE1p0.1>.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at dbarreras@usccr.gov or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate

over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at csanders@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome and roll call
- II. Chair's Comments
- III. Discuss on Report
- IV. Public comment
- V. Next steps
- VI. Adjournment

Dated: October 29, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–25509 Filed 11–1–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a briefing on Friday, November 15, 2024 at 12:00 p.m. Central time. The Committee will discuss finalizing their report on education funding in the state of Mississippi.

DATES: The meeting will take place on Friday November 15, 2024, at 12:00 p.m. Central Time.

Public Call Information: Dial: 833–435–1820, Confirmation Code: 160 735 4920.

Join from the meeting link: <https://www.zoomgov.com/j/1607354920?pwd=wOdo8TatkNQdN0MMx7q1GXi8Auf6eE.1>.

FOR FURTHER INFORMATION CONTACT:

David Barreras, DFO, at dbarreras@usccr.gov or (202) 656–8937

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to Corrine Sanders at csanders@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this

Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome and roll call
- II. Chair's Comments
- III. DFO Report Review
- IV. Public comment
- V. Next steps
- VI. Adjournment

Dated: October 29, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–25507 Filed 11–1–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2026 Census Test—Group Quarters Advance Contact (GQAC)

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed new information collection, for the 2026 Census Test—Group Quarters Advance Contact (GQAC) prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 3, 2025.

ADDRESSES: Interested persons are invited to submit written comments by email to ADDC.2030.census.paperwork@census.gov. Please reference 2026 Census Test—Group Quarters Advance Contact (GQAC) in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2024–0026, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to [http://](http://www.regulations.gov)

www.regulations.gov for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Michael Snow, Supervisory Program Analyst, Decennial Program Management Office, Decennial Census Management Division, 301–763–9912, dcmd.pra@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

During the years preceding the 2030 Census, the Census Bureau will pursue its commitment to developing a well-managed, cost-effective, and high-quality decennial census. The Census Bureau will streamline data collection processes and implement new and improved methods to count the U.S. population for the 2030 Census. This includes new and improved methods for counting individuals residing in Group Quarters (GQs), such as college/university student housing, residential treatment centers, nursing/skilled-nursing facilities, group homes, correctional facilities, hospitals, and military barracks. GQ Administrators play a vital role in GQ data collection during Group Quarters Advance Contact. They provide critical updates about the facility and residents. One of the new data collection methods is to test the capability to allow GQ Administrators to electronically review, verify and update address and other frame information associated with their GQs, as well as to select a method of enumeration for their residents. The 2026 Census Test will enable the Census Bureau to test revisions to the capability to receive and extract verified and updated GQ address information electronically into a useful format prior to the subsequent Group Quarters Enumeration (GQE) operation. The specific data items that GQ Administrators will review include GQ type code, primary and secondary GQ contact name, title, telephone number and email address, name of the GQ, address of GQ, maximum number of people who could live/stay in the GQ

and provide the expected number of people who will be staying in the GQ on Census Day.

The Census Bureau will examine the efficiencies provided by receiving this information using a secure portal.

Group Quarters Advance Contact (GQAC)

After the 2020 Census, the Census Bureau conducted lessons learned sessions which showed that some GQ Administrators desired to have the ability to provide GQAC operational responses electronically. During the GQAC operation, data will be collected to confirm information about the GQ that will help prepare the GQ Administrator and the field staff for the upcoming GQE operation. Specific data items include, collecting an enumeration method and depending on the method selected, scheduling an enumeration appointment.

During the 2026 Census Test, the research questions for GQAC include:

1. Can a web-based GQAC operation provide opportunities to receive GQAC data directly from GQ Administrators?
2. Can a web-based data collection instrument that receives GQ-level data directly from GQ Administrators improve efficiency and reduce cost for the GQAC operation?
3. Can a web-based data collection instrument improve completeness and quality (e.g., lower item nonresponse rates, fewer data entry errors, etc.) in the collection of data at the GQ level?

The 2026 Census Test will inform the Census Bureau's technological and operational planning and design for the GQAC operation. This test provides the opportunity to evaluate the enhanced procedures and technologies for conducting GQAC.

Operational Procedures

The 2026 Census Test GQAC operation is designed to use web-based, in-office, and in-field methodologies to contact GQ Administrators prior to the enumeration. During the GQAC operation, data will be collected to confirm information about the GQ. Specific data items include collecting an enumeration method, the expected population for the GQ on Census Day, April 1, 2026, and depending on the method selected, scheduling an enumeration appointment.

The 2026 Census Test GQAC will be fielded to 434 GQ facilities across two regional census areas that encompasses six test sites in Western Texas; Tribal Lands within Arizona; Colorado Springs, CO; Western North Carolina; Spartanburg, SC; and Huntsville, AL. The data collection period is February

2026 through March 2026. The Census Bureau will study the potential for using a Web-Based GQAC for frame building and enumeration for the 2030 Census. Thresholds will be used as input to determine completeness and quality of GQ facility level data provided by the GQ Administrators.

- During Web-Based GQAC, GQ Administrators will log into a secure GQAC instrument to review, verify, and if needed, update the GQ information in preparation for conducting the upcoming enumeration operations.
- During In-Office GQAC, office clerks will telephone GQ Administrators (using the phone number on file for the case or researching it using the internet) to conduct interviews while capturing responses and making entries into the In-Office GQAC instrument.
- During the In-Field GQAC, census workers will follow-up with GQs that did not include pre-enumeration information such as contact information. Census workers will visit each identified GQ and conduct an in-person interview with the GQ Administrator using an automatic hand-held device to capture the same information as a Web-Based GQAC and an In-Office GQAC.
- The information below will be asked of GQ Administrators across all three methods of data collection, web-based, in-office and in-field GQAC:
 - Verify or update the GQ name, address, GQ contact person's information, GQ type code, and maximum population.
 - Collect the following information to assist enumerators in conducting the upcoming enumeration operations:
 - Preferred method of enumeration.
 - Date and time for the Census Bureau to meet with the contact person to conduct the enumeration based on the enumeration method collected.
 - Maximum population for the GQ.
 - Expected population for the GQ on Census Day, April 1, 2026.
 - Whether the GQ serves females only, males only, or both.
 - Whether the GQ residents speak languages other than English. If the GQ resident speaks another language, an interpreter or the GQ administrator will assist.
 - Whether there are security, privacy, or confidentiality concerns.
 - Whether there are logistics concerns while conducting enumeration such as facility access requirements and procedures.
 - Whether the contact person was responsible for other GQs.
- *Technical Design*
 - Test the use of automated instruments to conduct Web-based, In-Office, and In-Field GQAC.

• Optimize the use of electronic response records to support the creation of the initial GQ universe for the GQAC Frame prior to enumeration.

• Utilize the GQ Contact Frame Maintenance system that will include GQ contact information, such as GQ facility name (linked to the possible GQs, name of GQ Administrator/primary contact person and secondary point of contact, phone number of contact person, and email address of GQ contact persons).

• Implement a process to virtually complete the Special Sworn Status form for GQ Administrators who select the Web-Based GQAC.

• Implement a system to track/maintain completed Special Sworn Status forms (BC-1759) collected during the American Community Survey and other Census Bureau web-based surveys. This will help minimize the number of GQ Administrators who will be required to virtually complete a Special Sworn Status form during GQAC.

II. Method of Collection

During the 2026 Census Test GQAC operation, data will be collected electronically using three modes: A web-based data collection application, in-office conducting a phone interview collecting data in the GQAC automated instrument, and in-field conducting an in-person interview collecting data on a hand-held device.

The U. S. Census Bureau will mail letters to all 434 GQs in the test area, utilizing mail delivery service such as FedEx, to inform the GQ Administrator about the upcoming GQAC operation.

Web GQAC

During the Web GQAC, GQ Administrators will log into a secure GQAC data collection instrument to review, verify, and, if needed, update the GQ information in preparation for conducting the upcoming enumeration operations.

At the start of the operation, the system will be programmed to automatically send Web GQAC Introductory Emails to GQ Administrators who meet the following conditions:

- Valid email address.
- Sworn-in point of contact.
- College/university student housing (Type code 501) or federal and state correctional facility (Type codes 101, 102, 103), Military Barracks/and Dormitories (Type code 601) (Residents living or staying in these type codes will be allowed to submit their enumeration over the internet using GQ internet Self-Response (ISR)).

• GQ(s) linked to their respective facility.

The email for the GQ Administrators will contain the following information: Login information (GQ user ID), link to the Web GQAC questionnaire, instructions and overview, and pertinent dates such as the start and end dates of the Web-Based GQAC.

The contact strategy for the Web GQAC is as follow:

- Initial email will be sent to the GQ Administrator on February 2, 2026, the start date of the operation.
- First reminder email for nonresponding GQs will be sent five (5) business days after the initial email.
- Second reminder email for nonresponding GQs will be sent three (3) business days after the first reminder emails.
- Third and final reminder email for nonresponding GQs will be sent three (3) business days after the second reminder emails.

In-Office GQAC

During In-Office GQAC, office clerks will call the GQ Administrator (using the phone number on file for the case or researching it using the internet) and conduct interviews while collecting responses and making entries into the clerk mode of the same secure GQAC data collection instrument used by GQ Administrators to verify and/or update the GQ information in preparation for conducting the upcoming enumeration operations.

The In-Office GQAC phone operation will include the following:

- Cases that did not meet the Web GQAC criteria stated above
- Nonresponding cases from the Web GQAC
- Email bounce backs from Web GQAC or non-responding contacts from the Web GQAC mailout.

The contact strategy for the In-Office GQAC is as follow:

- Three phone attempts: attempt 1, attempt 2, attempt 3 (final).
- After the 3rd (final) attempt, case(s) will be assigned to the Census Field Supervisor to conduct an In-Field GQAC.

In-Field GQAC

The In-Field GQAC visit operation will include all unresolved cases from the Web GQAC and In-Office GQAC.

- Census workers will follow-up in the field with GQs for which pre-enumeration information such as contact information was not obtained.
- Census workers will visit each identified GQ and conduct an in-person interview with the GQ contact person using an automated hand-held device to

capture the same information collected during Web GQAC and In-Office GQAC.

III. Data

OMB Control Number: 0607–XXXX.

Form Number(s): D6–L–GA(ES), D6–CN–GA(ES), D6–E–GA(E/S).

Type of Review: Regular submission.

Affected Public: Administrators, primary and/or secondary contacts at Group Quarters facilities.

Estimated Number of Respondents: 434.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 217.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–25592 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–56–2024]

Foreign-Trade Zone (FTZ) 49, Notification of Proposed Production Activity; Merck, Sharp & Dohme LLC; (Pharmaceutical Products for Research and Development); Rahway, New Jersey

Merck, Sharp & Dohme LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Rahway, New Jersey, within Subzone 49Y. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on October 18, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz. The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products for research and development include MK–2828 and MK–3214 cardiovascular disease drug products, MK–2420 autoimmune disease drug product, MK–4646 HIV drug product, and MK–0472 oncology drug product (duty free).

The proposed foreign-status materials/components include MK–2828 and MK–3214 cardiovascular disease active pharmaceutical ingredients (API), MK–2420 autoimmune disease API, MK–4646 HIV API, and MK–0472 oncology API (duty rate, 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is December 16, 2024.

A copy of the notification will be available for public inspection in the “Online FTZ Information System” section of the Board’s website.

For further information, contact Diane Finver at Diane.Finver@trade.gov.

Dated: October 30, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–25580 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–840]

Aluminum Extrusions From Indonesia: Final Affirmative Determination of Sales at Less Than Fair Value; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of October 3, 2024 in which Commerce announced the final determination of the less-than-fair-value (LTFV) investigation of aluminum extrusions from Indonesia for the period of investigation (POI), October 1, 2022, through September 30, 2023. This notice corrects the language in the “Continuation of Suspension of Liquidation” section of the *Final Determination*.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2024, Commerce published in the **Federal Register** the final determination of the LTFV investigation of aluminum extrusions from Indonesia investigation.¹ In that notice, we failed to include language regarding the suspension of liquidation of provisional measures in the companion countervailing duty (CVD) case in the “Continuation of Suspension of Liquidation” section.

Correction

In the **Federal Register** of October 3, 2024, in FR Doc 2024–22780, on page 80489, in the first column, add the following sentence at the end of the “Continuation of Suspension of Liquidation” section: “However, suspension of liquidation of provisional measures in the companion CVD case has been discontinued;² therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies at this time.”

Notification to Interested Parties

This notice is issued and published in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(c).

Dated: October 29, 2024.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–25581 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) will publish notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce’s conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–423–814	731–TA–1435	Belgium	Acetone (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–580–899	731–TA–1436	Korea	Acetone (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–559–808	731–TA–1438	Singapore	Acetone (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–791–824	731–TA–1439	South Africa	Acetone (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–469–819	731–TA–1440	Spain	Acetone (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–570–095	731–TA–1428	China	Aluminum Wire and Cable (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–570–104	731–TA–1441	China	Carbon and Alloy Steel Threaded Rod (1st Review).	Mary Kolberg, (202) 482–1785.

¹ See *Aluminum Extrusions from Indonesia: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 80487 (October 3, 2024) (*Final Determination*).

² See *Aluminum Extrusions from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination*, 89 FR 17405 (March 11, 2024); see also section 703(d) of the Act, which states that the

provisional measures may not be in effect for more than four months, which in the companion CVD case is 120 days after the publication of the preliminary determination, or July 8, 2024 (*i.e.*, last day provisional measures are in effect).

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-533-887	731-TA-1442	India	Carbon and Alloy Steel Threaded Rod (1st Review).	Mary Kolberg, (202) 482-1785.
A-583-865	731-TA-1443	Taiwan	Carbon and Alloy Steel Threaded Rod (1st Review).	Mary Kolberg, (202) 482-1785.
A-549-840	731-TA-1444	Thailand	Carbon and Alloy Steel Threaded Rod (1st Review).	Mary Kolberg, (202) 482-1785.
A-570-881	731-TA-1021	China	Malleable Iron Pipe Fittings (4th Review)	Mary Kolberg, (202) 482-1785.
A-570-092	731-TA-1424	China	Mattresses (1st Review)	Thomas Martin, (202) 482-3936.
A-570-909	731-TA-1114	China	Steel Nails (3rd Review)	Mary Kolberg, (202) 482-1785.
A-570-110	731-TA-1449	China	Vertical Metal File Cabinets (1st Review) ...	Jacqueline Arrowsmith, (202) 482-5255.
A-570-930	731-TA-1144	China	Welded Stainless Steel Pressure Pipe (3rd Review).	Thomas Martin, (202) 482-3936.
A-557-815	731-TA-1210	Malaysia	Welded Stainless Steel Pressure Pipe (2nd Review).	Thomas Martin, (202) 482-3936.
A-549-830	731-TA-1211	Thailand	Welded Stainless Steel Pressure Pipe (2nd Review).	Thomas Martin, (202) 482-3936.
A-552-816	731-TA-1212	Vietnam	Welded Stainless Steel Pressure Pipe (2nd Review).	Thomas Martin, (202) 482-3936.
C-570-096	701-TA-611	China	Aluminum Wire and Cable (1st Review)	Jacqueline Arrowsmith, (202) 482-5255.
C-570-105	701-TA-618	China	Carbon and Alloy Steel Threaded Rod (1st Review).	Mary Kolberg, (202) 482-1785.
C-533-888	701-TA-619	India	Carbon and Alloy Steel Threaded Rod (1st Review).	Mary Kolberg, (202) 482-1785.
C-570-111	701-TA-623	China	Vertical Metal File Cabinets (1st Review) ...	Jacqueline Arrowsmith, (202) 482-5255.
C-570-931	701-TA-454	China	Welded Stainless Steel Pressure Pipe (3rd Review).	Mary Kolberg, (202) 482-1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <https://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to

participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304 through 351.306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of

this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.²

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

Note that Commerce has amended certain of its requirements pertaining to

¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

² See 19 CFR 351.218(d)(1)(iii).

the service of documents in 19 CFR 351.303(f).³ An electronically filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the day on which it is due.

In prior proceedings we have encouraged interested parties to provide an executive summary of their comments, including footnotes. In these sunset reviews, we request that interested parties provide at the beginning of their comments, an executive summary for each issue raised in their comments. Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the decision memorandum that will accompany the notice to be published in the **Federal Register**. Finally, we request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 21, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–25610 Filed 11–1–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–180, A–428–854, A–533–932, A–517–807]

Hexamethylenetetramine From the People's Republic of China, Germany, India, and Saudi Arabia: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Thomas Cloyd at 202–482–1246 (the People's Republic of China (China)), Ajay Menon at 202–482–0208 (Germany), Dakota Potts at 202–482–0223 (India), and Andrew Hat at 202–482–1058 (Saudi Arabia), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 30, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of hexamethylenetetramine (hexamine) from China, Germany, India, and Saudi Arabia filed in proper form on behalf of Bakelite LLC (the petitioner).¹ The AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of hexamine from China and India.²

Between October 2 and 11, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in supplemental questionnaires.³ The petitioner responded to Commerce's supplemental questionnaires between October 7 and 18, 2024.⁴

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of hexamine from China, Germany, India, and Saudi Arabia are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the hexamine industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated September 30, 2024 (Petitions).

² *Id.*

³ See Commerce's Letters, "Supplemental Questions," dated October 2, 2024 (First General Issues Questionnaire); *see also* Country-Specific AD Supplemental Questionnaires: China Supplemental, Germany Supplemental, India Supplemental, and Saudi Arabia Supplemental, dated October 3, 2024; Commerce's Letter, "Second Supplemental Questions," dated October 11, 2024 (Second General Issues Questionnaire); Country-Specific Second AD Supplemental Questionnaires: China Second Supplemental, India Second Supplemental, and Saudi Arabia Second Supplemental; and Memorandum, "Phone Call," dated October 15, 2024 (October 15, 2024, Memorandum).

⁴ See Petitioner's Letters, "Response to Supplemental Questions," dated October 7, 2024 (First General Issues Supplement); *see also* Country-Specific AD Supplemental Responses: China AD Supplement, Germany AD Supplement, India AD Supplement, and Saudi Arabia AD Supplement, dated October 8, 2024; Petitioners' Letters, "Petitioner's Response to Second Supplemental Questions," dated October 16, 2024 (Second General Issues Supplement); Country-Specific Second AD Supplemental Responses: Second China AD Supplement, Second India AD Supplement, and Second Saudi Arabia AD Supplement, dated October 16, 2024; and Petitioner's Letter, "Erratum to Response to Supplemental Questions," dated October 18, 2024 (Second General Issues Errata).

information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.⁵

Periods of Investigation

Because the Petitions were filed on September 30, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Germany, India, and Saudi Arabia LTFV investigations is July 1, 2023, through June 30, 2024. Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the China LTFV investigation is January 1, 2024, through June 30, 2024.

Scope of the Investigations

The product covered by these investigations is hexamine from China, Germany, India, and Saudi Arabia. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On October 2 and 11, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁶ On October 7 and 18, 2024, the petitioner provided clarifications and revised the scope.⁷ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁸ Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments

⁵ See section on "Determination of Industry Support for the Petitions," *infra*.

⁶ See First General Issues Questionnaire; *see also* Second General Issues Questionnaire; and October 15, 2024, Memorandum.

⁷ See First General Issues Supplement at 3–5; *see also* Second General Issues Supplement at 1–3 and Second General Issues Errata.

⁸ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

include factual information,⁹ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on November 12, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹⁰ Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on November 22, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹¹ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of hexamine to be reported in response to Commerce's AD questionnaires. This

information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe hexamine, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on November 12, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹² Any rebuttal comments must be filed by 5:00 p.m. ET on November 22, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets

this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹³ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁴

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹⁰ See 19 CFR 351.303(b)(1). The deadline for scope comments falls on November 10, 2024, which is a Sunday. Monday, November 11, 2024 is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 12, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹² See 19 CFR 351.303(b)(1). The deadline for comments on product characteristics falls on November 10, 2024, which is a Sunday. Monday, November 11, 2024 is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 12, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹³ See section 771(10) of the Act.

¹⁴ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

distinct from the scope of the investigations.¹⁵ Based on our analysis of the information submitted on the record, we have determined that hexamine, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁶

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023.¹⁷ The petitioner stated that there are no other known producers of hexamine in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.¹⁸ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁹

Our review of the data provided in the Petitions, the First General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.²⁰ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (e.g., polling).²¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like

product.²² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²³ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²⁴

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁵

The petitioner contends that the industry’s injured condition is illustrated by the significant volume and market share of subject imports; underselling and price depression and/or suppression; lost sales and revenues; and adverse impact on the domestic industry’s production, capacity utilization, U.S. shipments, employment variables, capital expenditures, and sales and profitability.²⁶ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²⁷

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of hexamine from China, Germany, India, and Saudi Arabia. The sources of data for the deductions and adjustments

relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For China, Germany, and Saudi Arabia, the petitioner based export price (EP) on the POI average unit values (AUVs) derived from official U.S. import statistics for imports of hexamine produced in and exported from each country.²⁸ For India, the petitioner based EP on a transaction-specific AUV (i.e., month- and port-specific AUV) derived from official import statistics and tied to ship manifest data.²⁹ For each country, the petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.³⁰

Normal Value³¹

For Germany and India, the petitioner based NV on home market pricing information obtained for hexamine produced in and sold, or offered for sale, in the respective countries during the applicable time period.³² For India, the petitioner provided information indicating that the prices for hexamine sold or offered for sale in India were below the COP. Therefore, for India, the petitioner based NV on constructed value.³³ For Saudi Arabia, the petitioner stated that it was unable to obtain home market or third country pricing information for hexamine to use as a basis for NV.³⁴ Therefore, for Saudi Arabia, the petitioner calculated NV based on CV.³⁵ For further discussion of CV for India and Saudi Arabia, see the section “Normal Value Based on Constructed Value,” below.

Commerce considers China to be an NME country.³⁶ In accordance with

¹⁵ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Checklists, “Antidumping Duty Investigation Initiation Checklists: Hexamethylenetetramine from the People’s Republic of China, Germany, India, and Saudi Arabia,” dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Hexamethylenetetramine from the People’s Republic of China, Germany, India, and Saudi Arabia (Attachment II). These checklists are on file electronically via ACCESS.

¹⁶ See Attachment II of the Country-Specific AD Initiation Checklists.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ For further discussion, see Attachment II of the Country-Specific AD Initiation Checklists.

²⁰ *Id.*

²¹ *Id.*; see also section 732(c)(4)(D) of the Act.

²² See Attachment II of the Country-Specific AD Initiation Checklists.

²³ *Id.*

²⁴ *Id.*

²⁵ For further information regarding negligibility and the injury allegation, see Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Hexamethylenetetramine from the People’s Republic of China, Germany, India, and Saudi Arabia (Attachment III).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Country-Specific AD Initiation Checklists.

²⁹ See India AD Initiation Checklist.

³⁰ See Country-Specific AD Initiation Checklists.

³¹ In accordance with section 773(b)(2) of the Act, for the India investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

³² See Country-Specific AD Initiation Checklists.

³³ *Id.*

³⁴ See Saudi Arabia AD Initiation Checklist.

³⁵ *Id.*

³⁶ See, e.g., *Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative*

section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of the China LTFV investigation. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that the Republic of Türkiye (Türkiye) is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.³⁷ The petitioner provided publicly available information from Türkiye to value all FOPs.³⁸ Based on the information provided by the petitioner, we believe it is appropriate to use Türkiye as a surrogate country for China to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used its own production experience and product-specific consumption rates as a surrogate to value Chinese manufacturers' FOPs.³⁹ Additionally, the petitioner calculated factory overhead, selling, general, and administrative (SG&A) expenses, and profit based on the experience of a Turkish producer of comparable merchandise.⁴⁰

Normal Value Based on Constructed Value

As noted above for India, the petitioner provided information indicating that the prices for hexamine sold or offered for sale in India were below the COP. Also as noted above, for Saudi Arabia, the petitioner stated that it was unable to obtain home market or third-country prices for hexamine to use as a basis for NV. Therefore, for India

and Saudi Arabia, the petitioner calculated NV based on CV.⁴¹

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, SG&A expenses, financial expenses, and profit.⁴² For India and Saudi Arabia, in calculating the cost of manufacturing, the petitioner relied on its own production experience and product-specific consumption rates, valued using publicly available information applicable to the respective countries, where applicable.⁴³ For India, in calculating SG&A expenses, financial expenses, and profit ratios, the petitioner relied on the fiscal year 2023 financial statements of a producer of identical merchandise domiciled in India.⁴⁴ For Saudi Arabia, in calculating SG&A expenses, financial expenses, and profit ratios, the petitioner relied on the fiscal year 2022 financial statements of a producer of identical merchandise domiciled in Saudi Arabia.⁴⁵

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of hexamine from China, Germany, India, and Saudi Arabia are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for hexamine for each of the countries covered by this initiation are as follows: (1) China—405.19 percent; (2) Germany—104.72 to 111.24 percent; (3) India—105.76 percent; (4) Saudi Arabia—292.32 percent.⁴⁶

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of hexamine from China, Germany, India, and Saudi Arabia are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

Germany and Saudi Arabia

In the Petitions, the petitioner identified two companies in Germany (Prefere Paraform GmbH & Co Kg and Fiberpip GFK Vertriebsgesellschaft), and two companies in Saudi Arabia (Methanol Chemicals Company and The Factory of Methanol Chemicals) as producers/exporters of hexamine.⁴⁷ We currently know of no additional producers/exporters of hexamine from Germany and Saudi Arabia. Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations from these countries (*i.e.*, the companies cited above).

India

In the Petitions, the petitioner identified four companies in India.⁴⁸ In the event that Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Following standard practice in LTFV investigations involving market economy countries, Commerce would normally select respondents based on U.S. Customs and Border Protection entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigations" in the Appendix. However, for these investigations, the main HTSUS subheading under which the subject merchandise would enter (2933.69.5000) is not limited to subject merchandise and therefore may also cover non-subject merchandise. Therefore, we cannot rely on CBP entry data in selecting respondents. Accordingly, for India, Commerce will send Q&V questionnaires to each producer and/or exporter for which there is complete address information on the record.

Commerce will post the Q&V questionnaire along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of hexamine from India that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and

Determination of Critical Circumstances, 88 FR 34485 (May 30, 2023).

³⁷ See China AD Initiation Checklist.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Country-Specific AD Initiation Checklists.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Petitions at Volume I (pages 10–11 and Exhibit I–8); see also First General Issues Supplement at 1–3 and Exhibit I–S1.

⁴⁸ See Petitions at Volume I (pages 10–11 and Exhibit I–8); see also First General Issues Supplement at 1–3 and Exhibit I–S1.

can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Indian producers/exporters no later than 5:00 p.m. ET on November 4, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

China

In the Petitions, the petitioner identified 10 companies in China as producers and/or exporters of hexamine.⁴⁹ Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on Q&V questionnaires in cases where Commerce has determined that the number of companies is large, and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 10 Chinese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which there is complete address information on the record.

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of hexamine from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/

exporters no later than 5:00 p.m. ET on November 4, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html>. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms

receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.⁵⁰

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of China, Germany, India, and Saudi Arabia via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of hexamine from China, Germany, India, and/or Saudi Arabia are materially injuring, or threatening material injury to, a U.S. industry.⁵¹ A negative ITC determination for any country will result in the investigation being terminated with respect to that country.⁵² Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the

⁵⁰ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving NME Countries," (April 5, 2005) at 6 (emphasis added), available on Commerce's website at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

⁵¹ See section 733(a) of the Act.

⁵² *Id.*

⁴⁹ See Petitions at Volume I (pages 10–11 and Exhibit I–8); see also First General Issues Supplement at 1.

information is being submitted⁵³ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁵⁴ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.*, a cost-based PMS allegation), the submission must be filed in accordance with the requirements of 19 CFR 351.416(b), and Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent’s initial section D questionnaire response.

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.*, a sales-based PMS allegation) must be filed within 10 days of submission of a respondent’s initial section B questionnaire response, in accordance

with 19 CFR 351.301(c)(2)(i) and 19 CFR 351.404(c)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁵⁵ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce’s regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁵⁶

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁵⁷ Parties must use the certification formats provided in 19 CFR 351.303(g).⁵⁸ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

⁵⁵ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁵⁶ See 19 CFR 351.302; see also, *e.g.*, *Time Limits Final Rule*.

⁵⁷ See section 782(b) of the Act.

⁵⁸ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.*, by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁵⁹

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 21, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The scope of the investigations covers hexamine in granular form, with a particle size of 5 millimeters or less, whether stabilized or unstabilized, whether or not blended, mixed, pulverized, or grounded with other products, containing 50 percent or more hexamine by weight.

Hexamine is the common name for hexamethylene tetramine (Chemical Abstract Service #100–97–0), and is also referred to as 1,3,5,7-tetraazaadamantanemethenamine; HMT; HMTA; 1,3,5,7-tetraazatricyclo {3.3.1.1^{3,7}} decane; 1,3,5,7-tetraazaadamantane; hexamethylenamine. Hexamine has the chemical formula C₆H₁₂N₄.

Granular hexamine that has been blended with other product(s) is included in this scope when the resulting mix contains 50 percent or more of hexamine by weight, regardless of whether it is blended with inert additives, co-reactants, or any additives that undergo self-condensation.

Subject merchandise includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, adding or removing additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the subject country.

Merchandise covered by the scope of the investigations can be classified in the Harmonized Tariff Schedule (HTSUS) of the United States under the subheading 2933.69.5000. The HTSUS subheading and Chemical Abstracts Service registry number are provided for convenience and customs purposes only; however, the written description of the scope is dispositive.

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⁵⁹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

⁵³ See 19 CFR 351.301(b).

⁵⁴ See 19 CFR 351.301(b)(2).

DEPARTMENT OF COMMERCE**International Trade Administration**

[A–570–182, A–552–845]

Thermoformed Molded Fiber Products From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 28, 2024.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Dennis McClure at (202) 482–4007 or (202) 482–5973, respectively (the People's Republic of China (China)) and Thomas Martin at (202) 482–3936 (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**The Petitions**

On October 8, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of thermoformed molded fiber products (molded fiber products) from China and Vietnam filed in proper form on behalf of Genera, Tellus Products, LLC, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (the USW), collectively, the American Molded Fiber Products Coalition (the petitioners), domestic producers of molded fiber products and a certified union, which represents workers engaged in the production of molded fiber products in the United States.¹ The AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of molded fiber products from China and Vietnam.²

Between October 11 and 22, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in supplemental questionnaires.³ The petitioners

responded to Commerce's supplemental questionnaires between October 16 and 24, 2024.⁴

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of molded fiber products from China and Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the molded fiber products industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (D) of the Act.⁵ Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested LTFV investigations.⁶

Periods of Investigation

Because the Petitions were filed on October 8, 2024, and because China and Vietnam are non-market economy (NME) countries, pursuant to 19 CFR 351.204(b)(1), the periods of investigation (POI) for the China and Vietnam LTFV investigations are April 1, 2024, through September 30, 2024.

Scope of the Investigations

The products covered by these investigations are molded fiber products from China and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On October 11 and 22, 2024, Commerce requested information and clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products

for which the domestic industry is seeking relief.⁷ On October 16 and 24, 2024, the petitioners provided clarifications and revised the scope.⁸ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁹ Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,¹⁰ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on November 18, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹¹ Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on November 29, 2024, which is the next business day after 10 calendar days from the initial comment deadline.¹²

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request

⁷ *See* First General Issues Questionnaire; *see also* October 22, 2024, Memorandum.

⁸ *See* First General Issues Supplement at 2–4; *see also* Second General Issues Supplement at 1–4.

⁹ *See* Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

¹⁰ *See* 19 CFR 351.102(b)(21) (defining “factual information”).

¹¹ *See* 19 CFR 351.303(b)(1). The deadline for scope comments falls on November 17, 2024, which is a Sunday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 18, 2024 (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

¹² *See* 19 CFR 351.303(b)(1). The deadline for rebuttal scope comments falls on November 28, 2024, which is a Federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 29, 2024 (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

¹ *See* Petitioners' Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties,” dated October 8, 2024 (Petitions).

² *Id.*

³ *See* Commerce's Letters, “Supplemental Questions,” dated October 11, 2024 (First General Issues Questionnaire); *see also* Country-Specific AD Supplemental Questionnaires: China Supplemental and Vietnam Supplemental, dated October 11, 2024; and Memorandum, “Phone Call,” dated October 22, 2024 (October 22, 2024, Memorandum).

⁴ *See* Petitioners' Letters, “Responses to Antidumping and Countervailing Duty Petition Supplemental Questionnaire,” dated October 16, 2024 (First General Issues Supplement); *see also* Country-Specific AD Supplemental Responses: China AD Supplement and Vietnam AD Supplement, dated October 16, 2024; and Petitioners' Letter, “Responses to Second Supplemental Questionnaire,” dated October 24, 2024 (Second General Issues Supplement).

⁵ Genera and Tellus Products, LLC are interested parties under section 771(9)(C) of the Act, while the USW is an interested party under section 771(9)(D) of the Act.

⁶ *See* section on “Determination of Industry Support for the Petitions,” *infra*.

permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹³ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of molded fiber products to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on November 18, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹⁴ Any rebuttal comments must be filed by 5:00 p.m. ET on November 29, 2024, which is the next business day after 10 calendar days from the initial comment deadline.¹⁵ All comments and

submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹⁶ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁷

November 28, 2024, which is a Federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 29, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹⁶ See section 771(10) of the Act.

¹⁷ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.*

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁸ Based on our analysis of the information submitted on the record, we have determined that molded fiber products, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁹

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of the Investigations," in the appendix to this notice. To establish industry support, the petitioners provided the 2023 total production of the domestic like product for the U.S. producers and workers that support the Petitions and compared this to the estimated total U.S. production of the domestic like product for the entire U.S. molded fiber products industry.²⁰ We relied on data provided by the petitioners for purposes of measuring industry support.²¹

On October 21, 2024, we received timely filed comments on industry support from Eco-Products, PBC, a U.S. importer of molded fiber products.²² On

v. United States, 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁸ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Checklists, "Antidumping Duty Investigation Initiation Checklists: Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam," dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam (Attachment II). These checklists are on file electronically via ACCESS.

¹⁹ See Attachment II of the Country-Specific AD Initiation Checklists.

²⁰ *Id.*

²¹ For further discussion, see Attachment II of the Country-Specific AD Initiation Checklists.

²² See Eco-Products' Letter, "Comments on Domestic Industry Support," dated October 21, 2024.

¹³ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹⁴ See 19 CFR 351.303(b)(1). The deadline for comments on product characteristics falls on November 17, 2024, which is a Sunday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 18, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹⁵ See 19 CFR 351.303(b)(1). The deadline for rebuttal product characteristics comments falls on

October 23, 2024, the petitioners responded to the comments from Eco-Products, PBC in a timely filed rebuttal submission.²³

Our review of the data provided in the Petitions, the First General Issues Supplement, Petitioners' Rebuttal, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.²⁴ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (e.g., polling).²⁵ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.²⁶ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁷ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²⁸

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁹

The petitioners contend that the industry's injured condition is illustrated by the significant and increasing volume and market share of subject imports; underselling and price depression and/or suppression; lost sales and revenues; and adverse impact on the domestic industry's production, capacity utilization, employment variables, and financial performance.³⁰ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³¹

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of molded fiber products from China and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For China, the petitioners based export price (EP) on a price quote for molded fiber products produced in and exported from China and sold or offered for sale in the U.S. market during the POI.³² For Vietnam, the petitioners based EP on transaction-specific average unit values (AUVs) (i.e., month- and port-specific AUVs) derived from official import statistics and tied to ship manifest data.³³ For each country, the petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.³⁴

Normal Value

Commerce considers China and Vietnam to be NME countries.³⁵ In

Duty Petitions Covering Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam (Attachment III).

³⁰ *Id.*

³¹ *Id.*

³² See China AD Initiation Checklist.

³³ See Vietnam AD Initiation Checklist.

³⁴ See Country-Specific AD Initiation Checklists.

³⁵ See, e.g., *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-*

than-Fair Value and Final Affirmative Determination of Critical Circumstances, 88 FR 34485 (May 30, 2023); see also, e.g., *Raw Honey from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review*, 89 FR 64411 (August 7, 2024), and accompanying NME Analysis Memorandum at 5.

accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China and Vietnam as NME countries for purposes of the initiation of the China and Vietnam LTFV investigations. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioners claim that Malaysia is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.³⁶ The petitioners provided publicly available information from Malaysia to value all FOPs except labor.³⁷ Consistent with Commerce's recent practice in cases involving Malaysia as a surrogate country,³⁸ to value labor, the petitioners provided data from another surrogate country, the Republic of Türkiye (Türkiye).³⁹ Based on the information provided by the petitioners, we believe it is appropriate to use Malaysia as a surrogate country for China to value all FOPs except labor and Türkiye to value labor for initiation purposes.

The petitioners claim that Indonesia is an appropriate surrogate country for Vietnam because it is a market economy that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise.⁴⁰ The petitioners provided publicly available information from Indonesia to value all FOPs.⁴¹ Based on the information provided by the petitioners, we believe it is appropriate to use Indonesia as a surrogate country for Vietnam to value all FOPs for initiation purposes.

³⁶ See China AD Initiation Checklist.

³⁷ *Id.*

³⁸ See, e.g., *Certain Collated Steel Staples from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2021–2022*, 88 FR 85242 (December 7, 2023), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; and *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 88 FR 15671 (March 14, 2023), and accompanying IDM at Comment 2.

³⁹ See China AD Initiation Checklist.

⁴⁰ See Vietnam AD Initiation Checklist.

⁴¹ *Id.*

²³ See Petitioners' Letter, "Rebuttal Comments on Domestic Industry Support," dated October 23, 2024 (Petitioners' Rebuttal).

²⁴ See Attachment II of the Country-Specific AD Initiation Checklists.

²⁵ *Id.*; see also section 732(c)(4)(D) of the Act.

²⁶ See Attachment II of the Country-Specific AD Initiation Checklists.

²⁷ *Id.*

²⁸ *Id.*

²⁹ For further information regarding negligibility and the injury allegation, see Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determinations.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese and Vietnamese producers/exporters was not reasonably available, the petitioners used the production experience and product-specific consumption rates of a U.S. producer of molded fiber products as a surrogate to value Chinese and Vietnamese manufacturers' FOPs.⁴² Additionally, the petitioners calculated factory overhead, selling, general, and administrative expenses, and profit based on the experience of Malaysian and Indonesian producers of comparable merchandise for China and Vietnam, respectively.⁴³

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of molded fiber products from China and Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for molded fiber products for each of the countries covered by this initiation are as follows: (1) China—477.97 percent; and (2) Vietnam—231.73 to 260.56 percent.⁴⁴

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of molded fiber products from China and Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

In the Petitions, the petitioners identified 63 companies in China and eight companies in Vietnam as producers and/or exporters of molded

fiber products.⁴⁵ Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on quantity and value (Q&V) questionnaires in cases where Commerce has determined that the number of companies is large, and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 63 Chinese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to the largest producers and/or exporters in China that are identified in the U.S. Customs and Border Protection POI entry data for which there is complete address information on the record.⁴⁶ For Vietnam, because there are eight producers and/or exporters identified in the Petitions Commerce will issue a Q&V questionnaire to each potential respondent in Vietnam for which there is complete address information on the record.

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of molded fiber products from China and Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese and Vietnamese producers/exporters no later than 5:00 p.m. ET on November 12, 2024, which is the next business day after two weeks from the signature date of this notice.⁴⁷ All Q&V questionnaire responses must be filed

electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html>. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China and Vietnam submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is

⁴⁵ See Petitions at Volume I (page 15 and Exhibit I-15).

⁴⁶ See Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated October 25, 2024.

⁴⁷ See 19 CFR 351.303(b)(1). The deadline for Q&V questionnaire responses falls on November 11, 2024, which is a Federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept responses to the Q&V questionnaire filed by 5:00 p.m. ET on November 12, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

⁴² See Country-Specific AD Initiation Checklists.

⁴³ *Id.*

⁴⁴ *Id.*

referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.⁴⁸

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of China and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of molded fiber products from China and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.⁴⁹ A negative ITC determination for any country will result in the investigation being terminated with respect to that country.⁵⁰ Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). Section 351.301(b) of Commerce’s regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁵¹ and, if the information is submitted to rebut,

clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁵² Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁵³ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce’s regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁵⁴

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁵⁵ Parties must use the certification

formats provided in 19 CFR 351.303(g).⁵⁶ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁵⁷

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 28, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to these investigations consists of thermoformed molded fiber products regardless of shape, form, function, fiber source, or finish. Thermoformed molded fiber products are formed with cellulose fibers, thermoformed using one or more heated molds, and dried/cured in the mold.

Thermoformed molded fiber products include, but are not limited to, plates, bowls, clamshells, trays, lids, food or foodservice contact packaging, and consumer or other product packaging.

Thermoformed molded fiber products are relatively dense, with a typical fiber density above 0.5 grams per cubic centimeter, and are generally characterized by relatively smooth surfaces. They may be derived from any virgin or recycled cellulose fiber source (including, but not limited to, those sourced from wood, woody crops, agricultural crops/byproducts/residue, and agricultural/industrial/other waste). They may have any weight, shape, dimensionality, design, or size, and may be bleached, unbleached, dyed, colored, or printed. They may include ingredients, additives, or chemistries to enhance functionality including, but not limited to, anti-microbial, anti-fungal, anti-bacterial, heat/flame resistant, hydrophobic, oleophobic, absorbent, or adsorbent.

⁴⁸ See Enforcement and Compliance’s Policy Bulletin No. 05.1, regarding, “Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving NME Countries,” (April 5, 2005) at 6 (emphasis added), available on Commerce’s website at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

⁴⁹ See section 733(a) of the Act.

⁵⁰ *Id.*

⁵¹ See 19 CFR 351.301(b).

⁵² See 19 CFR 351.301(b)(2).

⁵³ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁵⁴ See 19 CFR 351.302; see also, e.g., *Time Limits Final Rule*.

⁵⁵ See section 782(b) of the Act.

⁵⁶ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

⁵⁷ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

Thermoformed molded fiber products may also be subject to other processing or treatments, including, but not limited to, hot or after pressing, die-cutting, punching, trimming, padding, perforating, printing, labeling, dyeing, coloring, coating, laminating, embossing, debossing, repacking, or denesting. Thermoformed molded fiber products subject to these investigations may also have additional design features, including, but not limited to, tab closures, venting, channeling, or stiffening.

Thermoformed molded fiber products remain covered by the scope of these investigations whether the subject product is encased by exterior packaging or whether the subject product forms the outer packaging for non-subject products. They also remain covered by the scope of these investigations whether imported alone, or in any combination of subject and non-subject merchandise (e.g., a lid or cover of any type packaged with a molded fiber bowl, addition of any items to make the thermoformed molded fiber packaging suitable for end-use such as absorbent pads). When thermoformed molded fiber products are imported in combination with non-subject merchandise, only the thermoformed molded fiber products are subject merchandise.

Excluded from the scope of these investigations are thermoformed molded fiber products imported as packaging material that enclose and/or surround non-subject merchandise prepackaged for final sale upon importation into the United States (e.g., molded fiber packaging surrounding a cellular phone).

Thermoformed molded fiber products include thermoformed molded fiber products matching the above description that have been finished, packaged, or otherwise processed in a third country by performing finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the thermoformed molded fiber products. Examples of finishing, packaging, or other processing in a third country that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the thermoformed molded fiber products include, but are not limited to, hot or after pressing, die-cutting, punching, trimming, padding, perforating, printing, labeling, dyeing, coloring, coating, laminating, embossing, debossing, repacking, or denesting.

Thermoformed molded fiber products are classified under subheadings 7823.70.0020 and 4823.70.0040, Harmonized Tariff Schedule of the United States (HTSUS). Imports may also be classified under subheadings 4823.61.0020, 4823.61.0040, 4823.69.0020, 4823.69.0040, 4823.90.1000, HTSUS. References to the HTSUS classification are provided for convenience and customs purposes, and the written description of the merchandise under investigation is dispositive.

[FR Doc. 2024-25562 Filed 11-1-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-183, C-552-846]

Thermoformed Molded Fiber Products From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 28, 2024.

FOR FURTHER INFORMATION CONTACT: Ashley Cossaart at (202) 482-0462 (the People's Republic of China (China)) and Zachary Shaykin at (202) 482-2638 (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On October 8, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of thermoformed molded fiber products (molded fiber products) from China and Vietnam filed in proper form on behalf of Genera, Tellus Products, LLC, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (the USW), collectively, the American Molded Fiber Products Coalition (the petitioners), domestic producers of molded fiber products and a certified union, which represents workers engaged in the production of molded fiber products in the United States.¹ The CVD Petitions were accompanied by antidumping duty (AD) petitions concerning imports of molded fiber products from China and Vietnam.²

Between October 11 and 22, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions.³ Between October 16 and 24, 2024, the petitioners filed

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated October 8, 2024 (Petitions).

² *Id.*

³ See Commerce's Letters, "Supplemental Questions," dated October 11, 2024 (First General Issues Questionnaire), *see also* Country-Specific CVD Supplemental Questionnaires: China Supplemental and Vietnam Supplemental, dated October 11, 2024; and Memorandum, "Phone Call," dated October 22, 2024 (October 22, 2024, Memorandum).

timely responses to these requests for additional information.⁴

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of China (GOC) and the Government of Vietnam (GOV) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of molded fiber products from China and Vietnam, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing molded fiber products in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (D) of the Act.⁵ Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.⁶

Periods of Investigation

Because the Petitions were filed on October 8, 2024, the periods of investigation for the China and Vietnam CVD investigations are January 1, 2023, through December 31, 2023.⁷

Scope of the Investigations

The products covered by these investigations are molded fiber products from China and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On October 11 and 22, 2024, Commerce requested information and

⁴ See Petitioners' Letters, "Responses to Antidumping and Countervailing Duty Petition Supplemental Questionnaire," dated October 16, 2024 (First General Issues Supplement); *see also* Country-Specific CVD Supplemental Responses: China CVD Supplement and India CVD Supplement, dated October 16, 2024; and Petitioners' Letter, "Responses to Second Supplemental Questionnaire," dated October 23, 2024 (Second General Issues Supplement).

⁵ Genera and Tellus Products, LLC are interested parties under section 771(9)(C) of the Act, while the USW is an interested party under section 771(9)(D) of the Act.

⁶ See section on "Determination of Industry Support for the Petitions," *infra*.

⁷ See 19 CFR 351.204(b)(2).

clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁸ On October 16 and 24, 2024, the petitioners provided clarifications and revised the scope.⁹ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).¹⁰ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to public information.¹¹ To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on November 18, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹² Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 29, 2024, which is the next business day after 10 calendar days from the initial comment deadline.¹³

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the

scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹⁴ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.¹⁵ Commerce held consultations with the GOC on October 16, 2024,¹⁶ and the GOV on October 25, 2024.¹⁷

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product,

Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹⁸ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁹

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.²⁰ Based on our analysis

⁸ See First General Issues Questionnaire; *see also* October 22, 2024, Memorandum.

⁹ See First General Issues Supplement at 2–4; *see also* Second General Issues Supplement at 2–4.

¹⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹¹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹² See 19 CFR 351.303(b)(1). The deadline for scope comments falls on November 17, 2024, which is a Sunday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 18, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹³ See 19 CFR 351.303(b)(1). The deadline for rebuttal scope comments falls on November 28, 2024, which is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 29, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.")

¹⁴ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹⁵ See Commerce's Letters, "Invitation for Consultation to Discuss the Countervailing Duty Petition," dated October 8, 2024.

¹⁶ See Memorandum, "Consultations with the Government of the People's Republic of China," dated October 16, 2024.

¹⁷ See Memorandum, "Consultations with the Government of the Socialist Republic of Vietnam," dated October 25, 2024.

¹⁸ See section 771(10) of the Act.

¹⁹ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

²⁰ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Checklists, "Countervailing Duty Investigation Initiation Checklists: Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam," dated concurrently with, and hereby adopted by, this notice (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Thermoformed Molded Fiber Products from the People's Republic of China and the Socialist Republic of Vietnam (Attachment II).

of the information submitted on the record, we have determined that molded fiber products, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.²¹

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice. To establish industry support, the petitioners provided the 2023 total production of the domestic like product for the U.S. producers and workers that support the Petitions and compared this to the estimated total U.S. production of the domestic like product for the entire U.S. molded fiber products industry.²² We relied on data provided by the petitioners for purposes of measuring industry support.²³

On October 21, 2024, we received timely filed comments on industry support from Eco-Products, PBC, a U.S. importer of molded fiber products.²⁴ On October 23, 2024, the petitioners responded to the comments from Eco-Products, PBC in a timely filed rebuttal submission.²⁵

Our review of the data provided in the Petitions, the First General Issues Supplement, Petitioners’ Rebuttal, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.²⁶ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁷ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or

workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.²⁸ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁹ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.³⁰

Injury Test

Because China and Vietnam are “Subsidies Agreement Countries” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China and/or Vietnam materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports from China and Vietnam individually exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³¹

The petitioners contend that the industry’s injured condition is illustrated by the significant and increasing volume and market share of subject imports; underselling and price depression and/or suppression; lost sales and revenues; and adverse impact on the domestic industry’s production, capacity utilization, employment variables, and financial performance.³² We assessed the allegations and supporting evidence regarding material

injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³³

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of molded fiber products from China and Vietnam benefit from countervailable subsidies conferred by the GOC and GOV, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

China

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 29 of the 30 programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Vietnam

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 26 programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the Vietnam CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioners identified 63 companies in China and eight companies in Vietnam as producers and/or exporters of molded fiber products.³⁴ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based on Commerce’s resources, Commerce normally selects mandatory

These checklists are on file electronically via ACCESS.

²¹ See Attachment II of the Country-Specific CVD Initiation Checklists.

²² *Id.*

²³ For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

²⁴ See Eco-Products’ Letter, “Comments on Domestic Industry Support,” dated October 21, 2024.

²⁵ See Petitioners’ Letter, “Rebuttal Comments on Domestic Industry Support,” dated October 23, 2024 (Petitioners’ Rebuttal).

²⁶ For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

²⁷ *Id.*; *see also* section 702(c)(4)(D) of the Act.

²⁸ See Attachment II of the Country-Specific CVD Initiation Checklists.

²⁹ *Id.*

³⁰ *Id.*

³¹ For further information regarding negligibility and the injury allegation, *see* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Thermoformed Molded Fiber Products from the People’s Republic of China and the Socialist Republic of Vietnam (Attachment III).

³² *Id.*

³³ *Id.*

³⁴ See Petitions at Volume I (page 15 and Exhibit I–15).

respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the “Scope of the Investigations” in the appendix. However, for these investigations, the main HTSUS subheadings under which the subject merchandise would enter (4823.70.0020 and 4823.70.0040) are not limited to subject merchandise and therefore may also cover non-subject merchandise. Therefore, we cannot rely on CBP entry data in selecting respondents. Notwithstanding the decision to rely on quantity and value (Q&V) questionnaires for respondent selection, due to the number of Chinese producers and/or exporters identified in the Petitions, Commerce has determined to limit the number of Q&V questionnaires that it will issue to Chinese producers and/or exporters based on CBP data for molded fiber products from China during the POI under the appropriate HTSUS subheadings listed in the “Scope of the Investigations,” in the appendix.³⁵ Accordingly, for China, Commerce will issue Q&V questionnaires to the largest producers and/or exporters that are identified in the CBP entry data for which there is complete address information on the record. For Vietnam, because there are eight companies identified, Commerce will issue Q&V questionnaires to each producer and/or exporter in Vietnam for which there is complete address information on the record.

Commerce will also post the Q&V questionnaire along with filing instructions on Commerce’s website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of molded fiber products from China and Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce’s website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese and Vietnamese producers/exporters no later than 5:00 p.m. ET on November 12, 2024, which is the next business day after two weeks from the signature date of this notice.³⁶ All Q&V

questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce’s website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the Governments via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of molded fiber products from China and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.³⁷ A negative ITC determination for any country will result in the investigation being terminated with respect to that country.³⁸ Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce’s regulations requires any party, when submitting factual

information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁹ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴⁰ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴¹ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce’s regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁴²

Certification Requirements

Any party submitting factual information in an AD or CVD

³⁵ See Memorandum, “Release of U.S. Customs and Border Protection Entry Data,” dated October 25, 2024.

³⁶ See 19 CFR 351.303(b)(1). The deadline for Q&V questionnaire responses falls on November 11, 2024, which is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept responses to the Q&V questionnaire filed by 5:00 p.m. ET on November 12, 2024 (“For both electronically filed and manually filed documents,

if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

³⁷ See section 703(a)(1) of the Act.

³⁸ *Id.*

³⁹ See 19 CFR 351.301(b).

⁴⁰ See 19 CFR 351.301(b)(2).

⁴¹ See 19 CFR 351.302.

⁴² See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

proceeding must certify to the accuracy and completeness of that information.⁴³ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁴ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁵

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 28, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to these investigations consists of thermoformed molded fiber products regardless of shape, form, function, fiber source, or finish. Thermoformed molded fiber products are formed with cellulose fibers, thermoformed using one or more heated molds, and dried/cured in the mold.

Thermoformed molded fiber products include, but are not limited to, plates, bowls, clamshells, trays, lids, food or foodservice contact packaging, and consumer or other product packaging.

Thermoformed molded fiber products are relatively dense, with a typical fiber density above 0.5 grams per cubic centimeter, and are generally characterized by relatively smooth surfaces. They may be derived from any virgin or recycled cellulose fiber source (including, but not limited to, those sourced from wood, woody crops, agricultural crops/byproducts/residue, and agricultural/industrial/other waste). They may have any weight, shape, dimensionality, design, or size, and may be bleached, unbleached, dyed, colored, or printed. They may include

ingredients, additives, or chemistries to enhance functionality including, but not limited to, anti-microbial, anti-fungal, anti-bacterial, heat/flame resistant, hydrophobic, oleophobic, absorbent, or adsorbent. Thermoformed molded fiber products may also be subject to other processing or treatments, including, but not limited to, hot or after pressing, die-cutting, punching, trimming, padding, perforating, printing, labeling, dyeing, coloring, coating, laminating, embossing, debossing, repacking, or denesting. Thermoformed molded fiber products subject to these investigations may also have additional design features, including, but not limited to, tab closures, venting, channeling, or stiffening.

Thermoformed molded fiber products remain covered by the scope of these investigations whether the subject product is encased by exterior packaging or whether the subject product forms the outer packaging for non-subject products. They also remain covered by the scope of these investigations whether imported alone, or in any combination of subject and non-subject merchandise (e.g., a lid or cover of any type packaged with a molded fiber bowl, addition of any items to make the thermoformed molded fiber packaging suitable for end-use such as absorbent pads). When thermoformed molded fiber products are imported in combination with non-subject merchandise, only the thermoformed molded fiber products are subject merchandise.

Excluded from the scope of these investigations are thermoformed molded fiber products imported as packaging material that enclose and/or surround non-subject merchandise prepackaged for final sale upon importation into the United States (e.g., molded fiber packaging surrounding a cellular phone).

Thermoformed molded fiber products include thermoformed molded fiber products matching the above description that have been finished, packaged, or otherwise processed in a third country by performing finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the thermoformed molded fiber products. Examples of finishing, packaging, or other processing in a third country that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the thermoformed molded fiber products include, but are not limited to, hot or after pressing, die-cutting, punching, trimming, padding, perforating, printing, labeling, dyeing, coloring, coating, laminating, embossing, debossing, repacking, or denesting.

Thermoformed molded fiber products are classified under subheadings 7823.70.0020 and 4823.70.0040, Harmonized Tariff Schedule of the United States (HTSUS). Imports may also be classified under subheadings 4823.61.0020, 4823.61.0040, 4823.69.0020, 4823.69.0040, 4823.90.1000, HTSUS. References to the HTSUS classification are provided for convenience and customs purposes, and the written

description of the merchandise under investigation is dispositive.

[FR Doc. 2024–25561 Filed 11–1–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–181, C–533–933]

Hexamethylenetetramine From the People's Republic of China and India: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Eliza Delong at 202–482–3878 (the People's Republic of China (China)), and Nicholas Czajkowski at 202–482–1395 (India), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 30, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of hexamethylenetetramine (hexamine) from China and India filed in proper form on behalf of Bakelite LLC (the petitioner).¹ The CVD Petitions were accompanied by antidumping duty (AD) petitions concerning imports of hexamine from China, Germany, India, and Saudi Arabia.²

Between October 2 and 11, Commerce requested supplemental information pertaining to certain aspects of the Petitions.³ Between October 7 and 18, 2024, the petitioner filed timely responses to these requests for additional information.⁴

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated September 30, 2024 (Petitions).

² *Id.*

³ See Commerce's Letters, "Supplemental Questions," dated October 2, 2024 (First General Issues Questionnaire), *see also* Country-Specific CVD Supplemental Questionnaires: China Supplemental and India Supplemental, dated October 2, 2024; Commerce's Letter, "Second Supplemental Questions," dated October 11, 2024 (Second General Issues Questionnaire); and Memorandum, "Phone Call," dated October 15, 2024 (October 15, 2024, Memorandum).

⁴ See Petitioner's Letters, "Response to Supplemental Questions," dated October 7, 2024 (First General Issues Supplement); *see also* Country-Specific CVD Supplemental Responses:

⁴³ See section 782(b) of the Act.

⁴⁴ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴⁵ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC), and the Government of India (GOI) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of hexamine from China and India, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing hexamine in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.⁵

Periods of Investigation

Because the Petitions were filed on September 30, 2024, the periods of investigation for the China and India CVD investigations are January 1, 2023, through December 31, 2023.⁶

Scope of the Investigations

The merchandise covered by these investigations is hexamine from China and India. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On October 2 and 11, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁷ During October 7 through 18, 2024, the petitioner provided clarifications and revised the

scope.⁸ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁹ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to public information.¹⁰ To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on November 12, 2024, which is the next business day after 20 calendar days from the signature date of this notice.¹¹ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 22, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹² An

electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.¹³ Commerce held consultations with the GOI on October 10, 2024,¹⁴ and the GOC on October 16, 2024.¹⁵

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International

China CVD Supplement and India CVD Supplement, dated October 7 and 8, 2024; Petitioner's Letter, "Petitioner's Response to Second Supplemental Questions," dated October 17, 2024 (Second General Issues Supplement), and Petitioner's Letter, "Erratum to Response to Supplemental Questions," dated October 18, 2024 (Second General Issues Errata).

⁵ See section on "Determination of Industry Support for the Petitions," *infra*.

⁶ See 19 CFR 351.204(b)(2).

⁷ See First General Issues Questionnaire; *see also* Second General Issues Questionnaire; and October 15, 2024, Memorandum.

⁸ See First General Issues Supplement at 3–5; *see also* Second General Issues Supplement at 1–3 and Second General Issues Errata.

⁹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁰ See 19 CFR 351.102(b)(21) (defining "factual information").

¹¹ See 19 CFR 351.303(b)(1). The deadline for scope comments falls on November 10, 2024, which is a Sunday. Monday, November 11, 2024 is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 12, 2024 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹² See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures*;

Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011); *see also* *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹³ See Commerce's Letters, "Invitation for Consultation to Discuss the Countervailing Duty Petition," dated September 5, 2024, and September 6, 2024.

¹⁴ See Memorandum, "Consultations with the Government of India," dated October 10, 2024 (GOI Consultations Memorandum).

¹⁵ See Memorandum, "Consultations with the Government of China," dated October 16, 2024 (GOC Consultations Memorandum).

Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹⁶ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁷

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁸ Based on our analysis of the information submitted on the record, we have determined that hexamine, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁹

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this

notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023.²⁰ The petitioner stated that there are no other known producers of hexamine in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.²¹ We relied on data provided by the petitioner for purposes of measuring industry support.²²

Our review of the data provided in the Petitions, the First General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.²³ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁴ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.²⁵ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁶ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²⁷

Injury Test

Because China and India are “Subsidies Agreement Countries” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China and/or India

materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from China and India individually exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁸

The petitioner contends that the industry’s injured condition is illustrated by the significant volume and market share of subject imports; underselling and price depression and/or suppression; lost sales and revenues; and adverse impact on the domestic industry’s production, capacity utilization, U.S. shipments, employment variables, capital expenditures, and sales and profitability.²⁹ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³⁰

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of hexamine from China and India benefit from countervailable subsidies conferred by the GOC and GOI, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

China

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 27 of the 28 programs alleged by the petitioner. For a full discussion of the basis for our decision

¹⁶ See section 771(10) of the Act.

¹⁷ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁸ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Checklists, “Countervailing Duty Investigation Initiation Checklists: Hexamethylenetetramine from the People’s Republic of China, Germany, India, and Saudi Arabia,” dated concurrently with, and hereby adopted by, this notice (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Hexamethylenetetramine from the People’s Republic of China, Germany, India, and Saudi Arabia (Attachment II). These checklists are on file electronically via ACCESS.

¹⁹ See Attachment II of the Country-Specific CVD Initiation Checklists.

²⁰ *Id.*

²¹ *Id.*

²² For further discussion, see Attachment II of the Country-Specific AD Initiation Checklists.

²³ For further discussion, see Attachment II of the Country-Specific CVD Initiation Checklists.

²⁴ *Id.*; see also section 702(c)(4)(D) of the Act.

²⁵ See Attachment II of the Country-Specific CVD Initiation Checklists.

²⁶ *Id.*

²⁷ *Id.*

²⁸ For further information regarding negligibility and the injury allegation, see Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Hexamethylenetetramine from the People’s Republic of China, Germany, India, and Saudi Arabia (Attachment III).

²⁹ *Id.*

³⁰ *Id.*

to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 18 of the 18 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioner identified 10 companies in China and four companies in India as producers and/or exporters of hexamine.³¹ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based on Commerce's resources, Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigations" in the appendix. However, for these investigations, the main HTSUS subheading under which the subject merchandise would enter (2933.69.5000) is not limited to subject merchandise and therefore may also cover non-subject merchandise. Therefore, we cannot rely on CBP entry data in selecting respondents. Accordingly, for China and India, Commerce will send Q&V questionnaires to each producer and/or exporter for which there is complete address information on the record.

Commerce will post the Q&V questionnaire along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of hexamine from China and India that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the

Q&V questionnaire must be submitted by the relevant Chinese and Indian producers/exporters no later than 5:00 p.m. ET on November 4, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOC and GOI via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of hexamine from China and/or India are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC determination for any country will result in the investigation being terminated with respect to that country.³³ Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b)

of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.³⁶ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.³⁷

³⁴ See 19 CFR 351.301(b).

³⁵ See 19 CFR 351.301(b)(2).

³⁶ See 19 CFR 351.302.

³⁷ See 19 CFR 351.301; *see also* *Extension of Time Limits: Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

³¹ See Petitions at Volume I (pages 10–11 and Exhibits I–8); *see also* First General Issues Supplement at 1–2 and Exhibit I–S1.

³² See section 703(a)(1) of the Act.

³³ *Id.*

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁸ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁹ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁰

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 21, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of the investigations covers hexamine in granular form, with a particle size of 5 millimeters or less, whether stabilized or unstabilized, whether or not blended, mixed, pulverized, or grounded with other products, containing 50 percent or more hexamine by weight.

Hexamine is the common name for hexamethylene tetramine (Chemical Abstract Service #100-97-0), and is also referred to as 1,3,5,7-tetraazaadamantanemethenamine; HMT; HMTA; 1,3,5,7-tetraazatricyclo {3.3.1.1^{3,7}} decane; 1,3,5,7-tetraaza adamantane; hexamethylenamine. Hexamine has the chemical formula C₆H₁₂N₄.

Granular hexamine that has been blended with other product(s) is included in this scope when the resulting mix contains 50 percent or more of hexamine by weight, regardless of whether it is blended with inert additives, co-reactants, or any additives that undergo self-condensation.

Subject merchandise includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, adding or removing additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the subject country.

Merchandise covered by the scope of the investigations can be classified in the Harmonized Tariff Schedule (HTSUS) of the United States under the subheading 2933.69.5000. The HTSUS subheading and Chemical Abstracts Service registry number are provided for convenience and customs purposes only; however, the written description of the scope is dispositive.

[FR Doc. 2024-25524 Filed 11-1-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will hold a virtual briefing session. This session will be held via web conference on Thursday, November 21, 2024, from 2 p.m.–4:30 p.m. eastern time. The primary purpose of this informational briefing is to have invited guests brief the full Committee on topics of interest related to AI in Hardware and AI and Energy. The briefings are from outside subject matter experts to the full Committee. The final agenda will be posted on the NIST website at <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac>.

DATES: The NAIAC will meet on Thursday, November 21, 2024 from 2 p.m.–4:30 p.m. eastern time.

ADDRESSES: The meeting will be held via webinar. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Cheryl L. Gendron, Designated Federal Officer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975-2785, Email address: cheryl.gendron@nist.gov. Please direct any inquiries to the committee at naiac@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 NAIAC will meet virtually as set forth in the **DATES** section of this notice. The meetings will be open to the public.

The NAIAC is authorized by section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116-283), in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. 1001 *et seq.* The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at ai.gov/naiac/.

The primary purpose of this meeting is to have invited guests brief the full Committee on topics of interest related to AI in Hardware and AI and Energy. The briefings, organized by the NAIAC's AI Futures-Preparedness, Opportunities, and Competitiveness Working Group, and follow-up discussion will address the following: As advancements in AI hardware fuel unprecedented growth in applications, they also raise critical questions about energy use and sustainability. These two briefings will delve into the trajectory of AI hardware development for both pre-training and inference, examining the driving forces behind these innovations and the evolving energy supply and demand landscape in response to the burgeoning AI sector. Through these briefings, we aim to identify valid sustainability concerns and explore policy recommendations that can foster AI innovation while promoting a more sustainable energy future. Additional information, including the speaker names, will be available on the agenda, which will be posted online. Members of the public interested in reviewing the agenda in advance and viewing the sessions are encouraged to visit <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac> for session details and to register to watch virtually. The agenda items may change to accommodate NAIAC business. The final agenda will be posted on the NIST website at <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac>.

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to submit comments in advance of the event. Please note that all comments submitted via email will be treated as public documents and will be

³⁸ See section 782(b) of the Act.

³⁹ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (Final Rule); see also frequently asked questions regarding the Final Rule, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴⁰ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

made available for public inspection. For consideration prior to the meeting, all comments must be submitted via email with the subject line "Thursday, November 21, 2024, NAIAC Public Meeting" to naiac@nist.gov by 5 p.m. eastern time, November 19, 2024. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals. Members of the public may also submit written comments to the NAIAC at any time.

Virtual Meeting Registration

Instructions: The meetings will be broadcast via web conference. Requests for special accommodations may be made by emailing cheryl.gendron@nist.gov. Registration is required to view the web conference. Instructions on how to register will be made available at <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac>. Registration will remain open until the conclusion of the meetings.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–25571 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE436]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Highly Migratory Species (HMS) Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, November 21, 2024, from 3 p.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at www.mafmc.org/council-events.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's HMS Committee will meet to review and provide comments on the NOAA HMS Proposed Rule for Electronic Reporting Requirements for Atlantic HMS. This action proposes to modify and/or expand reporting requirements for Atlantic HMS, including reporting by commercial, for-hire, and private recreational vessel owners and dealers. The proposed rule includes: (1) Requiring vessel owners, who currently report in existing paper commercial logbooks (*i.e.*, Atlantic HMS logbook and the Southeast Coastal Fisheries Logbook Program), to report electronically; (2) Implementing new logbook requirements for vessel owners holding HMS Charter/Headboat permits, Atlantic Tunas General category permits, Atlantic Tunas Harpoon category permits, and/or Swordfish General Commercial permits; (3) Modifying reporting options for private recreational vessel owners holding HMS Angling permits; (4) Requiring HMS dealers to report individual fish weights for additional species (*i.e.*, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and pelagic sharks); (5) Requiring electronic HMS reporting for all permit holders, using systems or applications approved by NOAA Fisheries for Atlantic HMS; and (6) Technical changes to clarify certain HMS regulations.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 30, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–25589 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE433]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a hybrid meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, November 20, 2024 at 9 a.m.

ADDRESSES:

Meeting address: This meeting will be held at Hilton Garden Inn, Boston Logan, 100 Boardman Street, Boston, MA 02110, Phone (617) 567–5678.

Webinar registration URL information: <https://nefmc-org.zoom.us/j/jcocOqtqD8qH9Z2sXIMGe2LNCkb5NmQPHSH>.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel will meet to discuss: Framework 39 (FW39): Review specifications alternatives in FW39 and select final preferred alternatives. FW39 will set specifications including the overfishing limit (OFL), acceptable biological catch/annual catch limit (ABC/ACLs), days-at-sea (DAS), access area allocations for Limited Access (LA) vessels, quota and access area trip allocation to the Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) component, Total Allowable Landings (TAL) for the Northern Gulf of Maine (NGOM) management area, a target-Total Allowable Catch (TAC) for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2025, and default specifications for fishing year 2026. This

action also considers modifying the seasonal bycatch closure of Area II to improve yield and reduce impacts to northern windowpane flounder and modifying the possession prohibition for NGOM-permitted scallop vessels on a declared NGOM trip to possess scallops outside of the NGOM management area. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: October 30, 2024.

Key Israel Marquez,

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

[FR Doc. 2024-25587 Filed 11-1-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE443]

2025 Annual Determination To Implement the Sea Turtle Observer Requirement

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

ACTION: Notification of annual determination of fisheries.

SUMMARY: NMFS is providing notification that the agency will not identify additional fisheries to observe on the 2025 Annual Determination (AD), pursuant to its authority under the Endangered Species Act (ESA). Through

the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle bycatch in a given fishery, evaluate measures to prevent or reduce sea turtle bycatch, and implement the prohibition against sea turtle takes. Fisheries identified on the 2020 and 2023 ADs (see table 1) remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until September 29, 2025, and December 31, 2027, respectively.

DATES: Published on November 4, 2024.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Wendy Piniak, Office of Protected Resources, 301-427-8402; Ellen Keane, Greater Atlantic Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Dan Lawson, West Coast Region, 206-526-4740; Irene Kelly, Pacific Islands Region, 808-725-5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*; North Pacific distinct population segment [DPS]), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*; Central West Pacific and Central South Pacific DPSs), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (Northwest Atlantic Ocean DPS), green (North Atlantic, South Atlantic, Central North Pacific, and East Pacific DPSs), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach,

NMFS considers these turtles endangered wherever they occur in U.S. Pacific waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Bycatch in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (defined to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates the ESA or a regulation issued to implement the ESA. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

For most fisheries, the most effective way for NMFS to learn more about bycatch in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone, or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the U.S. Failure to comply with the requirements under this regulation may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry the required observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry

observers, if requested, for a period of 5 years without further action by NMFS. This will enable NMFS to develop appropriate observer coverage and sampling protocols to investigate whether, how, when, where, and under what conditions sea turtle bycatch is occurring and to evaluate whether existing measures are minimizing or preventing bycatch.

2025 Annual Determination

Pursuant to 50 CFR 222.402(a), NOAA's Assistant Administrator for Fisheries, in consultation with Regional Administrators and Fisheries Science Center Directors, annually identifies fisheries for inclusion on the AD based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

NMFS is providing notification that the agency is not identifying additional fisheries to observe on the 2025 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of dedicated resources to implement new observer programs or expand existing observer programs to focus on sea turtles. The four fisheries identified on the 2020 AD (see table 1) will remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until September 29, 2025. The two fisheries identified on the 2023 AD (see table 1) will remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until December 31, 2027.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2020 AND 2023 ANNUAL DETERMINATIONS

Fishery	Years eligible to carry observers
Trawl Fisheries:	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2020–2025
Gulf of Mexico mixed species fish trawl	2020–2025
Gillnet Fisheries:	

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2020 AND 2023 ANNUAL DETERMINATIONS—Continued

Fishery	Years eligible to carry observers
Chesapeake Bay inshore gillnet	2020–2025
Long Island inshore gillnet	2020–2025
Mid-Atlantic gillnet	2023–2027
Pound Net/Weir/Seine Fisheries:	
Gulf of Mexico menhaden purse seine	2023–2027

Dated: October 29, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–25541 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for NOAA Social, Behavioral, and Economic Science Studies for Weather, Water, and Climate

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 30, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: NOAA Social, Behavioral, and Economic Science Studies for Weather, Water, and Climate.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: New information collection.

Number of Respondents: Approximately 6,000 per year.

Average Hours Per Response: 0.5 hours per person.

Total Annual Burden Hours: Annualized 3,000 hours overall.

Needs and Uses: This is a request for a new collection of information.

The National Oceanic and Atmospheric Administration (NOAA) products and services “support economic vitality and affect more than one-third of America’s gross domestic product.” The National Weather Service (NWS) is a critical component of this service and operates under the mission to “provide weather, water and climate data, forecasts, warnings, and impact-based decision support services for the protection of life and property and enhancement of the national economy.” Leveraging and integrating Social, Behavioral, and Economic Sciences (SBES) methodologies and knowledge is crucial to meeting our mission.

If we are to effectively support public and partner decision making, build actionable tools and information, and evaluate our performance, then it’s imperative that the NOAA/NWS collect key SBES data and fully engage with our audiences. Additionally, the NOAA/NWS has articulated a priority to enhance services for historically underinvested and underserved communities and improve service equity across the board. These communities typically experience higher rates of poverty, homelessness, disabilities, and language barriers, which increase their vulnerability to hazard impacts.

The generic clearance is an important planning and engagement tool for NOAA/NWS. The procedures expected to be used include but are not limited to social network analysis, open, semi-structured and structured interviews, focus groups, surveys, and participant observation.

Affected Public: Members of the public, emergency managers, broadcast meteorologists, state/local/tribal decision makers, and non-profit organizations.

Frequency: On Occasion.

Respondent’s Obligation: Voluntary.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day

Review—Open for Public Comments” or by using the search function and entering the title of the collection.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–25608 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE424]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council’s (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Wednesday, November 20, 2024, from 10 a.m. to 12 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: www.mafmc.org/ssc.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will provide revised Acceptable Biological Catch (ABC) recommendations for the 2025 Spiny Dogfish fishing year. At their October 2024 meeting, the Council reviewed the stock status and performance of the Spiny Dogfish fishery and deferred action on modifying 2025 Spiny Dogfish specifications until their December meeting. The Council requested the SSC calculate a revised ABC equal to the catch associated with a 50% probability of overfishing under a suspension of the Council’s risk policy. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council’s website (www.mafmc.org) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 30, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–25588 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE434]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a hybrid meeting of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, November 21, 2024 at 9 a.m.

ADDRESSES: This meeting will be held at Hilton Garden Inn, Boston Logan, 100 Boardman St., Boston, MA 02110; telephone: (617) 567–5678.

Webinar registration URL information: https://nefmc-org.zoom.us/j/9wdeytqTgqGt2VX_ZiPQpjvC-fTkgSM1YO.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O’Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will meet to discuss: Framework 39 (FW39): Review specifications alternatives in FW39 and

select final preferred alternatives. FW39 will set specifications including the overfishing limit (OFL), acceptable biological catch/annual catch limit (ABC/ACLs), days-at-sea (DAS), access area allocations for Limited Access (LA) vessels, quota and access area trip allocation to the Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) component, Total Allowable Landings (TAL) for the Northern Gulf of Maine (NGOM) management area, a target-Total Allowable Catch (TAC) for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2025, and default specifications for fishing year 2026. This action also considers modifying the seasonal bycatch closure of Area II to improve yield and reduce impacts to northern windowpane flounder and modifying the possession prohibition for NGOM-permitted scallop vessels on a declared NGOM trip to possess scallops outside of the NGOM management area. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council’s intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O’Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 30, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–25586 Filed 11–1–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: Date added to and deleted from the Procurement List: December 1, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On January 26, 2024, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. (89 FR 5214). The Committee determined that the service listed below is suitable for procurement by the Federal Government and has added this service to the Procurement List as a mandatory purchase for the contracting activity listed. In accordance with 41 CFR 51-5.3(b), the mandatory purchase requirement is limited to the contracting activity at the location listed, and in accordance with 41 CFR 51-5.2, the Committee has authorized the nonprofit agency listed as the authorized source of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Service(s)

Service Type: Logistics Support Service, Supply Chain Management

Mandatory for: US Navy, Naval Sea Systems Command, Southwest Regional Maintenance Center, Naval Base San Diego, San Diego, CA

Authorized Source of Supply: Professional Contract Services, Inc., Austin, TX

Contracting Activity: DEPT OF THE NAVY, SOUTHWEST REGIONAL MAINT CENTER

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Department of the Navy, Logistics Support Service, US Navy, SWRMC, San Diego, CA contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the Department of the Navy will refer its business elsewhere, this addition must be effective on November 20, 2024, ensuring timely execution for a November 22, 2024 start date. The Committee published an initial notice of proposed Procurement List addition in the **Federal Register** on September 13, 2024 (89 FR 74928) but did not receive any comments.

This addition will not create a public hardship and has limited effect on the public at large. Rather, this addition will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition enables the Federal customer to continue operations without interruption.

Deletions

On September 27, 2024 (89 FR 79259), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed

deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

6515-00-NIB-0571—Glove, Exam, Powder-Free, Nitrile, Non-Latex, Textured, Midnight, Black, Small
6515-00-NIB-0572—Glove, Exam, Powder-Free, Nitrile, Non-Latex, Textured, Midnight, Black, Medium
6515-00-NIB-0573—Glove, Exam, Powder-Free, Nitrile, Non-Latex, Textured, Midnight, Black, Large
6515-00-NIB-0574—Glove, Exam, Powder-Free, Nitrile, Non-Latex, Textured, Midnight, Black, X-Large

Authorized Source of Supply: Central Association for the Blind and Visually Impaired, Utica, NY

Contracting Activity: DEPT OF JUST/ FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC

NSN(s)—Product Name(s):

8105-01-582-6877—M26 MASS Ammunition Magazine Pouch, ACU Camouflage

Authorized Source of Supply: LC Industries, Inc., Durham, NC

Contracting Activity: W6QK ACC-PICA, PICATINNY ARSENAL, NJ

NSN(s)—Product Name(s):

6530-01-321-5592—Table, Field Operating

Authorized Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7530-01-501-2688—Pad, Message, “While You Were Out”

Authorized Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Mess Attendant Service
Mandatory for: US Navy, JEBLCFS Galley 2, Virginia Beach, VA

Authorized Source of Supply: Louise W. Eggleston Center, Inc., Norfolk, VA
Authorized Source of Supply: Community Alternatives, Incorporated, Norfolk, VA

Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR NORFOLK

Service Type: Mailroom Operation
Mandatory for: US Army, Customer Support Division, US Army Garrison Adelphi Laboratory Center, Adelphi, MD

Authorized Source of Supply: WeAchieve, Inc., Silver Spring, MD

Contracting Activity: DEPT OF THE ARMY, W6QK ACC-APG ADELPHI

Service Type: Mailroom Operation
Mandatory for: US Army Corps of Engineers, Cold Regions Research and Engineering Laboratory (CRREL), Hanover, NH

Authorized Source of Supply: Northern New England Employment Services, Portland, ME

Contracting Activity: DEPT OF THE ARMY, W2R2 COLD RGNS RSCH ENG LAB

Service Type: Records digitization
Mandatory for: Ohio Army Reserve National Guard Element, Joint Forces Headquarters, Columbus, Ohio

Authorized Source of Supply: Coleman Professional Services, Kent, OH

Contracting Activity: DEPT OF THE ARMY, W7NU USPFO ACTIVITY OH ARNG

Service Type: Janitorial/Grounds Maintenance

Mandatory for: GSA PBS Region 3, Mount Hope Federal Building, Mount Hope, WV

Authorized Source of Supply: Integrated Resources, Inc., Maben, WV

Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R3

Michael R. Jurkowski,
Director, Business Operations.

[FR Doc. 2024-25515 Filed 11-1-24; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: December 1, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

8465-01-580-1303—Entrenching Tool Carrier, MOLLE Components, OEFCP
Authorized Source of Supply: Chautauqua County Chapter, NYSARC, Jamestown, NY

Authorized Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

NSN(s)—Product Name(s):

9905-01-661-2143—Flag, Marking, 2½" x 3½", 21" Staff, Fluorescent Orange
9905-01-661-2147—Flag, Marking, 2½" x 3½", 15" Staff, Yellow
9905-01-661-2148—Flag, Marking, 2½" x 3½", 15" Staff, Red
9905-01-661-2152—Flag, Marking, 4" x 5", 21" Staff, Orange

Authorized Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Michael R. Jurkowski,
Director, Business Operations.

[FR Doc. 2024-25512 Filed 11-1-24; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, November 6, 2024—11 a.m.

PLACE: Meeting will take place remotely and in person at 4330 East West

Highway, Bethesda, Maryland, Room 420.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: *Meeting Matter:* Briefing Matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7479 (Office) or 240-863-8938 (Cell).

Dated: October 30, 2024.

Alberta Mills,
Commission Secretary.

[FR Doc. 2024-25652 Filed 10-31-24; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

AGENCY: Department of the Air Force.

ACTION: Meeting notice.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce the following Federal Advisory Committee meeting of the Air University Board of Visitor's (AU BoV) AFIT Subcommittee.

DATES: Tuesday, November 5, 2024, from 8 a.m. to 5 p.m. and Wednesday, November 6, 2024, from 8 a.m. to 3 p.m. (eastern time).

ADDRESSES: Air University Commander's Conference Room, Building 800, Maxwell Air Force Base, AL 36112.

FOR FURTHER INFORMATION CONTACT: Dr. Shawn P. O'Mailia, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112- 6335, telephone (334) 953-4547, email shawn.omalilia.3@au.af.mil.

SUPPLEMENTARY INFORMATION: This meeting is held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.50(d).

Purpose of the Meeting: For the AU Board of Visitors (BoV) to provide independent advice and recommendations on matters pertaining to the education, outreach, and research policies and activities of Air University to the Air University Commander and President and the Secretary of the Air Force. The agenda will include: Commander and President's State of the

University, Provost and Chief Academic Officer priorities, AFIT Subcommittee report and discussion, Community College of the Air Force update, Education Technology update, Agile Learning Concept update, AU Research in Support of Great Power Competition, and AU Accreditation update and discussion.

Meeting Accessibility: Open to the public. Any member of the public wishing to attend this meeting should contact the Designated Federal Officer at least ten calendar days prior to the meeting for information on base entry procedures.

Written Statements: Any member of the public wishing to provide input to the Air University Board of Visitors in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act should submit a written statement to the Designated Federal Officer. Statements submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least ten calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the AFIT Subcommittee of the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice.

Tommy W. Lee,
Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–25598 Filed 11–1–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Fiscal Year 2024 Performance Review Board Membership

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the appointment of members to the DON Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) Fiscal Year 2024 Performance Review Board (PRB). The purpose of the PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's

immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance-based bonuses and performance-based pay increases.

FOR FURTHER INFORMATION CONTACT: Kim Hanson, Director, Executive Management Program Office, Manpower and Reserve Affairs at 703–693–8896 or kim.t.hanson.civ@us.navy.mil.

SUPPLEMENTARY INFORMATION: Composition of the specific PRB is provided below:

Ms. E. Anne Sandel
Dr. Brett Seidle
Ms. Lisa St. Andre
Mr. Steven Parode
Dr. Bruce Danly
Mr. Thomas Rudowsky
Mr. Christopher Miller
Ms. Jennifer LaTorre
Ms. Deline Reardon
Ms. Catherine Kessmeier
Ms. Kate DeMane (HLR)
Ms. Jennifer Edgin (HLR)
Mr. Robert Hogue (Chair)

(Authority: 5 U.S.C. 4314(c)(4))

Dated: October 29, 2024.

A.J. Gioiello,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2024–25520 Filed 11–1–24; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24–10–000]

Reliability Technical Conference; Notice Inviting Post-Technical Conference Comments

On Wednesday, October 16, 2024, the Federal Energy Regulatory Commission (Commission) convened its annual Commissioner-led Reliability Technical Conference to discuss policy issues related to the reliability and security of the Bulk-Power System.

All interested persons are invited to file post-technical conference comments to address issues raised during the technical conference or identified in the Second Supplemental Notice for this Technical Conference issued on October 7, 2024. Commenters are invited to reference material previously filed in this docket but are encouraged to avoid repetition or replication of their previous comments. Comments must be submitted on or before 30 days from the date of this Notice.

Comments, identified by docket number, may be filed electronically or paper-filed. Electronic filing through <https://www.ferc.gov> is preferred. Documents must be filed in acceptable native applications and print-to-.pdf, but not in scanned or picture format. Instructions are available on the Commission's website: <http://www.ferc.gov/docs-filing/efiling.asp>.

Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to:

Federal Energy Regulatory Commission,
Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact:

Lodie White (Technical Information),
Office of Energy Reliability, (202)
502–8453, Lodie.White@ferc.gov.
Hampden T. Macbeth (Legal Information), Office of the General Counsel, (202) 502–8957,
Hampden.Macbeth@ferc.gov.

Dated: October 28, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–25513 Filed 11–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–66–002; ER20–2202–003; ER20–2032–003; ER10–2834–008; ER23–139–004; ER17–1438–004; ER17–2056–002; ER23–1500–001; ER10–1252–021; ER23–1501–001; ER23–1502–001; ER10–1246–021; ER10–2821–009; ER20–2671–007; ER23–138–003; ER12–1329–009.

Applicants: Wildcat Wind Farm I, LLC, Watlington Solar, LLC, Water Strider Solar, LLC, Stony Creek Wind Farm, LLC, Consolidated Edison Energy, Inc., RWE Supply & Trading US, LLC, RWE Supply & Trading Americas, LLC, Consolidated Edison Solutions, Inc., RWE Clean Energy QSE, LLC, EC&R O&M, LLC, Radford's Run Wind Farm, LLC, Pleasant Hill Solar, LLC, Munnsville Wind Farm, LLC, Hardin

Wind LLC, Cassadaga Wind LLC, Baron Winds LLC.

Description: Response to 09/27/2024 Deficiency Letter of Baron Winds LLC et al.

Filed Date: 10/23/24.

Accession Number: 20241023–5206.

Comment Date: 5 p.m. ET 11/13/24.

Docket Numbers: ER24–2970–001.

Applicants: ISO New England Inc., Central Maine Power Company.

Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): Amendment to Original Service Agreement No. LGIA–ISONE/CMP–24–01 to be effective 8/8/2024.

Filed Date: 10/28/24.

Accession Number: 20241028–5110.

Comment Date: 5 p.m. ET 11/18/24.

Docket Numbers: ER25–234–000.

Applicants: Citizens S-Line Transmission LLC.

Description: 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Informational Filing to be effective 12/31/9998.

Filed Date: 10/25/24.

Accession Number: 20241025–5178.

Comment Date: 5 p.m. ET 11/15/24.

Docket Numbers: ER25–235–000.

Applicants: DCR Transmission, L.L.C.
Description: 205(d) Rate Filing: DCR Transmission TRR and TRBAA Filing to be effective 1/1/2025.

Filed Date: 10/28/24.

Accession Number: 20241028–5095.

Comment Date: 5 p.m. ET 11/18/24.

Docket Numbers: ER25–236–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): MAIT–FE submits Revised Interconnection Agreement, SA No. 6412 to be effective 12/23/2024.

Filed Date: 10/28/24.

Accession Number: 20241028–5104.

Comment Date: 5 p.m. ET 11/18/24.

Docket Numbers: ER25–237–000.

Applicants: Stanton Clean Energy, LLC.

Description: 205(d) Rate Filing: Tariff No. 1, Cost-Based Rate Tariff to be effective 12/28/2024.

Filed Date: 10/28/24.

Accession Number: 20241028–5113.

Comment Date: 5 p.m. ET 11/18/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in

accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: October 28, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–25510 Filed 11–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5679–041]

Energy Stream, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license to continue to operate and maintain the M.S.C. Hydroelectric Project No. 5679 (project). The project is located on the Quinebaug River in Windham County, Connecticut. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that

would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (<http://www.ferc.gov/>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–5679–041.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

If you have process questions, contact John Baummer at (202) 502–6837 or by email at john.baummer@ferc.gov.

Dated: October 28, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–25511 Filed 11–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1744–054]

PacifiCorp; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed PacifiCorp's proposal to amend the project's license for surrender of license for the Weber Hydroelectric Project No. 1744 and have prepared an Environmental Assessment (EA) for the proposed amendment. The licensee proposes to amend its license to construct three new auxiliary spillways north of Weber Dam, between the dam and the new fish ladder, and make additional repairs to modernize the intake facility to ensure safe and reliable operations through the term of its license. The project is located on the Weber River near the city of Ogden in Weber, Morgan, and Davis counties, Utah, and occupies Federal lands within the Uinta-Wasatch-Cache National Forest managed by the U.S. Department of Agriculture's Forest Service (Forest Service).

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at <http://www.ferc.gov> using the "elibrary" link. Enter the docket number (P–1744) in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by November 27, 2024.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1744–054.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

For further information, contact Jennifer Polardino at (202) 502–6437 or Jennifer.Polardino@ferc.gov.

Dated: October 28, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–25516 Filed 11–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–93–000.

Applicants: Cheniere Corpus Christi Pipeline, L.P.

Description: Semi-Annual Transportation Retainage Report of Cheniere Corpus Christi Pipeline, L.P.
Filed Date: 10/28/24.

Accession Number: 20241028–5048.

Comment Date: 5 p.m. ET 11/12/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: October 28, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–25518 Filed 11–1–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–SFUND–2024–0441; FRL–12262–01–R8]

Proposed CERCLA Administrative Settlement Agreement by America West Investments, LLC and Tooele City Corporation, Broadway Hotel Site, Tooele, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: Notice is hereby given by the U.S. Environmental Protection Agency (EPA), Region 8, of a prospective purchaser and ability to pay agreement entered into voluntarily by the United States of America ("United States") on behalf of the United States Environmental Protection Agency ("EPA"), America West Investments, LLC ("Settling Party") and Tooele City Corporation ("Purchaser") in connection with the Broadway Hotel Superfund Site in Tooele, Tooele County, Utah ("Site"). It is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the proposed agreement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 4, 2024.

ADDRESSES: The proposed agreement and additional background information relating to the agreement will be available upon request. Any comments or requests or for a copy of the proposed agreement should be addressed to Crystal Kotowski-Edmunds, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency, Region 8, Mail Code 8SEM-PAC, 1595 Wynkoop Street, Denver, Colorado 80202, telephone number: (303) 312-6124, email address: edmunds.crystal@epa.gov, and should reference the Broadway Hotel Site. You may also send comments, identified by Docket ID No. EPA-R08-SFUND-2024-0441, to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Paige Lambert-Wright, Attorney, Office of Regional Counsel, Environmental Protection Agency, Region 8, Mail Code 8ORC-LEC, 1595 Wynkoop, Denver, Colorado 80202, telephone number: (303) 312-6762, email address: wright.paige@epa.gov.

SUPPLEMENTARY INFORMATION: The proposed settlement will resolve the liability of America West Investments, LLC ("Settling Party"), the potentially responsible party ("PRP") at the Site, and facilitate the transfer of Settling Party's property to prospective purchaser Tooele City Corporation (Purchaser) for redevelopment.

Settling Party will sell its property (seven parcels, totaling approximately 1.3 acres) (Property) to Purchaser for \$300,000. This amount was determined to be the fair market value of the Property in an appraisal dated June 5, 2024, conducted by a qualified appraiser certified to meet the Uniform

Standards of Professional Appraisal Practice. Settling Party will pay the EPA 100% of the Net Sales Proceeds of the sale. Net Sales Proceeds is defined in the proposed settlement agreement to exclude reasonable closing costs, broker's fees, and State or local taxes paid regarding the sale. Additionally, the definition of Net Sales Proceeds incorporates an exclusion for a sum certain value of \$20,000, as part of the resolution of *United States v. Daniel J. Brett*, Case No. 2:24-cr-00037 (D. Utah).

Purchaser will acquire the Property and comply with property requirements including release reporting, providing cooperation and access, exercising appropriate care with respect to hazardous substances, and providing notice to successors-in-title. Purchaser will make a one-time payment to the EPA in the amount of \$30,000 and has also agreed to redevelop the Property for the public interest.

This proposed settlement will resolve Settling Party's liability under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for the Site. The EPA will provide covenants not to sue or take administrative action against Settling Party, contingent on compliance with the agreement and subject to the standard reservations. The EPA will also provide Settling Party contribution protection pursuant to CERCLA section 113(f)(2) and 122(h)(4).

The EPA will provide covenants not to sue or take administrative action under CERCLA sections 106 and 107(a) against Purchaser for Existing Contamination, contingent on compliance with the agreement and subject to the standard reservations. The EPA will also provide Purchaser contribution protection pursuant to CERCLA sections 113(f)(2) and 122(h)(4).

For thirty (30) days following the date of publication of this document, EPA will receive electronic comments relating to the proposed agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this document for instructions.

Aaron Urdiales,

Division Director, Superfund and Emergency Management Division, Region 8.

[FR Doc. 2024-25563 Filed 11-1-24; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, November 14, 2024.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or virtually. If you would like to observe, at least 24 hours in advance, visit [FCA.gov](https://www.fca.gov), select "Newsroom," then select "Events." From there, access the linked "Instructions for board meeting visitors" and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of October 10, 2024, Minutes
- Report on Access to Capital in Indian Country

CONTACT PERSON FOR MORE INFORMATION:

If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703-883-4009. TTY: 703-883-4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2024-25681 Filed 10-31-24; 4:15 pm]

BILLING CODE 6705-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the

standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than November 19, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President), 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Dominik Mjartan and Georgia Miller Mjartan, both of Columbia, South Carolina*; as a group acting in concert, to acquire voting shares of American Bancorp, Inc., and thereby indirectly acquire voting shares of American Pride Bank, both of Macon, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–25593 Filed 11–1–24; 8:45 am]

BILLING CODE 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)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 December 4, 2024.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to Comments.applications@rich.frb.org:

1. *Southern Bancshares (N.C.), Inc., Mount Olive, North Carolina*; to acquire up to 19.9 percent of the voting shares of Old Point Financial Corporation, Hampton, Virginia, and thereby indirectly acquire voting shares of The Old Point National Bank of Phoebus, Hampton, Virginia, and Old Point Trust & Financial Services, N.A., Newport News, Virginia. In addition, Southern Bancshares (N.C.), Inc., through the acquisition of Old Point Trust & Financial Services, N.A., will engage in providing trust company functions and securities brokerage services pursuant to sections 225.28(b)(5) and (b)(7)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–25595 Filed 11–1–24; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Meeting of the Employee Thrift Advisory Council

DATES: November 14, 2024 at 10 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 504 721 370#; or via web: <https://www.frtib.gov/>.

FOR FURTHER INFORMATION CONTACT:

Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

ETAC Meeting Agenda

1. Approval of the minutes of the May 21, 2024, Joint Board/ETAC Meeting
2. Investment Program Review
3. 2024 FISMA Report
4. 2024 Participant Satisfaction Survey Results
5. 2024 Full Withdrawal Participant Exit Survey
6. Office of Participant Experience Update
7. Social Science Program Update
8. Legislative Update
9. New Business

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, interested parties may submit written statements in response to the stated agenda of the meeting, or to the Employee Thrift Advisory Council (ETAC), in general. Individuals may submit their comments to ETACComments@frtib.gov. Written comments or statements received less than 5 days before ETAC's meeting may not be provided to the Committee until its next meeting.

Authority: 5 U.S.C. 552b(e)(1).

Dated: October 30, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–25566 Filed 11–1–24; 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: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to

extend for an additional three years the Office of Management and Budget clearance for information collection requirements contained in the rules and regulations under the Pay-Per-Call Rule (Rule). This clearance expires on January 30, 2024.

DATES: Comments must be filed by January 3, 2025.

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 "Pay-Per-Call Rule, PRA Comment, P085405," 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: P. Connell McNulty, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, (202) 326-2061, pmcnulty@ftc.gov.

SUPPLEMENTARY INFORMATION:

Title: Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("Pay-Per-Call Rule"), 16 CFR part 308.

OMB Control Number: 3084-0102.

Type of Review: Extension of a currently approved collection.

Abstract: The existing reporting and disclosure requirements of the Pay-Per-Call Rule are mandated by the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely Respondents: telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities.

Estimated Annual Hours Burden: 949,536 hours (24 + 949,512).

Reporting: 24 hours for reporting by common carriers

Disclosure: 949,512 [(19,440 hours for advertising by vendors + 19,992 hours for preamble disclosure which applies to every pay-per-call service + 6,480 burden hours for telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity) + 13,000 burden hours for dispute resolution procedures in billing statements (applies to billing entities) + 890,600 hours for disclosures related to consumers reporting a billing error (applies to billing entities)]

Estimated annual cost burden: \$49,402,048 (solely relating to labor costs).¹

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 Pay-Per-Call Rule.

Burden Estimates

Brief description of the need for and proposed use of the information:

The existing reporting and disclosure requirements are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely respondents and their estimated number:

Respondents are telecommunications common carriers (subject to the

¹ Non-labor (e.g., capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (e.g., business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. Staff estimates that there are 8 common carriers, approximately 5,400 vendors, and approximately 2,600 possible billing entities. The FTC seeks public comment or data on these estimates and those stated below.

Estimated annual reporting and disclosure burden: 949,536 hours; \$49,402,048 in associated labor costs.

The burden hour estimate for each reporting and disclosure requirement has been multiplied by a "blended" mean wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine its total annual cost. The blended rate calculations are based on the following skill categories and average wage rates and/or labor costs: \$131/hour for professional (attorney) services; \$23/hour for skilled clerical workers; \$52/hour for computer programmers; and \$62/hour for management time. These figures are averages, based on the most currently available Bureau of Labor Statistics ("BLS") cost figures posted online. The attorney figure is based in part on BLS estimates and on other sources. FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours discussed further below.

(1) Reporting burden (applies to common carriers):

The Rule provides that common carriers must make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements between the carrier and any vendor or service bureau (other than for the provision of local exchange service). See 16 CFR 308.6. Staff believes that the resulting burden on this segment of the industry will be minimal, since OMB's definition of "burden" for PRA purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(b)(2). Because this reporting requirement permits staff to seek information limited to that which is already maintained by the carriers, the only burden would be the time an entity expends to compile and provide the information to the Commission. Because the Commission has seldom needed to rely on this requirement, staff estimates the annual time for reporting at 3 hours per entity.

In obtaining OMB clearance for this reporting requirement in 2021, staff estimated a total reporting burden of 18 hours. For 2024, staff is increasing the

total burden estimate to 24 hours, based on an average estimate of 3 hours expended by 8 common carriers. Using a \$61/hour blended wage rate, the FTC now estimates an annual cost of \$1,464.

(2) Disclosure burden:

(a) Advertising (applies to vendors).

FTC staff estimates that the annual burden on the industry for the Rule's advertising disclosure requirements is 19,440 hours. The estimate reflects the burden on approximately 5,400 vendors who must make cost disclosures for all pay-per-call services and additional disclosures if the advertisement is (a) directed to individuals under 18 or (b) for certain pay-per-call services. Because of continued industry changes and the fact that the Commission has seldom needed to rely on this requirement, staff is retaining its prior estimate that each vendor would have three advertisements requiring basic disclosures, and that 20 percent of these advertisements would require an additional disclosure. FTC staff estimates that each disclosure mandated by the Rule requires approximately one hour of compliance time. The total estimated annual cost of these burden hours is \$1,010,880, applying a blended wage rate of \$52/hour.

(b) The Rule's preamble disclosure (applies to every pay-per-call service). To comply with the Act, the Pay-Per-Call Rule also requires that every pay-per-call service be preceded by a free preamble and that four different disclosures be made in each preamble. Additionally, preambles to sweepstakes pay-per-call services and services that offer information on federal programs must provide additional disclosures. Each preamble need only be prepared one time, unless the cost or other information is changed. There is no additional burden on the vendor to make the disclosures for each telephone call, because the preambles are taped and play automatically when a caller dials the pay-per-call number.

Staff believes that the industry has had at least an 8 percent reduction in size since 2021 (when there were an estimated 18,110 pay-per-call services). Accordingly, staff now estimates that there are no more than 16,660 advertised pay-per-call services.

As with advertising disclosures, preambles for certain pay-per-call services require additional preamble disclosures. Consistent with the estimates of advertised pay-per-call services discussed above, staff estimates that 20 percent of all such pay-per-call services (3,332) relating to certain types of pay-per-call services would require such additional disclosures. Staff estimates that it would require no more

than one hour to draft each type of disclosure because the disclosures applicable to the preamble closely approximate in content and volume the advertising disclosures discussed above. Accordingly, staff estimates a total of 19,992 burden hours (16,660 + 3,332) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is \$1,039,584, using a blended wage rate of \$52/hour (*i.e.*, the same blended rate used for advertising disclosures).

(c) Telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity). Section 308.5(j) of the Rule, 16 CFR 308.5(j), requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, FTC staff estimated that the burden to comply would be minimal. At most, the burden on the vendor would be limited to spot checking telephone bills to ensure that the charges are displayed in the manner required by the Rule.

As it had in the 2021 PRA submission, FTC staff estimates that only 10 percent of vendors would monitor billing statements in this manner and that it would take 12 hours per year to conduct such checks. Using the total estimated number of vendors (5,400), this results in a total of 6,480 burden hours. The total annual cost would be at most \$349,920, using a blended rate of \$54/hour.

(d) Dispute resolution procedures in billing statements (applies to billing entities). This disclosure requirement is set forth in 16 CFR 308.7(c). The blended rate used for these disclosures is \$53/hour. FTC staff previously estimated that the billing entities would spend approximately 5 hours each to review, revise, and provide the disclosures on an annual basis. The estimated hour burden for the annual notice component of this requirement is 13,000 burden hours (based on 2,600 possible billing entities each requiring 5 hours), or a total cost of \$689,000.

(e) Further disclosures related to consumers reporting a billing error (applies to billing entities).

As in the 2021 PRA submission for this Rule, FTC staff estimates that the incremental disclosure obligations related to consumers reporting a billing error under section 308.7(d) requires, on average, about one hour per each billing

error. In 2021, staff projected that approximately 5 percent of an estimated 19,360,880 calls made to pay-per-call services each year involves such a billing error. The staff is now reducing its prior estimate of the number of those calls by approximately 8 percent (to 17,812,010 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 890,600 hours, cumulatively. Applying the \$52/hour blended wage rate, the estimated annual cost is \$46,311,200.

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 January 3, 2025. 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 "Pay-Per-Call Rule, PRA Comment, P085405," 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 January 3, 2025. 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. 2024–25559 Filed 11–1–24; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–IEB–2024–08; Docket No. 2024–0002; Sequence No. 50]

Privacy Act of 1974; System of Records

AGENCY: Office of Information Technology (GSA–IT), General Services Administration (GSA).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the GSA proposes to establish a new system of records, entitled GSA/PBS–11, GSA Real Estate Sales (G–RES). This system of records is for the GSA Real Estate Sales (G–RES) site, a public real estate bidding web application, hosted by GSA Public Buildings Service (PBS).

DATES: Submit comments on or before December 4, 2024.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal, <http://www.regulations.gov>. Submit comments by searching for Notice–IEB–2024–08.

FOR FURTHER INFORMATION CONTACT: Call or email Richard Speidel, Chief Privacy Officer at 202–969–5830, or gsa.privacyact@gsa.gov.

SUPPLEMENTARY INFORMATION: GSA proposes to establish a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system of records is being created to support the new GSA Real Estate Sales system, the records of which currently fall under the SORN GSA/FSS–13. The present system of records (GSA/PBS–11) will not include records previously covered by GSA/FSS–13. All records under GSA/PBS–11 will be newly-created for use in this system.

SYSTEM NAME AND NUMBER:

GSA Real Estate Sales (G–RES), GSA/PBS–11.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This cloud system is managed by GSA and Amazon. GSA is located at 1800 F Street NW, Washington, DC 20405. The headquarters for Amazon is located at 410 Terry Avenue North, Seattle, WA 98109.

SYSTEM MANAGER(S):

Dr. Jacqueline Rodriguez, IT Project Manager, GSA, 1800 F Street NW, Washington, DC 20405.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act Of 1949, as amended; Public Law 107–217, ch. 288, 63 Stat. 377 (40 U.S.C. 121(c) and 40 U.S.C. 541, *et seq.*).

PURPOSE(S) OF THE SYSTEM:

To establish and maintain a system of records for conducting public sales of Federal real property by GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system includes individuals who request to be added to GSA bidders mailing lists, register to bid on GSA sales, and/or enter into contracts to buy Federal real property at sales conducted by GSA. Such individuals may be members of the public or represent public or private interests. In addition, GSA employees who administer the system and process are also included.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to identify potential and actual bidders and awardees, and transaction information involving real property sales. System records include:

Personal information provided by bidders, including, but not limited to, names, phone numbers, addresses, email addresses, birth dates, and financial information. Additionally, real estate agent profiles containing first and last names, email, phone number, and address. Finally, information about GSA employees who administer the system, including name and business contact information.

RECORD SOURCE CATEGORIES:

Information is provided by individuals who wish to participate in the GSA real property sales program, and system transactions designed to gather and maintain data and to manage and evaluate the Federal real property disposal program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside GSA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. In any legal proceeding, where pertinent, to which GSA, a GSA employee, or the United States is a party before a court or administrative body.
- b. To a Federal, State, local, or foreign agency responsible for investigating,

prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. In connection with any litigation or settlement discussions regarding claims by or against the GSA, including public filing with a court, to the extent that GSA determines the disclosure of the information is relevant and necessary to the litigation or discussions.

i. To appropriate agencies, entities, and persons when (1) GSA suspects or has confirmed that there has been a breach of the system of records, (2) GSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, GSA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

j. To another Federal agency or Federal entity, when GSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national

security, resulting from a suspected or confirmed breach.

k. To compare such records to other agencies' systems of records or to non-Federal records, in coordination with an OIG in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the IG Act.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored on a secure server with access limited to staff who may access the records only by means of a lawful government purpose. Information is encrypted in transit and at rest.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Content in this system will be disposed according to the following GSA schedule:

121.1/050 Property Disposal Case Records. This series contains records related to the process of appraising federally-owned real property (both developed and undeveloped), and the disposal activities associated with closing, selling, destroying, transferring, or otherwise removing from the Federal Government's real property inventory. Such records include those used in the determination of excess real property, disposal of excess and surplus real property case files, correspondence, and related records.

Retention Instructions:

Permanent. Cut off at the end of the fiscal year following case completion and fulfillment of all restrictions on the disposed property. Transfer to NARA 15 years after cutoff.

Legal Disposition Authority: DAA-0121-2015-0001-0009 (121.1/050).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through a combination of administrative and technical measures. Administrative measures include but are not limited to policies that limit system access to individuals within an agency with a legitimate business need, and regular review of security procedures and best practices to enhance security. Technical measures include but are not limited to system design that allows authorized system users access only to data for which they are responsible; AWS security tools; required use of *Login.gov*

for application user account authorization and identity verification for real property bidders; required use of GSA SecureAuth for internal GSA users; and use of encryption for certain data transfers. Physical security measures are provided by the hosting service and ensure that unauthorized access to physical systems is not permitted.

RECORD ACCESS PROCEDURES:

If an individual wishes to access any data or record pertaining to him or her in the system after it has been submitted, that individual should consult the GSA's Privacy Act implementation rules available at 41 CFR part 105-64.2.

CONTESTING RECORD PROCEDURES:

If an individual wishes to contest the content of any record pertaining to him or her in the system after it has been submitted, that individual should consult the GSA's Privacy Act implementation rules available at 41 CFR part 105-64.4.

NOTIFICATION PROCEDURES:

If an individual wishes to be notified at his or her request if the system contains a record pertaining to him or her after it has been submitted, that individual should consult the GSA's Privacy Act implementation rules available at 41 CFR part 105-64.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Richard Speidel,

Chief Privacy Officer, Office of Enterprise Data & Privacy Management, General Services Administration.

[FR Doc. 2024-25577 Filed 11-1-24; 8:45 am]

BILLING CODE 6820-AB-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day-25-0048; Docket No. ATSDR-2024-0005]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry

(ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ATSDR Exposure Investigations (EIs). ATSDR EIs are designed to fill data gaps by conducting environmental and biological sampling and to evaluate public health issues at a site resulting from environmental exposures.

DATES: ATSDR must receive written comments on or before January 3, 2025.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR-2024-0005 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are

publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

ATSDR Exposure Investigations (EIs) (OMB Control No. 0923-0048, Exp. 6/30/2025)—Extension—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Extension of this Generic Clearance to allow the agency to conduct Exposure Investigations (EIs), through methods developed by ATSDR. After a chemical release or suspected release into the environment, EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency (EPA), the general public, and ATSDR staff.

EI results are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. For example, an EI that ATSDR previously conducted during included environmental sampling to evaluate non-drinking water exposure to per- and polyfluoroalkyl substances (PFAS) in two communities that were shown to be exposed to PFAS in their drinking water.

During the most recent clearance period (4/30/2022–present) a single Generic Exposure Investigation information collection request (ICR) was submitted. The EI conducted under this

clearance period was an EI in Jasper and Newton Counties, Missouri to evaluate exposure to lead in a former mining community. ATSDR collected blood samples from community members most vulnerable to the impacts of lead exposure: children five years old and younger along with pregnant women and women of childbearing age. ATSDR partnered with the U.S. Environmental Protection Agency (EPA) and the Missouri Department of Health and Senior Services (MDHSS) who collected environmental samples, including soil, dust wipes, drinking water and paint, along with the results of the blood sampling. Appropriate EI procedures, including use of consent forms and questionnaires were used in the EI. The environmental sampling was submitted under this OMB Control Number with a burden of 426 hours.

All of ATSDR's targeted biological assessments (e.g., urine, blood) and some of the environmental investigations (e.g., air, water, soil, dust, or food sampling) involve participants to determine whether they are or have been exposed to unusual levels of pollutants at specific locations (e.g., where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation). Questionnaires, appropriate to the specific contaminant, are generally needed in about half of the EIs (at most approximately 12 per year) to assist in interpreting the biological or environmental sampling results. ATSDR collects contact information (e.g., name, address, phone number) to provide the participant with their individual results. ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, hobbies, jobs, etc. In addition, ATSDR asks questions on recreational or occupational activities that could increase a participant's exposure potential. That information represents an individual's exposure history.

The number of questions can vary depending on the number of chemicals being investigated, the route of exposure (e.g., breathing, eating, touching), and number of other sources of the chemical(s) (e.g., products used, jobs). We use approximately 12–20 questions about the pertinent environmental exposures per investigation. A question bank is available for health assessors to use as a basis of questions to be asked during the EI, but EI-specific questions may be included as appropriate. Typically, the number of participants in an individual EI ranges from 10 to 100. Participation is completely voluntary, and there are no costs to participants

other than their time. Based on a maximum of 12 EIs per year and 100

participants each, the estimated annualized burden hours are 600.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Exposure Investigation Participants ..	Chemical Exposure Questions	1,200	1	30/60	600
Total .....	.....	.....	.....	.....	600

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–25554 Filed 11–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–25–1424; Docket No. CDC–2024–0087]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled U.S. National Authority for Containment of Poliovirus Data Collection Tools. Data collection will capture information relating to a poliovirus containment breach or incident at a U.S. facility and will assist the U.S. National Authority for Containment of Poliovirus (U.S. NAC) in the initial stages of the investigation into the breach, and also gather information regarding personal protective equipment and practices used for work and/or storage of infectious materials or potentially infectious at laboratory facilities.

DATES: CDC must receive written comments on or before January 3, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0087 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.

- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

U.S. National Authority for Containment of Poliovirus Data Collection Tools (OMB Control No. 0920–1424, Exp. 12/31/2026)—Revision—Office of Readiness and Response (ORR), Centers for Disease Control and Prevention CDC)

Background and Brief Description

The role of the National Authority for Containment of Poliovirus (U.S. NAC) is to ensure that the requirements established in the World Health Organization (WHO) Global Action Plan (GAP) III/IV standard are effectively implemented and maintained in facilities working with or storing infectious poliovirus or potentially infectious materials.

Risk assessments following an incident are a critical component for adequate application of the GAP standard. To support risk assessment activities, The Facility Incident Reporting Form for Poliovirus Release and Potential Exposure and the Facility Incident Reporting Form for Poliovirus Theft or Loss was created for facilities to capture and submit incident

information to the U.S. NAC. These forms will not only address the biosafety and biosecurity containment emergency elements of the GAP standard but will also inform the U.S. NAC risk assessments and thereby, guide CDC's determination of the emergency response level and direction.

The information collected in the Personal Protective Equipment (PPE) Survey for Laboratories will assist the CDC, U.S. NAC and NIOSH with developing guidance and recommendations for PPE selection and use in support of poliovirus containment as well as identify laboratory PPE commonly used to evaluate laboratory PPE performance characteristics in testing studies.

Information collected in the GAP Poliovirus Containment Poliovirus-Essential Facility Assessment Checklist will aid U.S. facilities in preparing for an audit to obtain a poliovirus certificate of containment. Data collected from the GAP Poliovirus Containment Poliovirus-Essential Facility Questionnaire will collect additional information on poliovirus materials held by a U.S. facility, their work activities, and facility features.

The Poliovirus Containment Sampling Plan and Sanitation Assessment Form for Wastewater (WW) Systems Supporting a Poliovirus-Essential Facility (PEF) in the United States will collect information to assess poliovirus essential facility's wastewater system, the primary safeguards to reduce and

control the release of poliovirus from the facility. In addition, it will verify the safeguards of local wastewater utilities that receive wastewater from the PEF.

The Appeals and Complaints form is a new form that will be made available by the U.S. NAC of Poliovirus and will allow facilities or persons to appeal or forward complaints based on services provided. This form can be used to appeal or initiate complaints with regards to specific survey outreach that had been conducted or decisions rendered by the audit team after an audit.

OMB approval is sought for three years. The annualized estimated time burden for this information collection is 129 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Facility Staff/Leadership	Facility Incident Reporting Form for Poliovirus Release or Potential Exposure.	10	1	45/60	8
Facility Staff/Leadership	Facility Incident Reporting Form for Poliovirus Theft or Loss.	10	1	45/60	8
Facility Staff/Leadership	Personal Protective Equipment Survey for Laboratories.	20	1	1.5	30
Facility Staff/Leadership	GAP Poliovirus Containment Poliovirus-Essential Facility Questionnaire.	20	1	1.5	30
Facility Staff/Leadership	GAP Facility Assessment Checklist	20	1	1	20
Facility Staff/Leadership	The Poliovirus Containment Sampling Plan and Sanitation Assessment Form for Wastewater (WW) Systems Supporting a Poliovirus-Essential Facility (PEF) in the United States.	20	1	1.5	30
Facility Staff/Leadership	U.S. National Authority of Containment of Poliovirus "Appeals and Complaints Form".	10	1	15/60	3
Total .....	.....	.....	.....	.....	129

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*

[FR Doc. 2024-25557 Filed 11-1-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-25-0666]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled "National

Healthcare Safety Network" to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on April 23, 2024 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the

proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666,

Exp. 06/30/2026)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control Number 0920–0666. NHSN provides facilities, health departments, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and

ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN also allows healthcare facilities to track blood safety errors and various HAI prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates.

The proposed changes in this new ICR includes revisions made to 74 approved NHSN data collection tools and 10 new forms, for a total of 84 forms in this package. CDC requests OMB approval for an estimated 4,398,109 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

	Form number & name	Number of respondents	Number of responses per respondent	Average burden per response (min./hour 60)
1	57.100 NHSN Registration Form	2,000	1	5/60
2	57.101 Facility Contact Information	2,000	1	10/60
3	57.102 NHSN Help Desk Customer Satisfaction Survey	26,400	1	2/60
4	57.103 Patient Safety Component—Annual Hospital Survey	5,400	1	137/60
5	57.104 NHSN Facility Administrator Change Request Form	800	1	5/60
6	57.105 Group Contact Information	1,000	1	5/60
7	57.106 Patient Safety Monthly Reporting Plan	7,821	12	15/60
8	57.108 Primary Bloodstream Infection (BSI)	6,000	12	42/60
9	57.111 Pneumonia (PNEU)	1,800	2	34/60
10	57.112 Ventilator-Associated Event (VAE)	5,463	8	32/60
11	57.113 Pediatric Ventilator-Associated Event (PedVAE)	334	1	34/60
12	57.114 Urinary Tract Infection (UTI)	6,000	12	24/60
13	57.115 Custom Event	600	91	39/60
14	57.116 Denominators for Neonatal Intensive Care Unit (NICU)	1,100	12	240/60
15	57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC)	500	12	300/60
16	57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	5,500	60	300/60
17	57.120 Surgical Site Infection (SSI)	3,800	12	14/60
18	57.121 Denominator for Procedure	3,800	12	14/60
19	57.122 HAI Progress Report State Health Department Survey	55	1	50/60
20	57.123 Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables—Initial Set-up.	2,200	1	4,800/60
	57.123 Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables—Yearly Maintenance.	3,300	2	120/60
	57.123 Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables—Monthly.	5,500	12	5/60
21	57.124 Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables—Initial Set-up.	1,500	1	2,400/60
	57.124 Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables—Yearly Maintenance.	4,000	1	120/60
	57.124 Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables—Monthly.	5,500	12	5/60
22	57.125 Central Line Insertion Practices Adherence Monitoring	500	213	26/60
23	57.126 MDRO or CDI Infection Form	720	12	34/60
24	57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	5,500	29	15/60
25	57.128 Laboratory-identified MDRO or CDI Event	4,800	12	24/60
26	57.129 Adult Sepsis	50	12	28/60
27	57.130 Pathogens of High Consequence	3,650	365	30/60
28	57.132 Patient Safety Component Digital Measure Reporting Plan (HOB, HT—CDI, VTE, Adult Sepsis, RPS, NVAP)—IT Initial Set up.	5,500	1	1,620/60
	57.132 Patient Safety Component Digital Measure Reporting Plan (HOB, HT—CDI, VTE, Adult Sepsis, RPS, NVAP)—IT Yearly Maintenance.	5,500	1	1,200/60
	57.132 Patient Safety Component Digital Measure Reporting Plan (HOB, HT—CDI, VTE, Adult Sepsis, RPS, NVAP)—Infection Preventionist.	5,500	4	10/60
	57.132 Patient Safety Digital Reporting Plan (RPS CSV)	5,500	365	2/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

	Form number & name	Number of respondents	Number of responses per respondent	Average burden per response (min./hour 60)
29	57.133 Patient Safety Attestation	3,500	1	10/60
30	57.137 Long-Term Care Facility Component—Annual Facility Survey	6,270	1	135/60
31	57.138 Laboratory-identified MDRO or CDI Event for LTCF	286	24	23/60
32	57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	738	12	10/60
33	57.140 Urinary Tract Infection (UTI) for LTCF	373	24	38/60
34	57.141 Monthly Reporting Plan for LTCF	546	12	5/60
35	57.142 Denominators for LTCF Locations	724	12	35/60
36	57.143 Prevention Process Measures Monthly Monitoring for LTCF	434	12	5/60
37	57.145 Long Term Care Antimicrobial Use (LTC-AU) Module CDA	16,500	12	5/60
38	57.150 LTAC Annual Survey	395	1	102/60
39	57.151 Rehab Annual Survey	395	1	102/60
40	57.211 Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Non-Long-Term Care Facilities-Manual.	117	12	25/60
	57.211 Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Non-Long-Term Care Facilities-.CSV.	3,080	12	20/60
41	57.214 Annual Healthcare Personnel Influenza Vaccination Summary-Manual	22,000	1	120/60
	57.214 Annual Healthcare Personnel Influenza Vaccination Summary-.CSV	1,920	1	55/60
42	57.215 Seasonal Survey on Influenza Vaccination Programs for Healthcare Personnel.	15,426	1	45/60
43	57.300 Hemovigilance Module Annual Survey	63	1	86/60
44	57.301 Hemovigilance Module Monthly Reporting Plan	108	12	1/60
45	57.302 Hemovigilance Module Monthly Incident Summary	9	12	30/60
46	57.303 Hemovigilance Module Monthly Reporting Denominators	102	12	70/60
47	57.305 Hemovigilance Incident	13	77	10/60
48	57.306 Hemovigilance Module Annual Survey—Non-acute care facility	20	1	35/60
49	57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction	8	2	22/60
50	57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction	50	11	22/60
51	57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction.	9	2	20/60
52	57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction.	19	5	20/60
53	57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction.	85	13	20/60
54	57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction	23	3	20/60
55	57.313 Hemovigilance Adverse Reaction—Infection	2	2	20/60
56	57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura	1	1	20/60
57	57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea	18	3	20/60
58	57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease.	1	1	20/60
59	57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury	1	1	20/60
60	57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload.	40	4	21/60
61	57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction	15	3	20/60
62	57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction	39	3	20/60
63	57.400 Outpatient Procedure Component—Annual Ambulatory Surgery Center Survey.	350	1	10/60
64	57.401 Outpatient Procedure Component—Monthly Reporting Plan	350	12	10/60
65	57.402 Outpatient Procedure Component Same Day Outcome Measures	50	1	43/60
66	57.403 Outpatient Procedure Component—Denominators for Same Day Outcome Measures.	50	400	20/60
67	57.404 Outpatient Procedure Component—SSI Denominator	300	100	23/60
68	57.405 Outpatient Procedure Component—Surgical Site (SSI) Event	300	36	40/60
69	57.408 Monthly Survey Patient Days & Nurse Staffing	2,500	12	300/60
70	57.500 Outpatient Dialysis Center Practices Survey	6,900	1	150/60
71	57.501 Dialysis Monthly Reporting Plan	7,400	12	5/60
72	57.502 Dialysis Event	7,400	30	50/60
73	57.503 Denominator for Outpatient Dialysis	7,400	12	10/60
74	57.504 Prevention Process Measures Monthly Monitoring for Dialysis	1,730	12	60/60
75	57.507 Home Dialysis Center Practices Survey	550	1	65/60
76	57.600 Neonatal Component FHIR Measure-Late Onset Sepsis Meningitis (LOSMEN) Module-IT Initial Set up.	5,500	1	1,620/60
	57.600 Neonatal Component FHIR Measure-Late Onset Sepsis Meningitis (LOSMEN) Module-IT Yearly Maintenance.	5,500	1	1,200/60
	57.600 Neonatal Component FHIR Measure-Late Onset Sepsis Meningitis (LOSMEN) Module-Infection Preventionist.	5,500	6	6/60
	57.600 Neonatal Component Late Onset Sepsis Meningitis (LOSMEN) Module CDA Data Collection-Infection Preventionist.	5,500	12	2/60
77	57.601 Late Onset Sepsis/Meningitis Denominator Form: Late Onset Sepsis/Meningitis Denominator Form: Data Table for monthly electronic upload.	300	6	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

	Form number & name	Number of respondents	Number of responses per respondent	Average burden per response (min./hour 60)
78	57.602 Late Onset Sepsis/Meningitis Event Form: Data Table for Monthly Electronic Upload.	300	6	6/60
79	57.700 Medication Safety-Digital Measure Reporting Plan (HYPO, HAKI, ORAE)—IT Initial Set up.	5,500	1	1,620/60
	57.700 Medication Safety-Digital Measure Reporting Plan (HYPO, HAKI, ORAE)—IT Yearly Maintenance.	5,500	1	1,200/60
	57.700 Medication Safety-Digital Measure Reporting Plan (HYPO, HAKI, ORAE)—Infection Preventionist.	5,500	4	10/60
80	57.701 Glycemic Control Module-HYPO Annual Survey	10	1	180/60
81	57.800 Billing Code Data: 837I Upload	5,500	4	5/60
82	57.801 External Validation Summary Report	20	2	15/60
83	57.802 Bed Capacity-IT Initial Set Up	25	1	20/60
84	57.803 All Hazards	540	365	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–25–25AU; Docket No. CDC–2024–0088]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Risk factors, clinical course, presence and persistence of virus in various bodily fluids, and risk of sexual transmission among U.S. adults with Oropouche virus (OROV) disease. This study will assist in the response to this emerging virus by; identifying risk factors for infection to inform prevention guidance and messaging, informing recognition, diagnosis, follow-up care, and counseling of patients with OROV

disease, and understanding risks of sexual transmission to inform prevention recommendations, especially for pregnant people and their partners, or those considering pregnancy.

DATES: CDC must receive written comments on or before January 3, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0088 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of

information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Risk factors, clinical course, presence and persistence of virus in various bodily fluids, and risk of sexual transmission among U.S. adults with Oropouche virus (OROV) disease—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Oropouche virus is an emerging virus in the Americas that is spread by the bite of midges and some species of mosquitoes. Infection with Oropouche virus generally causes a febrile illness, but more severe disease such as meningitis and hemorrhagic disease can occur. Beginning in late 2023, the geographic range of Oropouche virus has expanded, with over 10,000 cases from six countries reported in 2024 as of October 15. The first U.S. cases were reported in the summer of 2024, all among returning international travelers. This recent geographic expansion, along with reports of deaths among cases, vertical transmission leading to fetal loss and birth defects, and identification of live virus in semen raise concerns about the broader threat this virus represents to the United States. There

are numerous gaps in our understanding of this emerging virus, including the urgent need to evaluate the possibility of sexual transmission to inform prevention recommendations, especially for pregnant people and their partners, or those considering pregnancy.

The purpose of this investigation is to better define the risk factors, clinical course, viral shedding, and potential for sexual transmission among patients with Oropouche virus disease. Participants will be interviewed about their symptoms, medical and travel history, potential risk factors for infection, and sexual partners since becoming ill. They will be followed over time to see if their symptoms reoccur, which has been highlighted as a unique feature of Oropouche virus disease among similar viruses. They will also submit specimens of various bodily fluids over a 12-week period to be tested

for Oropouche virus RNA. Lastly, sexual contacts of people who have been diagnosed with Oropouche virus disease will be interviewed to see if they experienced any symptoms consistent with Oropouche virus disease after these sexual encounters. Sexual contacts that report symptoms will be asked to have a blood sample collected and tested for evidence of Oropouche virus infection.

The findings of this investigation will inform prevention guidance, improve clinical recognition and diagnosis, and prevent further illnesses of Oropouche virus disease. Preliminary results will be used immediately to inform agency response activities and prevention guidance to help people protect themselves from Oropouche virus disease. CDC requests Emergency OMB approval for an estimated 663 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General public	Baseline survey	200	1	30/60	100
	Follow-up clinical survey	200	6	15/60	300
	Symptom Diary	200	6	10/60	200
	Contact tracing survey	100	1	15/60	25
	Sexual contact interview form	150	1	15/60	38
Total .....	.....	.....	.....	.....	663

Jeffrey M. Zirger,
Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.
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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention
[60Day–25–0891; Docket No. CDC–2024–0086]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).
ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the

general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled World Trade Center (WTC) Health Program Enrollment, Appeals & Reimbursement. The WTC Health Program is a Federal limited benefit health care program providing medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

DATES: CDC must receive written comments on or before January 3, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0086 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329;

Telephone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

World Trade Center Health Program Enrollment, Appeals & Reimbursement (OMB Control No. 0920–0891, Exp. 09/30/2025)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) seeks OMB approval for a Revision of an ongoing information collection titled World Trade Center Health Program Enrollment, Appeals & Reimbursement (OMB Control No. 0920–0891). In accordance with the James Zadroga 9/11 Health and Compensation Act of 2010, individuals newly seeking enrollment in the World Trade Center (WTC) Health Program as responders or survivors may apply to the Program. The recently passed National Defense Authorization Act for Fiscal Year 2024 (NDAA) expands Program enrollment eligibility for Pentagon and Shanksville responders. title I of the Zadroga Act (Pub. L. 111–347, as amended by Pub. L. 114–113 and Pub. L. 116–59), added title XXXIII to the Public Health Service Act (PHS Act), establishing the World Trade Center (WTC) Health Program within the Department of Health and Human Services (HHS). The Director of NIOSH serves as the Administrator of the WTC Health Program for most purposes, with certain payment functions carried out by the Centers for Medicare & Medicaid Services. As established by the Zadroga Act, the WTC Health Program is a Federal limited benefit health care program providing medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors). The WTC Health Program has been authorized for 75 years (through 2090).

Respondents are WTC Health Program members and potential members. In this Revision, NIOSH requests OMB approval of the revised WTC Health Program Pentagon/Shanksville Application for Enrollment, to include

language regarding the expanded eligibility criteria mandated by the National Defense Authorization Act (NDAA) for Fiscal Year 2024. NIOSH also requests OMB approval of a new web-based Youth Research Cohort (YRC) Registration portal that will be used to engage future cohort members and allow them to self-enroll into the YRC.

In this Revision, total annualized burden will increase from 12,882 hours to 16,132 (+3,250 hours). The greatest increase in burden (+3,000 hours) is the result of the new secure, public-facing web-based portal for the YRC. In December 2022, the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), amended section 3341 of the PHS Act to direct the Administrator to establish a new cohort for future research. This portal has been developed to engage with future cohort members and streamline the enrollment process into the YRC. This web-based portal will maintain the privacy and data protection of future cohort members in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and HIPAA regulations.

Another increase in annualized burden (+250 hours) is due to the expanded eligibility for Program membership for Pentagon and Shanksville responders, as mandated in the NDAA. The WTC Health Program Pentagon/Shanksville Application for Enrollment has been updated to reflect the new eligibility criteria mandated by the NDAA. The revised application now includes an additional eligibility question targeting specific groups such as active duty, retired, or reserve members of the military, civilian employees of the Department of Defense (DOD), or certain DOD contractors who responded to the Pentagon or Shanksville sites. The application also now clarifies that in addition to the work status, the responder must have participated in rescue, recovery, demolition, debris cleanup, or other related services to be eligible to enroll in the Program.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
FDNY Responder	World Trade Center Health Program FDNY Responder Application for Enrollment.	140	1	30/60	70

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Responder ...	World Trade Center Health Program Responder Application for Enrollment (Other than FDNY).	6,215	1	30/60	3,108
Pentagon/Shanksville Responder.	World Trade Center Health Program Pentagon/Shanksville Responder Application for Enrollment.	742	1	30/60	371
WTC Survivor	World Trade Center Health Program Survivor Application for Enrollment (all languages).	9,240	1	30/60	4,620
General responder	Clinic Selection Postcard for new general responders in NY/NJ to select a clinic.	3,830	1	15/60	958
Interested Party	Petition for the addition of health conditions	35	1	1	35
Program Applicants or Members.	Designated Representative Appointment Form.	1,300	1	15/60	325
Program Applicants or Members.	Designated Representative HIPAA Release Form.	1,300	1	15/60	325
Program Members	Member Satisfaction Survey	6,600	1	30/60	3,300
General Public	WTC Health Program HIPAA Authorization for Deceased Individuals.	30	1	15/60	8
Program Applicants or Members.	WTC Health Program General HIPAA Authorization to Third Parties.	30	1	15/60	8
Program Applicants or Members.	Designated Representative Appointment Form.	15	1	15/60	4
Youth Research Cohort Enrollees.	Youth Research Cohort Registration Portal	6,000	1	30/60	3,000
Total .....	.....	.....	.....	.....	16,132

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024–25556 Filed 11–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–25–0607; Docket No. CDC–2024–0089]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites

comment on a proposed information collection project titled The National Violent Death Reporting System. (NVDRS). NVDRS is a state-based surveillance system developed to monitor the occurrence of violent deaths, including homicide, suicide, deaths due to legal intervention, deaths of undetermined intent, and unintentional firearm deaths in the U.S. **DATES:** CDC must receive written comments on or before January 3, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0089 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of

the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

The National Violence Death Reporting System (NVDRS) (OMB Control No. 0920–0607, Exp. 9/30/2025)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Violence against others or oneself is a major public health problem in the United States and is a particular problem for the young: suicide and homicide were among the top four leading causes of death for Americans 10–44 and 1–34 years of age in 2022. A key to preventing these violent deaths is to understand and target their circumstances. Given the magnitude of

the problem, it is noteworthy that no national surveillance system for violent deaths existed in the U.S. until the National Violent Death Reporting System (NVDRS) was developed. NVDRS is a state-based surveillance system developed to monitor the occurrence of violent deaths (e.g., homicide, suicide, deaths due to legal intervention, deaths of undetermined intent, and unintentional firearm deaths) in the U.S. by collecting comprehensive data from multiple sources (e.g., death certificates, coroner/medical examiner reports, law enforcement reports) into a useable, anonymous database.

CDC received initial OMB approval for NVDRS in November 2004 and renewals through July 2020. This Revision request includes several minor updates: (1) implement updates to the web-based system to improve performance, functionality, and accessibility; (2) add new data elements to the system; and (3) make minimal revisions to the NVDRS Coding Manual. The School Associated Violent Death (SAVD) module was added in the previous Revision request on July 2020, due to the discontinuation of the SAVD Surveillance System (OMB Control No. 0920–0604). SAVD currently monitors school-associated violent deaths across the U.S. by abstracting data from media reports. These data play an important role in assessing national trends in school-associated violent deaths and

helping inform efforts to prevent fatal school violence. To address duplication, the SAVD was phased out and the SAVD module in NVDRS will capture in depth information about such incidents. The Public Safety Officer Suicide Reporting module was also added to the system to capture more detailed information on suicides among public safety officers. This module includes information specific to first responders and builds upon elements collected as part of current NVDRS. Like the SAVD module, it is a tab in the NVDRS web-based system that only applies to a subset of incidents.

NVDRS is an ongoing surveillance system that captures annual violent death counts, CDC aggregates de-identified data from each state into one national database that is analyzed and released in annual reports and other publications. A restricted access database is available for researchers to request access to NVDRS data for analysis and a web-based query system is open for public use that allows for electronic querying of data. NVDRS generates public health surveillance information at the national, state, and local levels that is more detailed, useful, and timely. The information helps identify where prevention efforts need to be focused. CDC requests OMB approval for an estimated 41,827 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Public Agencies	Web-based Data Entry	56	1,350	30/60	37,800
	School Associated Violent Death Module	45	1	30/60	23
	Public Safety Officer Suicide Reporting Module	56	429	10/60	4,004
Total .....	.....	.....	.....	.....	41,827

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024–25555 Filed 11–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0055]

Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods (Edition 2); Draft Guidance for Industry; Extension of Comment Period

AGENCY: Food and Drug Administration,
HHS.

ACTION: Notice of availability; extension
of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for a draft guidance for industry entitled “Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods (Edition 2).” The draft guidance, when finalized, will describe our views on the next voluntary goals (Phase II (3-year)) for sodium reduction in a variety of identified categories of

foods that are commercially processed, packaged, or prepared. These goals are intended to address the excessive intake of sodium in the current population to help reduce the burden of diet-related chronic disease, promote improvements in public health, and advance health equity by supporting a healthier food supply. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments on the draft guidance by January 13, 2025, to ensure that we consider your comment on the draft guidance before we begin 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-2014-D-0055 for "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods (Edition 2)." 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." We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>

and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Nutrition Center of Excellence, Human Foods Program, Food and Drug

Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

Kasey Heintz, Nutrition Center of Excellence, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1376.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of August 16, 2024 (89 FR 66727), we published a notice announcing the availability of a draft guidance entitled, "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry (Edition 2)." The draft guidance, when finalized, will describe our views on the next voluntary goals (Phase II (3-year)) for sodium reduction in a variety of identified categories of foods that are commercially processed, packaged, or prepared. We provided a 90-day comment period for the draft guidance.

We have received requests for a 90-day extension of the comment period. In general, the requests explained that industry needed more time to thoroughly review the draft guidance against numerous product lines and that industry also anticipates a need to manage multiple critical initiatives from FDA, including a final rule on "healthy" labeling and a proposed rule on front-of-package nutrition labeling.

We have considered the requests and are extending the comment period for an additional 60 days until January 13, 2025. We believe that this extension will allow adequate time for interested persons to submit comments without significantly delaying finalizing the guidance.

Dated: October 29, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024-25567 Filed 11-1-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-D-0367]

Sec. 540.525 Scombrototoxin (Histamine)-Forming Fish and Fishery Products—Decomposition and Histamine (CPG 7108.24) Compliance Policy Guide; Guidance for Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a final guidance for FDA staff entitled “Sec. 540.525 Scombrototoxin (Histamine)-forming Fish and Fishery Products—Decomposition and Histamine (CPG 7108.24) Compliance Policy Guide.” This compliance policy guide (CPG) is intended to provide FDA staff guidance on adulteration associated with decomposition and/or histamine identified during surveillance sampling and testing of fish and fishery products susceptible to histamine formation.

DATES: The announcement of the guidance is published in the **Federal Register** on November 4, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the

public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2021-D-0367 for “Sec. 540.525 Scombrototoxin (Histamine)-forming Fish and Fishery Products—Decomposition and Histamine (CPG 7108.24) Compliance Policy Guide.” 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.” We will review this copy, including the claimed confidential information, in our 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>.

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to Division of Seafood Safety, Office of Dairy and Seafood Safety, Office of Microbiological Food Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Steven Bloodgood, Division of Seafood Safety, Office of Dairy and Seafood Safety, Office of Microbiological Food Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-5316; or Jessica Ritsick, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a CPG for FDA Staff entitled “Sec. 540.525 Scombrototoxin (Histamine)-forming Fish and Fishery Products—Decomposition and Histamine (CPG 7108.24).” We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. 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.

This CPG is intended to provide FDA staff guidance on adulteration associated with decomposition and/or histamine identified during surveillance sampling and testing of fish and fishery products susceptible to histamine formation. This finalized CPG supersedes FDA’s existing CPG on this topic.

In the **Federal Register** of December 27, 2021 (86 FR 73295), we made

available a draft guidance for FDA staff entitled “Sec. 540.525 Scombrototoxin (Histamine)-forming Fish and Fishery Products—Decomposition and Histamine (CPG 7108.24)” and gave interested parties an opportunity to submit comments by February 25, 2022, for us to consider before beginning work on the final version of the guidance. In the **Federal Register** of March 15, 2022 (87 FR 14538), in response to a request from stakeholders, we reopened the comment period until April 14, 2022.

We received comments on the draft guidance and have modified the final guidance where appropriate. Changes to the guidance include the addition of a detailed explanation for our revisions to the histamine levels set forth in the guidance. The guidance announced in this notice finalizes the draft guidance dated December 2021.

II. Paperwork Reduction Act of 1995

This guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/FoodGuidances> or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: October 22, 2024.

Kimberlee Trzeciak,
Deputy Commissioner for Policy, Legislation,
and International Affairs.

[FR Doc. 2024–25315 Filed 11–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Process Data for Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to

submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate and any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than January 3, 2025.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or by mail to the HRSA Information Collection Clearance Officer, Room 14NWH04, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Process Data for Organ Procurement and Transplantation Network, OMB No. 0906–xxxx–New.

Abstract: Section 372 of the Public Health Service Act requires that the Secretary of HHS, by awards, provide for the establishment and operation of the Organ Procurement and Transplantation Network (OPTN), which, under oversight of the HRSA, operates the U.S. procurement and transplantation system. The Secretary and/or HRSA may direct the collection of data in accordance with the regulatory authority in 42 CFR 121.11 of the OPTN Final Rule. HRSA, in alignment with the Paperwork Reduction Act of 1995, submits data elements for collection to OMB for official federal approval.

Need and Proposed Use of the Information: HRSA and the OPTN Board of Directors use data to develop transplant, procurement, and allocation policies; to determine whether institutional members are complying with policy; to determine member-specific performance; to ensure patient safety, and to fulfill the requirements of the OPTN Final Rule. The regulatory authority in 42 CFR 121.11 of the OPTN Final Rule allows the Secretary of HHS to prescribe data collection. This regulatory authority requires OPTN data to be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, and members of the public for evaluation, research, patient information, and other purposes.

This is a request to expand the current OPTN data collection, approved under OMB No. 0915–0157. HRSA is submitting this new data collection, separate from OMB No. 0915–0157, since it includes new forms developed in response to an HHS Secretarial Data Directive that are not in use by OPTN. HRSA believes that separating these data collections will minimize confusion, increase clarity among OPTN members and stakeholders, and enable more direct feedback on the new forms. Both data collections include time-sensitive, life-critical data on transplant candidates and potential organ donor patients, the organ matching process, histocompatibility results, organ labeling and packaging, and pre-and post-transplantation data on recipients and donors. The OPTN collects these specific data elements from transplant centers.

HRSA and the OPTN use this information to: (1) facilitate organ placement and match donor organs with recipients; (2) monitor compliance of member organizations with federal laws and regulations and with OPTN requirements; (3) review and report periodically to the public on the status of organ donation, procurement, and transplantation in the United States; (4) provide data to researchers and government agencies to study the scientific and clinical status of organ transplantation; and (5) perform transplantation-related public health surveillance, including the possible transmission of donor disease.

This new collection consists of three new data forms as directed by the HHS Secretary, which were developed to improve the OPTN organ matching and allocation process and OPTN member compliance with OPTN requirements:

- One new form will collect data from the point of referral of a patient to an organ procurement organization (OPO) for potential deceased organ donation. These data will provide a more objective source of information on procurement practices, the management of donor patients, and how these practices inform the supply of deceased donor organs available for transplant. These data may also help to improve monitoring of OPO performance and would facilitate quality assurance and performance improvement efforts to reduce the variation in the quality-of-care OPOs provide to donors and donor families.

- Two new forms will expand data collection from the point of patient registration, referral, and evaluation at transplant centers. These data will enable collection of data from the point of referral. Pre-waitlisting data will provide insight into who gets referred

and by whom, who gets evaluated, and who gets placed on the organ transplantation waiting list. These data will also facilitate the OPTN's ability to address disparities in processes of care, improve access to organ transplantation, and assess overall system performance.

Once this collection is approved, HRSA will cease the use of the Death Notification Registration and the Deceased Donor Death Referral forms that are included within the existing OMB-approved Data System for Organ Procurement and Transplantation Network OMB No. 0915–0157. This

decision was made to avoid unnecessary burden and redundancy in the data collected by this package and the existing OMB data collection instrument.

Likely Respondents: Transplant Centers, OPOs, and Histocompatibility Laboratories.

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 No.	Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
1	Pre-Waitlist Transplant Referral Form	248	1,164.68	288,840.64	0.35	101,094.22
2	Pre-Waitlist Transplant Evaluation Form	248	594.22	147,366.56	0.40	58,946.62
3	Ventilated Patient Form	56	3,292.00	184,352.00	0.50	92,176.00
Total .....	.....	552	.....	620,559.20	.....	252,216.84

The average burden estimates of both new pre-waitlist forms are based on the 2023 burden estimates of existing OMB-approved Transplant Candidate Registration forms, approved under 0915–0157. The average burden estimate of the Ventilated Patient Form is based on the average burden estimate of the 2024 burden estimates of existing OMB-approved Death Notification Registration form with an additional 0.08 hour per collected form burden to reflect an increase in total data fields.

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy P. McNulty,

Deputy Director, Executive Secretariat.

[FR Doc. 2024–25522 Filed 11–1–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Given the capacity constraints of the venue, the public is strongly encouraged to attend virtually via NIH videocast. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: December 12, 2024.

Time: 9:00 a.m. to 5:45 p.m.

Agenda: NIH Director's Report; Budget Update; Legislative Update; RECOVER 2.0 Early Career Intramural Investigator Highlight; ACD Working Group on Diversity Update; Accessibility, Disability Inclusion, and Disability Research at NIH; NExTRAC ENGAGE Update; Scientific Management Review Board. Other Business of the Committee.

Date: December 13, 2024.

Time: 9:00 a.m. to 12:15 p.m.

Agenda: Cancer Moonshot Update; ABCD Update; Alzheimer's Update; AMP Update Other Business of the Committee.

Place: National Institutes of Health, Building 1, Wilson Hall, One Center Drive, Bethesda, MD 20892.

Contact Person: Cyndi Burrus-Shaw, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–2433, email: shawcy@od.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://www.nih.gov/about-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: <http://acd.od.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 30, 2024.

Bruce A. George,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–25584 Filed 11–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Study Section.

Date: December 6, 2024.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Address: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Melissa H. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20892, (301) 827–7951, email: nagelinmh2@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 30, 2024.

Bruce A. George,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–25585 Filed 11–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Research in Infectious Diseases (R01 Clinical Trial Not Allowed).

Date: December 2–3, 2024.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Rekha Dhanwani, Ph.D., Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (240) 627–3076, rekha.dhanwani@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 29, 2024.

Lauren A. Fleck,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–25549 Filed 11–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500183047]

Notice of Availability of the Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for the Rough Hat Clark Solar Project in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLMPA), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) Amendment and Final Environmental Impact Statement (EIS) for the Rough Hat Clark Solar Project and by this notice is announcing the start of a 30-day protest period of the Proposed RMP Amendment to the BLM Director.

DATES: This notice announces the opening of a 30-day protest period for the Proposed RMP Amendment. Protests must be postmarked or electronically submitted on the BLM's National NEPA Register site within 30 days of the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The Proposed RMP Amendment, Final EIS, and associated documents are available on the BLM National NEPA Register project website at <https://eplanning.blm.gov/eplanning-ui/project/2019992/510>. Documents pertinent to this proposal may also be examined at the Southern Nevada District Office, Las Vegas Field Office, 4701 N Torrey Pines Drive, Las Vegas, Nevada 89130.

Instructions, including addresses, for filing a protest with the BLM for the Rough Hat Clark Solar Project can be found at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT:

Jessica Headen, Project Manager, telephone (702) 515–5206, address Bureau of Land Management, 4701 N Torrey Pines Drive, Las Vegas, NV 89130. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for

contacting Ms. Headen. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Proposed RMP Amendment is being considered to allow the BLM to evaluate the effects of granting a right-of-way (ROW) for the Rough Hat Clark Solar Project. This process requires amending the existing 1998 Las Vegas Resource Management Plan (Las Vegas RMP) to modify the Visual Resource Management (VRM) Class of lands south of State Route 160 and west of Tecopa Road to the Town of Pahrump, Nevada. The Applicant's proposed Project does not conform with the management objectives of the Project area's current VRM classification (Class III), and therefore the designated lands would be modified from VRM Class III to VRM Class IV.

The Proposed RMP Amendment covers a larger area than the Rough Hat Clark Solar Project application area. The Proposed RMP Amendment area would encompass approximately 9,960 acres of BLM-administered land. This area includes the location where the Yellow Pine Solar Project is currently under construction, as well as lands within the application areas for the Copper Rays, Mosey, and Purple Sage Solar Projects. Given the existing and proposed uses of this area, amending the VRM from Class III to Class IV is necessary to ensure activities conform with the Las Vegas RMP.

Purpose and Need

The need for the BLM's action is to respond to the Applicant's request for a ROW authorization to construct, operate, maintain, and decommission the proposed Project in accordance with the BLM's responsibility under Title V of FLPMA and 43 CFR part 2800. The BLM's action of considering the ROW application also would meet the BLM's obligation to contribute towards the legislative and administrative goals of advancing the development of renewable energy production on Federal public lands, as directed by Section 3104 of the Energy Act of 2020 and Executive Order 14057.

The Project as proposed would not conform to the 1998 Las Vegas RMP as required by 43 CFR 1610.5–3(a). The BLM would need to amend the RMP to bring it into compliance, as discussed above.

The purpose of the BLM's action is to determine if the Applicant's Project and alternatives are consistent with relevant

laws, regulations, and policies, and to consider whether to grant, grant with modifications, or deny the ROW. The purpose of the RMP Amendment is to ensure that any development of renewable energy production in the general vicinity of the Applicant's proposed Project area conforms with the RMP's provisions, as provided for in 43 CFR 1610.5–3(c), specifically by reclassifying this geographic area as VRM Class IV.

Alternatives Considered

The Applicant, Candela Renewables, LLC, applied to the BLM's Las Vegas Field Office for a ROW grant to provide the necessary land and access for the construction, operation, maintenance, and eventual decommissioning of the proposed Rough Hat Clark Solar Project and interconnection to the regional transmission system. The Proposed Action would include up to a 400-megawatt (MW) alternating current solar photovoltaic power generating facility with up to 700 MW of battery energy storage on approximately 2,469 acres of BLM-managed public land. The Project area is located in the Pahrump Valley in Clark County, Nevada, immediately adjacent to the Clark/Nye county line, three miles southeast of the Town of Pahrump, and approximately 38 miles west of the City of Las Vegas. The expected life of the Project is 30 years.

Alternatives to the Proposed Action were developed by the BLM to avoid or reduce various resource conflicts. Key resource constraints include the habitat for and presence of the Mojave desert tortoise listed as threatened under the Endangered Species Act, along with limited groundwater resources, vegetation at the Project area, and the generation of dust.

The BLM analyzed three alternatives in detail: the Applicant Proposed Action, Alternative Action 1, and the No Action Alternative.

Alternative Action 1, referred to as the Resources Integration Alternative, was developed in response to issues raised by the public and agency considerations. The intent of the Resources Integrated Alternative is to minimize disturbance to vegetation and soils within the solar facility by setting maximum allowable disturbance thresholds to vegetation during construction, setting restoration goals, and utilizing topography-spanning technologies. The Resources Integration Alternative would implement overland travel for project construction as this method is less intensive than others and is expected to improve the retention of native vegetation, wildlife habitat, soils, seed banks, and biological soil crusts

while minimizing water quality impacts and air quality impacts from fugitive dust.

The No Action Alternative would be a continuation of existing conditions and the ROW would not be approved.

The BLM evaluated the alternatives in consultation with other Federal and State agencies, Tribes, the public, and cooperating agencies. The BLM's Preferred Alternative is Alternative 1, the Resources Integration Alternative.

The BLM analyzed a combination of Project Design Features and Best Management Practices to eliminate or minimize impacts associated with the BLM Preferred Alternative. This includes required Solar PEIS Programmatic Design Features, Southern Nevada District Office Project Design Features, and required management plans, all of which are detailed in Appendix B of the Final EIS.

The BLM published the NOA of the Draft EIS and RMP Amendment in the **Federal Register** on January 12, 2024. The publication of the NOA began a 90-day public comment period that ended on April 11, 2024. The BLM hosted two public meetings, held on January 30, 2024 (in-person in Pahrump, Nevada), and February 1, 2024 (virtual), to provide the public with the opportunity to speak with BLM representatives, ask questions, and submit comments.

The BLM received a total of 207 substantive and non-substantive letters and verbally recorded comments from 7 Federal, State, and local agencies; 1 member of a Native American Tribe; 9 non-governmental organizations; 1 private company; and 189 individual members of the public. Detailed responses to comments can be found in Appendix G of the Final EIS. In response to the substantive comments received, the BLM made corrections to analyses or data in the EIS or explained why the comments did not warrant additional changes to the EIS. For example, the BLM updated the acreages of impacts for the Proposed Action and Alternative 1, added information regarding the U.S. Fish and Wildlife Service Biological Opinion and impacts to desert tortoise, revised descriptions of Project infrastructure, updated the groundwater analysis, revised the cultural resources and recreation analysis, and included two new mitigation measures addressing the monarch butterfly and desert tortoise.

Protest of the Proposed RMP Amendment

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely

affected by approval of the Proposed RMP Amendment may protest its approval to the BLM. Protest of the Proposed RMP Amendment constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP Amendment. Instructions for filing a protest with the BLM regarding the Proposed RMP Amendment may be found online (see **ADDRESSES**). All protests must be in writing and mailed to the appropriate address (found in the instructions for filing a protest) or submitted electronically through the BLM National NEPA Register project website (see **ADDRESSES**). Protests submitted by any other means will be invalid. The BLM will render a written decision on each protest. The decision of the BLM on the protest shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. Upon resolution of protests, the BLM will issue a Record of Decision and Approved RMP Amendment.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10 (2023), 43 CFR 1610.2, 43 CFR 1610.5, and 43 CFR part 2800)

Jon K. Raby,

State Director.

[FR Doc. 2024–25573 Filed 11–1–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 245R5065C6,
RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Morgan Raymond, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; mraymond@usbr.gov; telephone 303–445–3382.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the “Final Revised Public Participation Procedures” for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each

proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

BCP Boulder Canyon Project

Reclamation Bureau of Reclamation
 CAP Central Arizona Project
 CUP Central Utah Project
 CVP Central Valley Project
 CRSP Colorado River Storage Project
 XM Extraordinary Maintenance
 EXM Emergency Extraordinary Maintenance
 FR Federal Register
 IDD Irrigation and Drainage District
 ID Irrigation District
 M&I Municipal and Industrial
 O&M Operation and Maintenance
 OM&R Operation, Maintenance, and Replacement
 P-SMBP Pick-Sloan Missouri Basin Program
 RRA Reclamation Reform Act of 1982
 SOD Safety of Dams
 SRPA Small Reclamation Projects Act of 1956
 USACE U.S. Army Corps of Engineers
 WD Water District
 WIIN Act Water Infrastructure Improvements for the Nation Act

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406-247-7752.

New contract actions:

27. Clyde Little, Boysen Unit, Pick-Sloan Missouri Basin Program, Wyoming: Consideration for renewal of long-term irrigation water service Contract No. 039E6A0093, as amended.

28. Town of Kirby, Boysen Unit, Pick-Sloan Missouri Basin Program, Wyoming: Consideration for renewal of long-term water service for supplemental municipal water for Contract No. 5-07-60-WS173.

29. Central Oklahoma Master Conservancy District, Norman Project, Oklahoma: Consideration for renewal of a water service contract for municipal and industrial uses for Contract No. 219E640007.

30. Elevation NewCo, LLC, East Bench Unit, Helena-Great Falls Division, Pick-Sloan Missouri Basin Program, Montana: Consideration for name re-assignment of Contract No. 119E670012.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138-1102, telephone 801-524-3864.

New contract actions:

44. South Cache Water Users Association, Hyrum Project, Utah. Reclamation intends to enter into a repayment contract with the South Cache Water Users Association under the Safety of Dams Act for the reimbursable portion of the costs to repair the spillway at Hyrum Dam.

45. Strawberry Valley Project, Utah. The water users on the Strawberry Valley Project have requested to enter into a conversion contract with

Reclamation under the Sale of Water for Miscellaneous Purposes Act to convert the project irrigation water to miscellaneous purposes.

46. Seedskaadee Project, Wyoming. The Wyoming Water Development Commission (WWDC) desires to enter into a contract with Reclamation to acquire the use of the remaining water in Fontenelle Reservoir under Section 9 of the Reclamation Project Act of 1939. The WWDC also desires to enter into an exchange contract with Reclamation under Section 14 of the Reclamation Project Act of 1939.

47. Uncompahgre Project, Colorado River Storage Project, Colorado. The Uncompahgre Valley Water Users Association desires to enter into a renewal contract with Reclamation under Section 14 of the Reclamation Project Act of 1939 to exchange water between Taylor Park Reservoir and Blue Mesa Reservoir.

48. Navajo Gallup Project, Arizona. The Navajo Nation desires to enter into a contract with Reclamation under the Contributed Funds Act of 1922 to provide funding to increase the size of certain laterals on the Navajo Gallup Project.

49. Middle Rio Grande Project, New Mexico. The Bureau of Reclamation desires to store El Vado irrigation water in Abiquiu Reservoir under Section 14 of the Reclamation Project Act of 1939.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8192.

New contract actions:

17. United States Department of the Navy, Boulder Canyon Project, All American Canal System, California: Terminate Interagency Agreement No. 6-07-30-W0351 pursuant to Article 4.

Columbia-Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706-1234, telephone 208-378-5344.

Completed contract actions:

7. Stanfield Irrigation District, Umatilla Basin Project, Oregon: A Short-term water service contract to provide for the use of conjunctive use water, if needed, for the purposes of pre-saturation and for such use in October to extend their irrigation season. Completed June 27, 2024.

17. J.R. Simplot Company and Micron Technology, Inc., Boise Project, Arrowrock Division, Idaho: Request to renew municipal and industrial water service contract pursuant to Section 9(c)(2) of the Reclamation Project Act of 1939. Completed June 3, 2024.

California—Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916-978-5250.

New contract actions:

39. CVP, California: Water Service Contract for fish & wildlife purposes with Contra Costa Water District and/or Los Vaqueros Reservoir Joint Powers Authority pursuant to Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706).

40. Tri-Valley Water District, CVP, California: Proposed partial assignment of 150 acre-feet of Tri-Valley Water District's CVP water supply to Kaweah Delta Water Conservation District.

41. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, CVP, California: Execution of Temporary Water Service Contracts for Surplus Water Under Section 215 of the Reclamation Reform Act of 1982 with various entities for volumes up to 100,000 acre-feet per year per contract.

42. CVP, California. Administrative assignments of various water service/repayment contracts.

Completed contract actions:

12. San Luis WD, Meyers Farms Family Trust, and Reclamation, CVP, California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,525 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet. Completed June 25, 2024.

43. Meyers Farms Family Trust, CVP, California: Voluntary Full Assignment of Contract No. 07-WC-20-3529A, from Meyers Farms Family Trust to Westside Agriculture LLC. Completed July 25, 2024.

44. Meyers Farms Family Trust, CVP, California: Voluntary Full Assignment of Contract No. 9-07-20-W1608, from Meyers Farms Family Trust to Westside Agriculture LLC. Completed July 25, 2024.

45. Meyers Farms Family Trust, CVP, California: Voluntary Full Assignment of Contract No. 21-WC-20-5784, from Meyers Farms Family Trust to Westside Agriculture LLC. Completed July 25, 2024.

Christopher Beardsley,

Director, Mission Assurance and Protection Organization.

[FR Doc. 2024-25539 Filed 11-1-24; 8:45 am]

BILLING CODE 4332-90-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–749 (Fifth Review)]

Persulfates From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 4, 2024.

FOR FURTHER INFORMATION CONTACT:

Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2024, the Commission determined that the domestic interested party group response to its notice of institution (89 FR 54533, July 1, 2024) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B

(19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on December 18, 2024. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission’s rules.

Written submissions.—As provided in § 207.62(d) of the Commission’s rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before 5:15 p.m. on December 26, 2024 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 26, 2024. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its

authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission’s rules.

By order of the Commission.

Issued: October 29, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–25508 Filed 11–1–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–746–747 and 731–TA–1724–1725 (Preliminary)]

Overhead Door Counterbalance Torsion Springs From China and India; Notice of Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–746–747 and 731–TA–1724–1725 (Preliminary) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of overhead door counterbalance torsion springs from China and India, provided for in subheadings 7308.90.95, 7320.20.50, 8412.80.10, and 8412.90.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China and India. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by December 13, 2024. The Commission’s views must be transmitted to Commerce within five business days thereafter, or by December 20, 2024.

¹ A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements will be available from the Office of the Secretary and at the Commission’s website.

² The Commission has found the response submitted on behalf of Evonik Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DATES: October 29, 2024.

FOR FURTHER INFORMATION CONTACT:

Peter Stebbins ((202) 205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on October 29, 2024, by IDC Group, Inc., Minneapolis, Minnesota; Iowa Spring Manufacturing, Inc., Adel, Iowa; and Service Spring Corp., Maumee, Ohio.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing

interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on November 19, 2024. Requests to appear at the conference should be emailed to preliminaryconferences@usitc.gov (DO NOT FILE ON EDIS) on or before 5:15 p.m. on November 15, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

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.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on November 22, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than 4:00 p.m. on November 18, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed

by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 29, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–25551 Filed 11–1–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0119]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Request for Interim Security Clearance—ATF Form 8620.70

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 4, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Niki Wiltshire, Personnel Security Division, by email at Niki.Wiltshire@atf.gov, or telephone at 202-648-9260.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 89 FR 67105, on Monday, August 19, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the information collection or the OMB Control Number 1140-0119. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of

Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of this information collection:

1. *Type of Information Collection:* Revision of a previously approved collection.
2. *Title of the Form/Collection:* Request for Interim Security Clearance.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 8620.70. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* *Affected Public:* Individuals or households. The obligation to respond is voluntary. *Abstract:* The Request for Interim Security Clearance (ATF F 8620.70) is used to request approval for a candidate for Federal or Contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives to be granted an interim security clearance prior to the completion and adjudication of the individual's background investigation. The proposed information collection (IC) OMB # 1140-0119 is being revised to remove the option for one to delay an interim security clearance and to replace it with the option for one to decline the risk associated with an interim security clearance. Additionally, a minor revision to the Paperwork Reduction Act Notice has been included.
5. *Obligation to Respond:* Voluntary.
6. *Total Estimated Number of Respondents:* 2,000 respondents.
7. *Estimated Time per Respondent:* 5 minutes.
8. *Frequency:* Once annually.
9. *Total Estimated Annual Time Burden:* 167 hrs.
10. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: October 29, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-25519 Filed 11-1-24; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. L-12069]

Proposed Exemption From Certain Prohibited Transaction Restrictions Involving Boilermakers Western States Apprenticeship Fund Located in Page, Arizona

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA). This proposed exemption would permit the purchase of a parcel of improved real property by the Boilermakers Western States Apprenticeship Fund (the Plan or Applicant) from a local union lodge whose members may be participants in the Plan. The Plan requests the exemption in order to continue to utilize the property to carry out its training program and its administrative duties.

DATES:

Exemption date: If granted, the exemption will be effective as of the date the grant notice is published in the **Federal Register**.

Comments due: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by December 19, 2024.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L-12069, via email to e-OED@dol.gov or online through <https://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of

Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210, reachable by telephone at (202) 693-8673. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez of the Department at (202) 693-8553. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the requestor, and a notice of such hearing will be published by the Department in the Federal Register. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements stated above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified in the request can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but **DO NOT** submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. If EBSA cannot

read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the <https://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and in accordance with the Department's exemption procedures regulation.¹ If the proposed exemption is granted, the Plan would be permitted to purchase an improved real estate property parcel (the Property) from the "Navajo Nation" Lodge 4 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers (Lodge 4), provided that the Plan meets the conditions set forth in section III.

This proposed exemption would provide relief from certain restrictions set forth in ERISA sections 406(a)(1)(A) and (D), and 406(b)(1) and (2). However, this proposed exemption would not provide relief from any other violation of law.

Benefits of the Exemption: As described in more detail below, the Department is proposing relief based, in part, on the Applicant's representations that purchase of the property would avoid significant time and cost of relocating the Plan's training program to an alternative location (as the property has already been modified at the Plan's own expense for its particular training purposes).

Summary of Facts and Representations²

1. The Plan is an apprenticeship program trust fund created to provide

¹ 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).

² The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinion of the Department, unless indicated otherwise. The Department notes that availability of this exemption is subject to the express condition that the material facts and representations made by the Applicant in Application L-12069 are true, complete, and accurately describe all material terms of the transaction(s) covered by the exemption. If there is

training benefits to individuals engaged in the boilermaker construction trade.

2. The Plan is a multiemployer plan created pursuant to collective bargaining agreements (under the Taft-Hartley Act of 1947)³ between signatory contractors/employers (the Employers) and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers (the Boilermakers Union). As of December 31, 2023, the approximate aggregate fair market value of the Plan's total assets was \$12,611,589. As of May 17, 2024, there are 369 apprentices currently active in the Plan's apprenticeship program. The program graduated 84 apprentices in 2022, 65 in 2023, and 51 as of May 17, 2024. The Plan admits apprentices on a rolling basis. There have been 1,233 apprentices participating in the Plan's training from May 13, 2019, through May 13, 2024.

3. The Plan provides training and education to eligible participants located in the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming (the Western States Area).

4. The Plan is sponsored by the Boilermakers National Apprenticeship Program (the BNAP).⁴ The BNAP also is known as the National Joint Apprenticeship and Training Program, sponsors apprenticeship programs in four different geographical areas, including the Western States Area.

5. A board of trustees—the Boilermakers National Apprenticeship Board—administers the Plan (the Board of Trustees). The Board of Trustees consists of equal representation from locals of the Boilermakers Union (the Union Trustees) and signatory contractors/employers (the Employer Trustees). The Board of Trustees has discretion over the Plan's assets, including over the investment of such assets.

6. The Plan receives funding through collectively bargained contributions from contributing employers and grants,

any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

³ The Department notes that the Taft-Hartley Act is commonly known as the Labor Management Relations Act of 1947; see 29 U.S.C. 141.

⁴ ERISA section 3(16)(B) defines the term Plan Sponsor to mean in pertinent part . . . (ii) the employee organization in the case of a plan established or maintained by an employee organization, (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. . . ."

among other income sources provided under the Plan's governing documents. According to the Plan's governing documents, the Plan's assets may be used to provide apprenticeship and training benefits and to finance the operation and administration of such apprenticeship and training benefits within the Western States Area. The Plan provides benefits in two ways: through a regional training center, the JG Cooksey Training Center in Salt Lake City, Utah; and through subsidizing apprenticeship and training programs maintained by locals of the Boilermakers Union within the Western States Area. As further explained below with respect to the reimbursement policy, the Plan subsidizes apprenticeship and training programs of local Boilermakers Union lodges by annually allocating funds to such lodges based on the number of apprentices and journeypersons in each lodge and/or reimbursing the lodges' training expenses, including equipment and supplies, student expenses (tuition/lodging/meals/mileage), instructor expenses (wages/benefits/mileage), and tuition costs for apprentices or journeypersons to attend regional or national training centers, or other approved training facilities.

7. During a five-year period ending on February 11, 2022, the Plan nearly doubled its apprentice numbers, and the participation rate continued to increase as of May 17, 2024, as the demand for boilermakers in the Western States Area continues to rise. Accordingly, the Plan is interested in opening a new regional training center and is seeking to purchase an improved real estate property parcel (the Property) from Lodge 4, a labor union, located in Page, Arizona, that is affiliated with the Boilermakers Union. Lodge 4 is a separate legal entity from both the Boilermakers Union and the other lodges of the Boilermakers Union. The Board of Trustees does not currently have any Union Trustees who were appointed by Lodge 4. Rather, the Union Trustees serving on the Plan's Board of Trustees are appointed either by the Boilermakers Union or other lodges of the Boilermakers Union (*e.g.*, Boilermakers Lodge 502).

8. *The Property.* The Property is an improved real estate parcel located at 294 Cowboy Ray Road, Page, Arizona. The Property's site is 1.678 acres, with two office/warehouse buildings. The smaller of the two buildings has 1,365 square feet of office area and 975 square feet of warehouse area, for a total of 2,340 square feet. The larger of the two buildings has 1,626 square feet of office/classroom area and 3,374 square feet of

warehouse area, for a total of 5,000 square feet.

9. As discussed further below, the Plan's apprentices currently use the Property's buildings as training facilities (the Training Facility). The Applicant represents that this use of the Training Facility is essential for the Plan to fulfill its purpose of providing education and training opportunities to its apprentices.

10. The Applicant represents that the Property has been modified to carry out the purposes of the Plan. According to the Applicant, the Property is ideally situated to be a regional training facility for boilermaker apprentices and journeypersons, and the Facility is ideally suited for the Plan's purposes. The Property also has administrative space for the Plan's headquarters.⁵

11. Lodge 4 has decided to move and no longer desires to operate the Training Facility. The Union Trustees recused themselves from voting with respect to the Plan's decision to enter into the Proposed Transaction, and the Plan's Employer Trustees⁶ determined it would be in the interest of the Plan to purchase the Property because: (a) the Training Facility is already suited for the needs of the Plan; (b) the purchase of the Property would allow the Plan to maintain the Training Program at the Training Facility notwithstanding Lodge 4's decision to terminate operating the Training Facility; (c) using the Property to create a regional training facility would meet the increasing demand for the training of participants, including apprentices within the Western States Area; (d) the purchase of the Property from Lodge 4 would allow the Plan to pay the Property's fair market value without incurring any commission costs or other expenses in connection with the purchase; and (e) the Plan's continued use of the Property for training purposes would provide additional benefits to participants and provide other financial benefits to the Plan.⁷

⁵ The Plan maintains an administrative office in Page, Arizona, three miles away from the Property, that it began leasing from Marquis Realty LLC, an unrelated party to the Plan, on July 1, 2014 (the Leased Office).

⁶ The Applicant represents that the Union Trustees recused themselves from the vote to enter into the Proposed Transaction with Lodge 4 on behalf of the Plan. The recusal is described in more detail below.

⁷ The Department understands that the Plan would financially benefit from the Proposed Transaction (and indirectly benefit the Plan's participants and beneficiaries), because it (1) would not need to pay for the removal of the Plan's specialized air venting system from the Training Facility (the venting system is explained further below) and (2) could relocate its administrative office within the Property instead of paying for the Leased Office. The Applicant also stated that

12. On January 20, 2022, the Employer Trustees gave their approval for the Plan to proceed with the purchase of the Property (the Proposed Transaction), subject to the Department's grant of this proposed exemption. The Plan intends to purchase the Property from Lodge 4 within ninety (90) days following the Department's grant of a final exemption, should such an exemption be granted. The Applicant represents that the Plan considered other possible locations and properties for a regional center, but after consulting with various service providers, it ultimately determined that purchasing the Property owned by Lodge 4 was the most appropriate given the Plan's goals, as explained below.

13. In connection with the Proposed Transaction, the Plan would pay the lesser of: (i) the fair market value of \$920,000 identified in the appraisal conducted on April 1, 2021; and (ii) the updated appraised fair market value of the Property as determined by the qualified independent appraiser on the purchase date.

14. Lodge 4 and the Plan will each pay half of the costs associated with the proposed exemption, including but not limited to fees for qualified independent fiduciary services, qualified independent appraiser services, and legal fees for preparing the Plan's application to the Department requesting this proposed exemption.⁸

15. The Plan intends to make a \$460,000 cash down payment to Lodge 4 (approximately 4.7 percent of the Plan's total assets) and will finance the remaining \$460,000 of the purchase price through a third-party bank (as further described below). The Plan's estimates that the total cost to purchase the Property will represent approximately 9.4 percent of the Plan's total assets.

16. On November 1, 2021, the Plan executed a Term Loan Commitment Letter with the Bank of Labor, a bank located in Kansas City, Kansas, for \$600,000 (approximately 6.1 percent of the Plan's total assets).⁹ The Department understands that the Bank of Labor may be partly owned by the Boilermakers Union. In order to ensure that the Plan

participants would benefit by having the ability to visit the Plan's administration office and training facilities at the same location after the office is moved from the Leased Office to the Property.

⁸ Matters pertaining to services being provided by the independent fiduciary and independent appraiser with respect to the Proposed Transaction, including their qualifications and independence, are explained further below.

⁹ As explained further below, a qualified independent fiduciary notes that the Plan intends to finance the additional \$460,000 but has received a larger commitment as a precaution.

will obtain financing for the Proposed Transaction, if any, on arms' length terms, the proposed exemption prohibits the Plan from financing the acquisition of the Property with any bank that has any pecuniary interest in, or is owned, managed, or controlled in any manner by a party in interest with respect to the Plan as defined in ERISA section 3(14).

17. *ERISA Prohibited Transaction Analysis.* Lodge 4 is an employee organization whose members are covered by the Plan; therefore, it is a party in interest to the Plan pursuant to ERISA section 3(14)(D).¹⁰

18. ERISA section 406(a)(1)(A) prohibits a plan fiduciary from causing the sale or exchange, or leasing, of property between a plan and a party in interest. ERISA section 406(a)(1)(D) provides that a plan fiduciary shall not cause the plan to engage in a transaction if (1) that fiduciary knows or should know that such transaction constitutes a direct or indirect transfer of any of the plan's assets to a party in interest or (2) would result in the plan's assets being used by or for the benefit of a party in interest.

19. The Plan's purchase of the Property from Lodge 4 in exchange for the Plan's funds would constitute a prohibited sale and transfer of Plan assets in violation of ERISA sections 406(a)(1)(A) and (D), respectively.

20. Additionally, ERISA section 406(b)(1) prohibits a plan fiduciary from dealing with a plan's assets ". . . in his own interest or for his own account." ERISA section 406(b)(2) prohibits a plan fiduciary "in his individual or in any other capacity [from acting] in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries."

21. The Union Trustees may have an interest in benefitting Lodge 4, a party in interest to the Plan, because Lodge 4 is also a Boilermakers Union lodge, and as such, it is affiliated with the Boilermakers Union. Although the Applicant represents that the Union Trustees "recused" themselves from voting on the Plan's decision to enter into the Proposed Transaction, whether the Union Trustees' recusal from any aspects of the Proposed Transaction negates a violation of ERISA section 406(b)(1) or (2), involves an inherently factual determination that is beyond the scope of this proposed exemption.

¹⁰ ERISA section 3(14)(D) defines, in part, the term party in interest to an employee benefit plan as "an employee organization any of whose members are covered by such plan."

Therefore, the Department cannot determine from the record whether the Union Trustees sufficiently recused themselves from engaging in the deliberations regarding the Proposed Transaction or using their positions to influence the Employer Trustees' decision to approve the Proposed Transaction in order to determine definitively that there was no violation of ERISA section 406(b)(1) or (b)(2). To the extent the Union Trustees exercised any authority, control, or responsibility that make them a fiduciary to cause the Plan to engage in the Proposed Transaction, they would have violated ERISA section 406(b)(1) and (b)(2), because the Proposed Transaction would benefit Lodge 4, an entity in which the Union Trustees have an interest and involve Union Trustees acting on behalf of both the Plan and Lodge 4.¹¹

22. *Applicant's Representations Regarding the Merits of the Proposed Exemption.* The Applicant represents that the Proposed Transaction would benefit the Plan because the Training Facility is currently operated by Lodge 4 to conduct trainings and the Plan would not have to make any improvements or modifications for the Plan to continue using it. The Applicant explains that Lodge 4 currently provides training to Plan participants at the Training Facility in accordance with a reimbursement policy between the Plan and Lodge 4, whereby the Plan reimburses Lodge 4 only for the direct costs that Lodge 4 incurs in conducting training (the Reimbursement Policy).¹² According to the Applicant, the Plan relies on ERISA Section 408(b)(2) to operate its Reimbursement Policy. The Plan may terminate this arrangement with Lodge 4 at any time with no penalty to the Plan and without notice to Lodge 4.¹³

¹¹ The Department notes that "the prohibitions of section 406(b) supplement the other prohibitions of section 406(a) of [ERISA] by imposing on parties in interest who are fiduciaries a duty of undivided loyalty to the plans for which they act. These prohibitions are imposed upon fiduciaries to deter them from exercising the authority, control, or responsibility which makes such persons fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the fiduciaries have interests in the transaction which may affect the exercise of their best judgment as fiduciaries." See 29 CFR 2550.408b-2(e)(1).

¹² The Applicant notes that the Reimbursement Policy also covers Lodge 4's expense of sending its affiliated apprentices to off-site locations for training purposes.

¹³ Whether the Reimbursement Policy complies with the requirements of ERISA section 408(b)(2) is an inherently factual inquiry that is beyond the scope of this proposed exemption and with respect to which the Department offers no opinion.

23. The Applicant represents that the Plan has also invested nearly \$600,000 in equipment at the Training Facility to equip 24 welding stations, including installing a \$250,000 custom ventilation system designed to remove noxious fumes that are produced by the welding machines. The Applicant states that the Plan still owns this equipment, which is only used in connection with the training of participants by Lodge 4 in connection with the provision of services to the Plan, described in more detail below.¹⁴

24. The Applicant represents that the Proposed Transaction would benefit the Plan because Lodge 4 intends to terminate its involvement with the Training Facility. If Lodge 4 no longer runs the Training Facility, the Plan can longer provide training there. Furthermore, the Training Facility is currently equipped with Plan-purchased equipment that is used to provide training for participants. If Lodge 4 terminates its involvement with the Training Facility and/or sells the Property, the Plan would need to remove and relocate the equipment at significant time and expense.

25. The Applicant represents that the Proposed Transaction would benefit the Plan because of the Property's location. The Property is centrally located in the Southern portion of the Western States Area with convenient access from New Mexico, Arizona, Southern Nevada, and Southern California. The Property also is located on the edge of the Navajo Nation reservation, which has traditionally been a large source of apprenticeship participants in that area, making the Property a convenient location to a segment of current and future apprenticeship participants.

26. The Applicant represents further that the Plan wants to create a regional training center on the Property due to the transient nature of the boilermaker trade and industry. The Applicant explains that journeypersons and apprentices travel based on where the projects are located, including traveling outside the boundary of their home lodge of the Boilermakers Union. As such, the location of the Boilermakers Union lodges and employers are less important than the location of the projects. Larger projects may involve journeymen and apprentices from multiple Boilermakers Union lodges. The Training Facility will be available to all apprentices in the Western States Area, regardless of their Boilermakers Union lodge affiliation. While there are other training facilities across the 13-

¹⁴ The costs for these pieces of equipment are not included as part of the Property's value appraisal.

state region that the Plan covers, there is a continued need to have training facilities accessible across the region.

27. The Applicant represents further that the Proposed Transaction would benefit the Plan, because the Property will become the site for the Plan's administrative headquarters. If the Plan moves its administrative headquarters to the Property, it will no longer need the Leased Office and will avoid incurring the rental cost for that office. Additionally, combining the Training Facility with the Plan's administrative offices will provide closer access for the staff to monitor the Training Facility and for the Plan's apprenticeship and journeyman participants to interact with the Plan's administrative staff.

28. The Applicant represents that the Plan would also benefit from the Proposed Transaction because the Property provides flexibility for expansion as the number of Boilermaker apprentices continues to grow and significant space for: (a) large training sessions where there are numerous vehicles and recreational vehicles utilized by participants; (b) outdoor training components such as training involving a rigging tower; and (c) expansion of training facilities and/or demonstrations.

29. *The Property's Appraisal.* The Plan retained the services of Accuracy Valuation—Morley & McConkie L.C. (AVMM) to appraise the Property (Qualified Independent Appraiser). Mr. Garrett Hanning (Hanning) of AVMM authored an appraisal report dated May 17, 2021 (Appraisal Report). Hanning is a licensed Certified General Appraiser specializing in commercial appraisals in the states of Arizona and Utah. Hanning represents that the Appraisal Report is being submitted to the Department as part of the Applicant's request for the proposed exemption and that he has no bias with respect to the Property, the Plan, or Lodge 4, which may influence the Property's appraisal. AVMM's current revenue that is derived from any party in interest involved in the proposed transaction or its affiliates is 0.04%, and his engagement letter contains no provisions providing for his reimbursement or indemnification by any party for violations of applicable law or of his contractual obligations related to his work, or waivers of rights, claims or remedies of the Plan or its participants and beneficiaries under applicable laws against Hanning or AVMM with respect to their work on the Proposed Transaction, and the terms of the proposed exemption prohibit any such arrangements, as described in more detail below.

30. In determining the Property's fair market value, Hanning utilized two methods: (a) the cost approach; and (b) the sales comparison approach, and he applied primary weight to the sales comparison approach given the owner-occupied nature of the Property. Based on his analysis, Hanning concluded that the Property's fair market value was \$920,000 as of April 1, 2021.

31. During the pendency of the Applicant's request for this proposed exemption, the Applicant submitted to the Department an updated report from the Qualified Independent Appraiser, dated July 28, 2022, indicating that no changes to the Property's structures have taken place that would change the Property's value reflected in the Appraisal Report dated April 1, 2021.

32. The Applicant states that the fees for the April 1, 2021 Appraisal Report, which are shared equally between the Plan and Lodge 4, totaled \$3,750. Furthermore, in the event this proposed exemption is granted, the conditions for relief require the appraisal to be updated by the Qualified Independent Appraiser to reflect the fair market value of the Property on the Transaction's closing date. The Plan does not expect that the cost to update the appraisal will exceed \$3,750.

33. *The Independent Fiduciary.* The Plan retained the services of the Wagner Law Group to serve as the Plan's independent fiduciary (Wagner or the Independent Fiduciary) with respect to the Proposed Transaction, pursuant to Wagner's engagement letter dated November 3, 2020 (Wagner's Engagement Letter). Wagner represents that it has significant experience with serving as the appointed independent fiduciary at the request of the Department, federal courts, bankruptcy trustees, and ERISA plan fiduciaries.

34. Wagner acknowledged that it understands its duties and responsibilities under ERISA in acting as the Independent Fiduciary, and will determine whether, with the assistance of one or more independent appraisals, the proposed real estate purchase transaction would be in the interests of the Plan and the Plan's participants and beneficiaries and protective of their rights. Wagner's Engagement Letter contains no provisions that indemnify Wagner for any failure to adhere to its contractual obligations or to state or Federal laws applicable to its work including ERISA or that waives any of the Plan's rights, claims, or remedies of the Plan under ERISA, State, or Federal law against Wagner with respect to the proposed transaction.

35. Wagner represents that the percentage of its current revenue that is

derived from any party in interest involved in the Proposed Transaction is 0.13%. Furthermore, Wagner represents that it has no current or future interest in the outcome of the Proposed Transaction. Its sole financial interest in the transaction is the receipt of its fees for acting as the Independent Fiduciary.

36. Wagner states that the Proposed Transaction will be implemented only after the Department grants a final exemption and the relevant conditions are satisfied, and Wagner determines that the Proposed Transaction would be in the interests of the Plan and of its participants and beneficiaries. In this regard, Wagner will prepare a statement of the reasons on which its "best interest" determination is based and will submit the statement to the Department (the Statement). Before the closing of the Proposed Transaction, Wagner will ensure that all of the preconditions to the real estate purchase are completed and will monitor the transaction until and coincident with the transaction's closing. The conditions for relief in the proposed exemption require Wagner to have the authority to take all appropriate actions to safeguard the Plan's interests and the interests of the Plan's participants and beneficiaries and to:

(i) Monitor the Proposed Transaction on the Plan's behalf on a continuing basis until the earlier of the closing or the date that the Proposed Transaction is terminated;

(ii) Ensure that the Proposed Transaction remains in the interests of the Plan and of the Plan's participants and their beneficiaries and, if not, take any appropriate actions available under the particular circumstances; and

(iii) Ensure compliance with all of the exemption conditions and obligations imposed on any party dealing with the Plan with respect to the Proposed Transaction.

37. *The Independent Fiduciary's Opinion.* On February 10, 2022, Wagner issued its report to the Plan regarding the Proposed Transaction (the IF Report). The IF Report provided Wagner's opinion that the Plan's proposed purchase of the Property for a price of the lesser of \$920,000 or the Property's appraised value on the date of sale, under the terms and conditions described herein, would be in the best interest and protective of the rights of the Plan's participants and beneficiaries.

38. According to the IF Report, the Independent Fiduciary reviewed all the particulars of the Property and existing Training Facility, including the Independent Appraisal, the terms of the Real Estate Purchase and Sale Agreement between the Plan and Lodge

4 to buy the Property (the Purchase Contract) and determined that the Property's \$920,000 purchase price is appropriate.

39. The Independent Fiduciary determined that the Property's location is convenient for the Plan's participants as well as the Plan's staff who will benefit from affordable housing in close proximity to the Property. As described in the IF Report, the purchase of the Property will further the Plan's long-term goals to stabilize the Plan's expenses with a regional center in this area. The IF Report provides that the Property's overall size appears to present the opportunity for expansion with minimal difficulty or hardship for the Plan and its participants as the number of Boilermakers Union members increase. The IF Report notes further that the Property has existing buildings with considerable life expectancy that are particularly suited to the Plan's intended use.

40. The IF Report provides that the Plan already owns the training equipment currently housed at the Training Facility, and removing and relocating this equipment to another location would be extremely costly. The equipment on the site will provide the Plan with significant start-up costs savings as compared to purchasing a comparable facility and having to pay to relocate this equipment or purchase new equipment to furnish the new facility. Wagner opines that the Property provides a turn-key facility, ready immediate occupancy, and use for the Plan's intended purposes.

41. The Independent Fiduciary notes that the Plan will save money by using the Property to house its administrative office instead of paying rent for the Leased Office and will benefit the Plan by locating its administrative offices on the Property where administrative staff will be able to monitor the Training Facility and interact with participants in connection with administrative matters.

42. The IF Report describes the Independent Fiduciary's review and approval of the methodology used by the Independent Appraiser. Wagner opined that, based on the intended use of the Property, it would be prudent for the Plan to rely on the appraised value as of April 1, 2021, subject to change pending the updated appraisal at date of purchase.

43. Finally, the Independent Fiduciary examined the Plan's ability to buy and finance the purchase of the Property, including the percent of the purchase price to total plan assets, any prospective earnings or savings from the proposed purchase, including the difference between the current lease

arrangement and the proposed purchase of the Property, and the Plan's potential liabilities. The Independent Fiduciary determined that the Plan's use of its assets for the proposed real estate purchase of the Property will not negatively impact the overall financial health of the Plan and its programs. In this regard, the IF Report notes that the Plan receives continual stable funding through collectively bargained contributions from contributing employers to provide the benefits of its programs and subsidize training for the local Boilermaker lodges in the Western Region. According to the Plan, the monthly mortgage payments on the \$460,000 loan will be less than \$10,000. The Plan's average monthly income is above \$200,000. Therefore, the Independent Fiduciary determined that the mortgage for the amount of \$460,000 will not negatively affect the Plan's operating budget. In addition, the Plan will be relieved of incurring the additional rental expense to maintain its existing office space.

44. *Protective Conditions.* In addition to the conditions mentioned above, the exemption, if granted, requires the parties' adherence to the protective conditions that are summarized below.¹⁵

45. The Proposed Transaction is a one-time transaction in which the Plan would make a \$460,000 cash down payment and obtain a loan for the remaining balance of the purchase price that could not exceed \$920,000. The loan's monthly payments could not exceed \$10,000 and its collateral would be a first mortgage lien and assignment of the lease on the Property. The Plan must pay the lesser of the Property's fair market value of \$920,000 as appraised on April 1, 2021, and an updated appraised value to be determined on the date of purchase, subject to cost sharing allocations regarding the cost for this exemption. The updated appraisal must be provided to the Department and will be made a part of the administrative record for this exemption application.

46. The terms and conditions of the Proposed Transaction must be at least as favorable to the Plan as the terms and conditions the Plan would have received in an arm's length transaction between unrelated and independent parties.

47. The Proposed Transaction must not be part of an agreement, arrangement, or understanding designed to benefit Lodge 4.

¹⁵ The Department notes that this is a summary of the conditions intended for the convenience of a reader; however, the governing conditions for the Proposed Transaction are those reflected in section III of the proposed exemption.

48. No later than 30 days after the Transaction is completed, the Independent Fiduciary must submit to the Department a written certification that all of the conditions of the final exemption have been met and must submit the Statement to the Department.

49. The Independent Fiduciary must:

(a) Determine that the Proposed Transaction is in the interest of and protective of the rights of the Plan and its participants and beneficiaries;

(b) Determine whether it is prudent for the Plan to proceed with the Proposed Transaction;

(c) Review, negotiate, and approve the terms and conditions of the Proposed Transaction;

(d) Represent the Plan's interests in connection with the Proposed Transaction, including monitoring the parties' compliance with terms of the contract of sale and the closing contract, enforcing the Plan's rights under the contract of sale and the closing contract, and ensuring the satisfaction of all preconditions for the Plan's purchase of the Property, including the terms of the proposed financing from an unrelated third-party bank;

(e) Monitoring to ensure that all exemption conditions are met and take whatever actions are necessary to protect the rights of the Plan and its participants and beneficiaries in the Proposed Transaction;

(f) Review the Appraisal Report and confirm that the underlying methodology is reasonable and accurate such that the valuation of the Property was reasonably derived;

(g) Ensure that the Appraisal Report is based on complete, current, and accurate information; the appraiser was prudently selected; the methodology used by the Qualified Independent Appraiser is consistent with sound valuation principles; and that it is reasonable under the circumstances to rely upon the Appraisal Report, as updated, to determine the fair market value of the Property as of the date of the transaction; and

(h) Not have entered into, or must not enter into, any agreement or instrument that violates either ERISA Section 410, or the Department's Regulations codified at 29 CFR 2509.75-4;¹⁶

50. Furthermore, the Independent Fiduciary must not have entered into, and must not enter into, any agreement,

¹⁶ ERISA section 410 provides, in part, that "except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning part 4 of ERISA] shall be void as against public policy."

arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Fiduciary's work; or waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the Proposed Transaction;

51. The Qualified Independent Appraiser must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Qualified Independent Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Qualified Independent Appraiser's work. The Plan also must not waive any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the Qualified Independent Appraiser with respect to the Proposed Transaction.

52. The Employer Trustees but not the Union Trustees must determine that the Proposed Transaction is prudent and in the Plan's interest to proceed with the Transaction; the Union Trustees cannot participate or in any way influence the Employer Trustees' determination. Lastly, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

Statutory Findings

53. "*Administratively Feasible.*" The Department has tentatively determined that the proposed exemption is administratively feasible for the Department because it is a one-time transaction requiring strict adherence to fiduciary conduct that is subject to conditions designed to safeguard the Plan, as overseen by an Independent Fiduciary responsible for ensuring that all of the conditions of the exemption have been met.

54. "*In the interests of.*" The Department has tentatively determined that the proposed exemption is in the Plan's and participants' and beneficiaries' interest because Lodge 4 intends to terminate operating the Training Facility and doing so would require the Plan to move its training programs and equipment at great expense, and the Plan would need to find new suitable property to conduct its apprenticeship training goals. The

Proposed Transaction, however, would permit the Plan to acquire the Property, thereby continuing utilizing the Training Facility to provide adequate training, and avoid moving its specialized training equipment and air filtration system. The Proposed Transaction would also permit the Plan to terminate its Leased Office space, thereby saving additional expenses and use the Property to expand its Training Program to create a regional training center.

55. "*Protective of.*" The Department has tentatively determined that the proposed exemption is protective of the Plan's participants and beneficiaries because the Independent Fiduciary has reviewed the terms of the Proposed Transaction and determined that the purchase of the Property under the given terms and conditions is prudent and in the best interest of the Plan and its participants and beneficiaries. Among other things, the Independent Fiduciary will monitor the Proposed Transaction to ensure that the Plan will acquire the Property at a price that will not be greater than the fair market value as determined by the Qualified Independent Appraiser. Additionally, the Independent Fiduciary will continue to oversee the Proposed Transaction, including the services to be provided by the Qualified Independent Appraiser, and the Proposed Transaction will be subject to specific conditions aimed at protecting the rights of Plan participants and beneficiaries.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include participants and beneficiaries of the Plan and participants and beneficiaries of the Plan. The Applicants will provide notification to interested persons by electronic mail, and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise the interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan and its participants and beneficiaries and in a prudent manner in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption, if granted, would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

Section I. Definitions

(a) The term "Qualified Independent Fiduciary" means the Wagner Law

Group, and any of its employees that provide any fiduciary service to the Plan in respect to this proposed exemption; or such other “qualified independent fiduciary” as defined under 29 CFR part 2570, subpart B, as updated from time to time.

(b) The term “Qualified Independent Appraiser” means Accurity Morley & McConkie, LC, and any of its employees that provide any appraisal related service to the Plan in connection with this proposed exemption.

(c) The term “Mortgage Loan” means a mortgage loan from an independent, third-party bank consisting of a five-year term with payments based on 20-year amortization, ballooning at maturity, or such other mortgage loan prudently entered into by the Independent Fiduciary on behalf of the Plan.

Section II. Transactions

The restrictions of ERISA Sections 406(a)(1)(A), (D), and 406(b)(1) and (2) shall not apply to the purchase of the improved real property located at 294 Cowboy Ray Road, Page, Arizona (the Property), by the Boilermakers Western States Apprenticeship Fund’s (the Plan) from the “Navajo Nation” Lodge 4 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith, Forgers, and Helpers (Lodge 4), a party in interest with respect to the Plan (the Purchase); provided that the conditions in Section III are satisfied.

Section III. Conditions

(a) The Purchase is a one-time transaction for the lesser of \$920,000 in cash or an updated appraised value to be determined by the Qualified Independent Appraiser as of the Purchase’s closing date (the Price). The updated report from the Qualified Independent Appraiser must be submitted to the Department within 30 days before the date the Purchase is completed for inclusion in the record for this exemption application;

(b) Approval of the Purchase must be made solely by Plan trustees that are not, and were not, appointed by a labor union that is affiliated with the International Brotherhood of Boilermakers, and such Plan trustees must prudently determine in a writing that the Purchase is in the Plan’s best interest. Such non-union appointed Plan trustees must have considered other possible locations and properties that were unrelated to Lodge 4 prior to determining that the Purchase is the most appropriate given the Plan’s goals. Any trustee appointed by a labor union that is affiliated with the International Brotherhood of Boilermakers cannot

participate or in any way influence a non-union appointed Plan trustee;

(c) The Plan must retain the services of a Qualified Independent Fiduciary and the Qualified Independent Fiduciary must prudently:

(1) Determine that the Purchase is in the interest of, and protective of, the Plan and the Plan’s participants;

(2) Determine whether it is prudent for the Plan to proceed with the Purchase;

(3) Review, negotiate, and approve the terms and conditions of the Purchase;

(4) Represent the Plan’s interests in connection with the Purchase, including monitoring the parties’ compliance with terms of the sales contract and the closing contract, enforcing the Plan’s rights under the sale contract and closing contract, and ensuring the satisfaction of all conditions precedent to complete the Purchase, including the terms of the Mortgage Loan;

(5) Monitor to ensure that all of the exemption conditions are met and take whatever actions are necessary to protect the rights of the Plan and its participants and beneficiaries with respect to the Purchase;

(6) Review the Qualified Independent Appraisal Report and confirm that the underlying methodology is reasonable and accurate and that the valuation of the Property was reasonably derived;

(7) Ensure that the Qualified Independent Appraisal Report is based on complete, current, and accurate information; the Qualified Independent Appraiser was prudently selected; the methodology used by the Qualified Independent Appraiser is consistent with sound valuation principles; and that it is reasonable under the circumstances to rely upon the Qualified Independent Appraisal’s report to determine the fair market value of the Property as of the date of the Purchase; and

(8) Not have entered into, and must not enter into, any agreement or instrument that violates either ERISA section 410, or the Department’s Regulations codified at 29 CFR 2509.75–4;

(d) The terms and conditions of the Purchase must be at least as favorable to the Plan as the terms and conditions the Plan would have received in an arm’s length transaction with an unrelated and independent party, each of which had full knowledge of the relevant facts, and neither of which were under any compulsion to buy or sell;

(e) The Purchase must not be part of an agreement, arrangement, or understanding designed to benefit Lodge 4 or the International Brotherhood of Boilermakers;

(f) In the event the Purchase is financed with a Mortgage Loan, then the Mortgage Loan must be approved by the Qualified Independent Fiduciary, and its monthly payments must not exceed \$10,000;

(g) The Mortgage Loan collateral is limited to a first mortgage lien and assignment of lease and rents on the Property. The Plan may not obtain a Mortgage Loan from a bank that has any pecuniary interest in, or is owned, managed, or controlled in any degree by any party in interest with respect to the Plan as defined in ERISA section 3(14);

(h) The Plan must not pay any commissions, costs, or other expenses in connection with the Purchase subject to the cost sharing allocations regarding the cost for this exemption as provided below in paragraph (i);

(i) Lodge 4 and the Plan must each pay half of the costs associated with the proposed exemption including but not limited to fees for Qualified Independent Fiduciary services, fees for Qualified Independent Appraiser services, and fees for preparing the Plan’s application to the Department requesting this proposed exemption, but not including the Price;

(j) The Qualified Independent Fiduciary must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Qualified Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Qualified Independent Fiduciary’s work; or that waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Qualified Independent Fiduciary with respect to the Purchase;

(k) The Qualified Independent Appraiser must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Qualified Independent Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Qualified Independent Appraiser’s work; or that waives any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the Qualified Independent Appraiser with respect to the Purchase;

(l) The Plan’s trustees and the Qualified Independent Fiduciary maintain for a period of six (6) years

from the date of any transaction related to the Purchase, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (m)(1) below to determine whether conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Plan's trustees and/or the Qualified Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Plan's trustees or the Qualified Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (n) below; and

(m)(1) Except as provided in section (2) of this paragraph and not withstanding any provisions of subsections (a)(2) and (b) of ERISA Section 504, the records referred to in paragraph (l) above shall be unconditionally available at their customary location during normal business hours to:

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) the Plan's trustees or any duly authorized representative of the Plan's trustees;

(iii) the Qualified Independent Fiduciary or any duly authorized representative of the Qualified Independent Fiduciary;

(iv) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) Should Lodge 4 or any party refuse to disclose information to a person on the basis that such information is exempt from disclosure, such party shall provide a written notice advising that person of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request;

(n) Within 30 calendar days after the Property is purchased, the Qualified Independent Fiduciary must provide to the Department a written certification that all of the exemption conditions have been met and must provide to the Department the Statement documenting its conclusion that the Proposed Transaction is in the Plan's best interest; and

(o) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times.

Exemption Date: If granted, the exemption will be in effect as of the date the grant notice is published in the **Federal Register**.

Signed at Washington, DC, this 30th day of October 2024.

George Christopher Cosby,

*Director, Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2024–25583 Filed 11–1–24; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA–2024–0135]

The NCUA Staff Draft 2025–2026 Budget Justification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA's staff draft "detailed business-type budget" is being made available for public review as required by Federal statute. The proposed resources will finance the agency's annual operations and capital projects, both of which are necessary for the agency to accomplish its mission of protecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance. The briefing schedule and comment instructions are included in the supplementary information section.

DATES: Requests to deliver an in-person statement at the November 22, 2024, budget briefing must be received on or before November 13, 2024. Written statements and presentations for those scheduled to appear at the budget briefing must be received on or before 1 p.m. Eastern, November 18, 2024.

Written comments may be submitted by November 27, 2024.

ADDRESSES: You may submit comments by any of the following methods (please send comments by one method only):

- *In-person presentation at public budget briefing:* submit requests to deliver a statement at the briefing to BudgetBriefing@ncua.gov by November 13, 2024. Include your name, title, affiliation, mailing address, email address, and telephone number. The NCUA Board Secretary will inform you by November 14, 2024, if you have been approved to make a presentation. In order to present at the public meeting, you must submit a statement. Your statement must be submitted to BudgetBriefing@ncua.gov by 1 p.m. Eastern, November 18, 2024. Your

presentation must be delivered in person at the public budget briefing. You will be allotted five minutes during the budget briefing to deliver your remarks.

- *Written comments without an in-person presentation:* submit written comments by November 27, 2024, through the Federal eRulemaking Portal: <https://www.regulations.gov>. The docket number is NCUA–2024–0135. Follow the instructions for submitting comments.

- Copies of the NCUA Draft 2025–2026 Budget Justification and associated materials are also available on the NCUA website at <https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx>.

FOR FURTHER INFORMATION CONTACT:

Eugene H. Schied, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6571.

SUPPLEMENTARY INFORMATION: The following itemized list details the sections in this Notice made available for public review:

- I. Introduction and Strategic Context
- II. The NCUA Budget in Brief
- III. Key Themes of the Proposed 2025–2026 Budget
- IV. Operating Budget
- V. Capital Budget
- VI. Share Insurance Fund Administrative Budget
- VII. Financing the NCUA's Programs
- VIII. Appendix A: Supplemental Budget Information
- IX. Appendix B: Capital Projects
- X. Appendix C: Glossary of Terms and Acronyms

Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amended 12 U.S.C. 1789(b)(1)(A) to require the NCUA Board (Board) to "on an annual basis and prior to the submission of the detailed business-type budget make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget." Although 12 U.S.C. 1789(b)(1)(A) requires publication of a "business-type budget" only for the agency operations arising under the Federal Credit Union Act's subchapter on insurance activities, in the interest of transparency the Board is providing the NCUA's entire staff draft budget for 2025–2026 in this Notice.

The staff draft budget details the resources required to support NCUA's mission. The staff draft budget includes personnel and dollar estimates for three major budget components: (1) the Operating Budget; (2) the Capital Budget; and (3) the Share Insurance Fund Administrative Budget. The

resources proposed in the staff draft budget are to carry out the agency's operations in 2025 and 2026. This document is a draft, staff-level budget proposal made available to the NCUA Board members and the public for their consideration and comment. The NCUA Board directed the NCUA Executive Director to develop the staff draft budget under delegated authority. The staff draft budget may change based on public comments, Board member decisions, and staff's ongoing consideration of estimates and programs that impact the budget.

The NCUA Chief Financial Officer will present the staff draft budget at a budget briefing open to the public and scheduled for Friday, November 22, 2024, at 10 a.m. eastern at the NCUA headquarters building, 1775 Duke Street, Alexandria, Virginia 22314. Interested parties unable to attend in person may visit the agency's homepage (<https://www.ncua.gov/>) to access the provided webcast link.

If you wish to participate in the briefing and deliver a statement, you must email a request to BudgetBriefing@ncua.gov by November 13, 2024. Your request must include your name, title, affiliation, mailing address, email address, and telephone number. Statements must be delivered in person at the briefing. The NCUA will work to accommodate as many public statements as possible at the November 22, 2024, budget briefing. The Board Secretary will inform you if you have been approved to make a presentation and you will be allotted five minutes during the budget briefing to deliver your remarks. A written copy of your statement must be delivered to the Board Secretary by email at by 1 p.m. Eastern, November 18, 2024. In addition to delivering their remarks at the budget briefing, registered presenters will be provided the opportunity to ask questions of NCUA staff about the staff draft budget. The initial round of questions will be limited to five minutes per presenter, and one subsequent round of questions, limited to five minutes per presenter, may be permitted by the Chairman if time allows.

Written comments on the staff draft budget will also be accepted by November 27, 2024, through the Federal eRulemaking Portal: <https://www.regulations.gov>. The docket number is NCUA–2024–0135. Commenters should follow the portal instructions for submitting comments.

All comments should provide specific, actionable recommendations about the staff draft budget rather than general remarks. The NCUA Board will review and consider any comments

from the public prior to approving the NCUA 2025–2026 budget.

By the National Credit Union Administration Board on October 30, 2024.
Melane Conyers-Ausbrooks,
Secretary of the Board.

I. Introduction and Strategic Context

About the NCUA

Credit unions have provided financial services to their members for more than 100 years. Credit unions are not-for-profit financial cooperatives created to serve a membership with a common bond.

In 1970, the U.S. Congress established the NCUA as an independent federal agency to regulate, charter, and supervise federal credit unions. The NCUA operates and manages the National Credit Union Share Insurance Fund (Share Insurance Fund) with the backing of the full faith and credit of the United States, insuring the deposits of the account holders in all federal credit unions and most state-chartered credit unions.

As of June 30, 2024, the NCUA regulates and supervises 4,533 federally insured credit unions, which have approximately 141 million members and more than \$2.3 trillion in assets across all states and U.S. territories.¹

Statutory Authority

Pursuant to the Federal Credit Union Act, authority for NCUA management is vested in the NCUA Board. The Board determines the resources needed for carrying out the NCUA's responsibilities under the Act.² The Board is authorized to expend such funds and perform such other functions or acts as it deems necessary or appropriate, per the rules, regulations, or policies it establishes.³

Upon determination of the budgeted annual expenses for the agency's operations, the Board determines a fee schedule to assess federal credit unions. The Board considers federal credit unions' ability to pay such a fee and the necessity of the expenses the NCUA will incur in carrying out its responsibilities in connection with federal credit unions.⁴ In December 2023, the Board approved a notice with changes to its methodology for determining the operating fees due from federal credit unions.⁵

Pursuant to the law, the NCUA deposits fees collected are deposited in

the agency's Operating Fund at the Treasury of the United States, and those fees are expended by the Board to defray the cost of carrying out the agency's operations, including the examination and supervision of federal credit unions.⁶ Per its authority to use the Share Insurance Fund to carry out its insurance-related responsibilities, the Board approved an Overhead Transfer Rate (OTR) methodology and authorized the Office of the Chief Financial Officer to transfer resources from the Share Insurance Fund to the Operating Fund to account for insurance-related expenses.⁷

Mission, Goals, and Strategy

The proposed budget for 2025–2026 supports the NCUA's fourth year implementing its 2022–2026 *Strategic Plan*. Throughout 2025 and 2026, the agency will continue fulfilling its mission of “*protecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance.*” The agency's three strategic goals are:

- Ensure a safe, sound, and viable system of cooperative credit that protects consumers.
- Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services.
- Maximize organizational performance to enable mission success.

The NCUA's strategic plan is the foundation for the agency's performance management and resource allocation processes. The annual performance plan functions as the agency's operational plan for each calendar year. It outlines the annual or short-term objectives, strategies, and corresponding performance goals and activities that contribute to the accomplishment of the agency's strategic goals. The NCUA budget provides the resources necessary for the agency to implement its strategic priorities and related programs and activities, to identify key challenges facing the credit union industry, and to leverage agency strengths to help credit unions address those challenges.

Appendix A provides additional information about how the budget aligns to the NCUA's strategic goals.

The NCUA's Annual Budget Process

Each regional and central office director at the NCUA develops an initial budget request identifying the resources necessary for their office to support the agency's mission, goals, and objectives. These budgets are developed to ensure

¹ Source: NCUA quarterly call report data, second quarter 2024.

² See 12 United States Code (U.S.C.) 1752a(a).

³ See 12 U.S.C. 1766(i)(2).

⁴ See 12 U.S.C. 1755(a)–(b).

⁵ See <https://www.federalregister.gov/d/2023-28303>.

⁶ See 12 U.S.C. 1755(d).

⁷ See 12 U.S.C. 1783(a).

requirements are individually justified and remain consistent with the agency’s overall strategic framework. This effort also includes a field-level review of every federally insured credit union to estimate the workload to carry out credit union examinations in the forthcoming year, which is translated into the cost of the staff and associated expenses necessary to meet the agency’s safety and soundness goals. In addition to this workload analysis, each NCUA office estimates its fixed and recurring expenses, such as for employee travel, rental payments for leased property, operations and maintenance for owned facilities or equipment, supplies, telecommunications services, major capital investments, and other administrative and contracted services costs.

The Office of the Chief Financial Officer presents draft budgets to the public on the agency’s website and in the **Federal Register** as part of the NCUA Board’s commitment to transparency in the agency’s budgeting processes. The Board also holds a public briefing about the draft budget and facilitates dialog between public stakeholders and NCUA staff to develop a common understanding of the agency’s resource needs. The NCUA is the only Financial Institutions Reform, Recovery, and Enforcement Act agency that releases such a detailed draft budget and solicits public comments on it.

The NCUA Board reviews the comments from the public about the draft budget and makes revisions in response to stakeholder views,

individual Board office priorities, and changing economic conditions. The Board then approves the final budget levels and the associated OTR and the operating fees paid by credit unions to finance the agency’s programs.

II. The NCUA Budget in Brief

Proposed 2025 and 2026 Budgets

The NCUA *2022–2026 Strategic Plan* sets forth the agency’s goals and objectives that drive the agency’s resource needs and allocations. The agency’s annual budgets provide the resources to execute the strategic plan, to implement important initiatives, and to undertake the NCUA’s major programs: examination and supervision, insurance, credit union development, consumer financial protection, and asset management.⁸

2025–2026 NCUA BUDGET RESOURCES											
Budget	2024 Board- Approved Budget	2025 Requested Budget**	Change (2024-2025)	Percent Change (2024- 2025)	2026 Requested Budget	Change (2025-2026)	Percent Change (2025- 2026)	2024* Positions	2025* Positions	2026* Positions	Position Change (24– 25) (25– 26)
Operating Budget	\$374,494,000	\$419,325,000	\$ 44,831,000	12.0%	\$450,607,000	\$ 31,282,000	7.5%	1,247	1,261	1,272	14 11
Capital Budget	\$6,189,000	\$8,209,000	\$ 2,020,000	32.6%	\$12,500,000	\$ 4,291,000	52.3%	-	-	-	- -
Share Insurance Fund Admin. Budget	\$5,142,000	\$5,500,000	\$ 358,000	7.0%	\$5,366,000	\$ (134,000)	-2.4%	-	-	-	- -
Total**	\$385,825,000	\$433,034,000	\$47,209,000	12.2%	\$468,473,000	\$35,439,000	8.2%	1,247	1,261	1,272	14 11

* All position levels exclude positions funded by the Central Liquidity Facility (CLF).

** 2025 Requested Budget is \$0.3 million lower than the 2025 funding level approved by the NCUA Board as part of the two-year 2024–2025 Budget.

The NCUA’s 2025–2026 staff draft budget justification includes three separate budgets: the Operating Budget, the Capital Budget, and the Share Insurance Fund Administrative Expenses Budget. Combined, these three budgets total \$433.0 million for 2025, which is \$0.3 million *lower* than the \$433.3 million 2025 funding level approved by the NCUA Board as part of the two-year 2024–2025 budget.

Three significant factors, when combined, account for most of the 12.2 percent increase in the total budget between 2024 and 2025:

1. An increase of \$25.9 million in funding for contracted services for 2025 compared to 2024. Of this amount,

approximately \$18.0 million results from a lower 2024 surplus carried over as part of the 2025 budget when compared to the surplus carried over from 2023 as part of the 2024 budget. Of the residual \$7.9 million increase for contracted services, much of the additional funding will address new and evolving operational risks such as cybersecurity threats and for tools used to identify and resolve credit union system risk concerns such as interest rate risk, credit risk, and industry concentration risk. Growth in the contracted services budget category also results from new operations and maintenance costs for recently delivered capital investments. Other increased

costs include general price inflation for core agency business operation systems such as accounting and payroll processing and various other recurring support costs.

2. An increase of \$19.5 million for current employee compensation in 2025 compared to 2024. This increase accounts for merit pay raises for the NCUA’s employees as required by the Collective Bargaining Agreement and expected inflationary cost increases for employee benefits.

3. A proposed increase of 14 positions compared to 2024, which equates to a headcount increase of 10 positions and four positions approved by the NCUA Board in the 2024 budget for 2025. Of

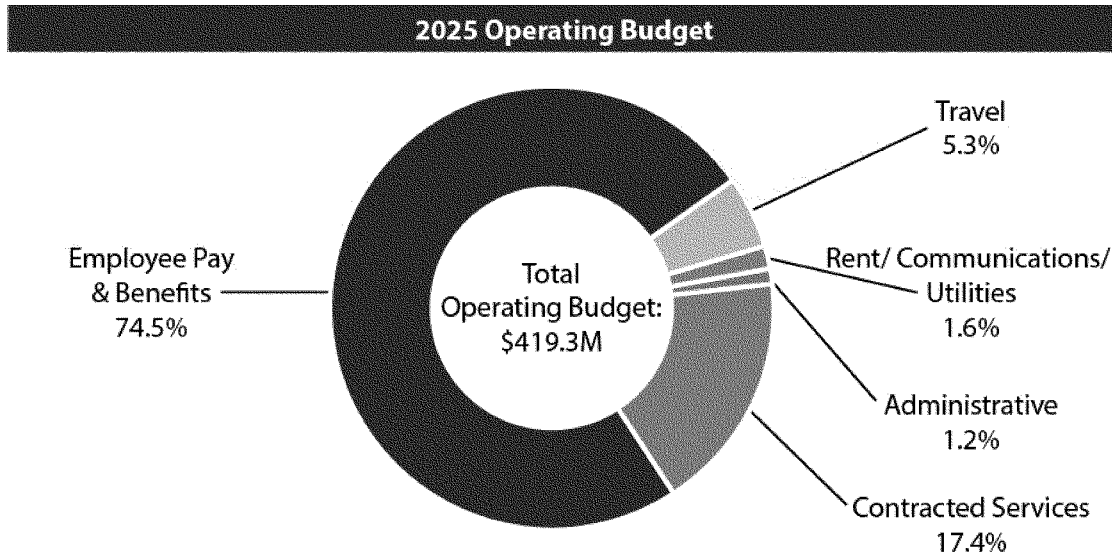
⁸ Budget information presented in this document excludes funding for the CLF, which has its own budget reviewed and decided upon separately by the CLF Board.

the 10 positions recommended in the staff draft budget, eight are new positions and the remaining two are existing positions currently unfunded in the 2024 budget.⁹ Explanations for each

of the proposed new positions are included later in this document.

Proposed 2025 Operating Budget: \$419.3 Million

The following chart presents the major categories of spending supported by the proposed 2025 Operating Budget.

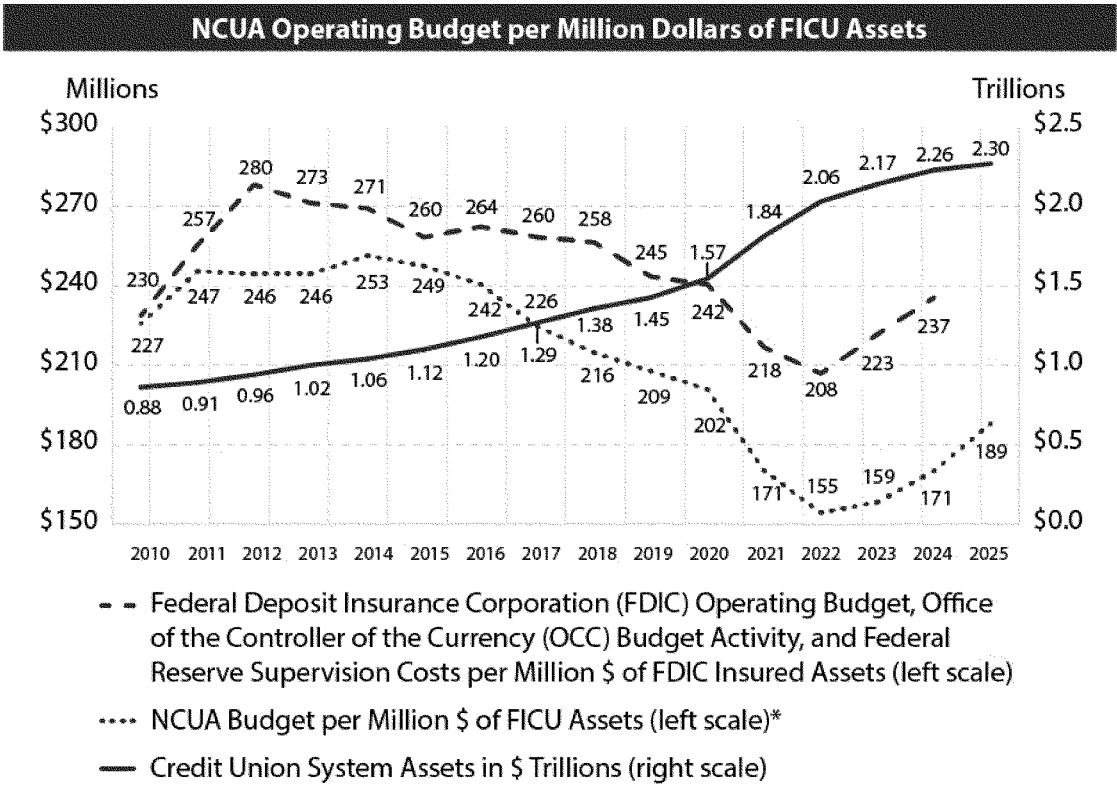


Note: Minor rounding differences may occur in totals.

As shown in the following chart, the relative size of the NCUA budget (dotted line) has generally decreased when

compared to balance sheets at federally insured credit unions (FICU, solid line).
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⁹These positions are also known as "overhire" positions and are funded by surplus pay and benefits budgets that result from vacancies.



Source: NCUA Annual Budgets, Call Reports, FDIC, OCC, and Federal Reserve financial reports

* Budget per million \$ of FICU assets is calculated as the fiscal year’s budget divided by the previous year’s end-of-year assets (e.g., 2025 draft budget/projected FICU assets as of fourth quarter 2024).

Proposed 2026 Operating Budget: \$450.6 Million

additional positions compared to the 2025 level.

The Operating Budget estimate for 2026 is \$450.6 million and includes 11

Proposed 2025 Operating Budget Summary

(Dollars in Millions)	Budget	Change from 2024 Budget	Percent Change*	Description
2025 Operating Budget	\$419.3	↑ \$44.8	+ 12.0%	
Total Staffing (positions)	1,261	↑ 14	+ 1.1%	The 2025 position level increases by 14 positions from 1,247 authorized by the Board in 2024.**
Budget Category				
Pay & Benefits	\$312.3	↑ \$19.5	+ 6.7%	The pay and benefits adjustment includes funding for the proposed staffing increase of 14 positions, net, for critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues. Additionally, the increase in pay and benefits includes merit and locality pay changes anticipated for 2025.
Travel	\$22.1	↑ \$2.1	+ 10.5%	The travel budget increases by \$2.1 million in 2025 compared to 2024.
Rent, Communications, & Utilities	\$6.8	↓ \$0.3	- 4.3%	Rent, communications, and utilities budgets pay for essential workspace, telecommunications, data capacity, and network support. The 2025 increase results primarily from new costs for rent and data services for a disaster recovery site.
Administrative Expenses	\$5.1	↓ \$2.4	- 31.8%	Administrative expenses primarily support operational requirements, relocation expenses, and employee supplies.
Contracted Services	\$73.0	↑ \$25.9	+ 55.1%	Contracted services reflect costs for products and services acquired from the commercial marketplace and include mission-critical services, such as information technology (IT) acquisitions and support services, accounting and auditing services, and specialized subject matter expertise. Most of the increase in this category results from an \$18.0 million difference in budget surplus from prior years. The increase also includes funding to address new and evolving risks, operations and maintenance recently delivered capital investments, and contractual price inflation for business systems and services. Starting in 2025, the contracted services category also reflects fees paid by NCUA to the Federal Financial Institutions Examination Council (FFIEC).

*Percentage change is based upon exact amounts reflected in the table, “2025-2026 Proposed NCUA Operating Budget Summary.”

**Total staffing levels do not include five positions funded by the CLF.

Proposed 2026 Operating Budget Summary

(Dollars in Millions)	Budget	Change from 2025 Budget	Percent Change*	Description
2026 Operating Budget	\$450.6	↑ \$31.3	+ 7.5%	
Total Staffing (positions)	1,272	↑ 11	+ 0.9%	The 2026 position level increases by 11 positions from 1,261 recommended for 2025.**
Budget Category				
Pay & Benefits	\$329.2	↑ \$16.9	+ 5.4%	The pay and benefits budget is projected to increase in 2026 to pay for compensation adjustments for on-board employees and for the cost of new staff hired in 2025 and 2026.
Travel	\$24.2	↑ \$2.1	+ 9.5%	Travel costs are projected to increase due to price inflation and a national training conference planned for NCUA employees in 2026.
Rent, Communications, & Utilities	\$7.9	↑ \$1.1	+ 15.4%	Rent, communications, and utilities costs are projected to increase modestly to reflect a national training conference planned for NCUA employees in 2026.
Administrative Expenses	\$5.9	↑ \$0.8	+ 14.7%	Administrative expenses are projected to increase slightly to reflect a national training conference planned for NCUA employees in 2026.
Contracted Services	\$83.5	↑ \$10.5	+ 14.4%	Contracted services reflect costs for products and services acquired from the commercial marketplace. The proposed 2025 budget for contracted services includes an offset of \$5 million from estimated prior-year budget surpluses, which is not expected to be available again in 2026.

*Percentage change is based upon exact amounts reflected in the table, “2025-2026

Proposed NCUA Operating Budget Summary.”

**Total staffing levels do not include five positions funded by the CLF.

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Proposed 2025 Capital Budget: \$8.2 Million

The proposed 2025 Capital Budget is \$2.0 million higher than the 2024 Board-approved budget.

The Capital Budget supports the NCUA’s ongoing effort to modernize its IT infrastructure and applications. Funding in the Capital Budget for upgrades to or replacement of obsolete IT systems is higher in 2025 than in 2024 and includes an increase in capital investment for cyclical system updates to the Modern Examination and Risk Identification Tool (MERIT) examination system. Other IT investments in the proposed 2025

Capital Budget include funds to ensure that agency systems comply with evolving cybersecurity requirements required of all federal agencies, enhancements to agency information security, investments to begin transitioning legacy hardware to a cloud-based storage environment, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to achieve the agency’s mission.

The Capital Budget also includes \$480,000 for NCUA facility maintenance and improvements.

Proposed 2025 Share Insurance Fund Administrative Expenses: \$5.5 Million

The proposed 2025 Share Insurance Fund Administrative Expenses Budget is \$0.4 million higher than the 2024 Board-approved budget. The Share Insurance Fund Administrative Expenses Budget funds the tools and technology used by the Office of National Examinations and Supervision (ONES) to oversee credit union-run stress testing for the largest credit unions, travel for state examiners attending NCUA-sponsored training, audit support for the Share Insurance Fund’s financial statements, and certain insurance-related expenses for Asset

Management and Assistance Center (AMAC) operations.

III. Key Themes of the Proposed 2025–2026 Budget

Overview

The proposed 2025–2026 budget includes funding for the NCUA to increase staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues and responding to changes in economic conditions that may impact the credit union system.

The percentage of insured shares in credit unions with composite Capital adequacy, Asset quality, Management, Earnings, Liquidity risk, and Sensitivity to market risk (CAMELS) ratings 1 and 2 has decreased each quarter since December 2021.¹⁰ Between the reporting periods of December 31, 2021, and June 30, 2024, credit unions with composite CAMELS 4 and 5 ratings and total assets greater than \$500 million increased from 2 to 9, while these credit unions' insured shares increased from \$4.4 billion to \$13.8 billion—an increase of 214 percent. During the same period, credit unions with composite CAMELS 3 ratings and assets greater than \$500 million increased from 15 to 66, and their insured shares increased from \$11.3 billion to \$127.0 billion—an increase of 1,024 percent. Under the agency's rules, credit unions with total assets greater than \$500 million are considered complex. Liquidations of such complex credit unions would cause greater losses for the Share Insurance Fund than non-complex credit unions.

The NCUA must have the necessary resources to continue to monitor credit union performance and mitigate risks at these complex credit unions and all other non-complex credit unions through the examination process, offsite monitoring, and tailored supervision, consistent with its mission.

The NCUA employees are the agency's most valuable resource for

achieving its mission. The agency is committed to maintaining a workforce with integrity, accountability, transparency, inclusion, and proficiency.¹¹ The NCUA will continue investing in its workforce through training and development, ensuring employees have the skills they need to work effectively. These investments will also facilitate the agency's succession planning as it undertakes a generational leadership shift as the Baby Boom cohort retires.

The proposed 2025–2026 budget includes investments across a range of NCUA priorities, including:

- Ensuring robust cybersecurity in the credit union system and at the agency.
- Continuing to strengthen and mature analytic capabilities and capacity in the areas of fraud and anti-money laundering, quantitative analytics and stress testing, and climate-related financial risk.
- Recalibrating examination and supervisory oversight over credit unions based on a prioritization of the risks presented to the system.
- Providing program and staff resources to increase assistance to small credit unions and credit unions designated as minority depository institutions (MDIs).
- Expanding the resources allocated to the NCUA's examination of credit unions' compliance with consumer financial protection laws and regulations.
- Investing in information technology systems and infrastructure to bolster the NCUA's supervisory capabilities.

The efficiency and effectiveness of the agency's workforce depends upon the availability of modern analytical tools and the resiliency of the NCUA's information technology systems. The NCUA is committed to implementing its new technology responsibly and delivering secure, reliable, and innovative solutions. The investments funded in the NCUA's Capital Budget will provide the tools and technology the workforce needs to achieve the NCUA mission.

Cybersecurity

The NCUA's cybersecurity program focuses on two main efforts: supervision of credit union cybersecurity programs and protection of the agency's systems, assets, data, and mission capabilities.

Cyberattacks continue to pose significant and growing risks to all organizations. The NCUA places credit union cybersecurity as a top enterprise and supervisory priority because of

continued attacks on the nation's financial sector and the broader national critical infrastructure.

Supervision of Credit Union Cybersecurity

The NCUA engages in interagency cybersecurity preparedness as a member of the FFIEC and of the Financial and Banking Information Infrastructure Committee. The NCUA monitors cyber threats identified by federal and non-federal sources and shares relevant information about them with the credit union industry and financial sector partners.

The NCUA maintains a team within the Office of Examination and Insurance dedicated to developing and maintaining supervisory policies, procedures, and tools and examiner training for cybersecurity. The regions and the ONES employ highly trained regional information security specialists for information security examinations and supervision of credit unions.

All credit unions will periodically receive an information security examination as part of the agency's new Information Security Examination program (ISE). The ISE uses a risk-focused approach to examine credit unions' information security, providing examiners flexibility to focus on areas of material current or potential risk relevant to each credit union's unique business model. The objectives of an information security examination include:

- Evaluating management's ability to recognize, assess, monitor, and manage information systems and technology-related risks.
- Assessing whether the credit union has sufficient expertise to adequately plan, direct, and manage information systems and technology operations.
- Determining whether the board of directors has adopted and implemented adequate information systems and technology-related policies and procedures.¹²
- Evaluating the adequacy of internal information systems and technology controls and oversight to safeguard member information.

The NCUA built and maintains the Automated Cybersecurity Evaluation Toolbox (ACET) to help credit unions voluntarily assess their level of cybersecurity preparedness. The tool incorporates appropriate cybersecurity standards and practices established for financial institutions. The tool maps each of its declarative statements to the

¹⁰ The NCUA's composite CAMELS rating consists of an assessment of a credit union's Capital adequacy, Asset quality, Management, Earnings, Liquidity risk, and Sensitivity to market risk. The CAMELS rating system is designed to consider and reflect all significant financial, operational and management factors field staff assess in their valuation of credit unions' performance and risk profiles. CAMELS ratings range from 1 to 5, with 1 being the best rating. Credit unions with a composite CAMELS rating of 3 exhibit some degree of supervisory concern in one or more components. CAMELS 4 credit unions generally exhibit unsafe or unsound practices, and CAMELS 5 institutions demonstrate extremely unsafe or unsound practices and conditions. The NCUA collectively refers to CAMELS 4 and 5 credit unions as "troubled credit unions."

¹¹ See <https://ncua.gov/files/agenda-items/strategic-plan-20220317.pdf>, page 6.

¹² See <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/board-director-engagement-cybersecurity-oversight>.

practices found in the *FFIEC Information Technology Examination Handbook*, regulatory guidance, and leading industry standards like the National Institute of Standards and Technology's (NIST) Cybersecurity Framework. The ACET also provides a plain-language explanation and references for each of the statements included within the assessment.

Enhanced and continuing examiner training related to information security and evolving cyber risks is planned for 2025.

Protection of the Agency's Information and Systems

The NCUA's approach to agency cybersecurity is based on requirements established by federal statute such as the Federal Information Security Management and Federal Information Security Modernization Act (FISMA), and government-wide policy such as the NIST's Cybersecurity Framework, and Executive Order (E.O.) 14028, *Improving the Nation's Cybersecurity*. Based upon the most recent FISMA reporting metrics, the NCUA earned a Level 4 maturity rating for its information security program. This is the highest rating the NCUA has earned to date and demonstrates the agency's commitment a strong cybersecurity posture that mitigates risk and protects sensitive data. The proposed 2025 budget includes over \$22 million for the cost of compliance with and implementation of these requirements, of which \$3.2 million is budgeted for capital investments. Many government cybersecurity requirements are not necessarily expected of non-governmental entities; however, as a federal agency the NCUA must carry them out.

Examination Workforce

In 2021, a cross-agency working group at the NCUA conducted an internal review to determine the appropriate level of specialist positions required to ensure compliance with the Bank Secrecy Act (BSA) and consumer financial protection laws and regulations. The review evaluated staffing needs for three potential regional specialist groups in the areas of electronic payment systems, consumer compliance, and the BSA. Unlike other specialist areas where credit union asset size is a reasonable basis for allocating supervisory resources, BSA and consumer compliance risks are not necessarily concentrated in a particular asset group.

Since this review, the NCUA added specialist positions to each of the regions in two separate phases. These

new specialist positions were offset by a reduction in general examiner positions throughout the regions. These positions are now fully annualized in the 2025 budget and no new specialist positions are proposed in the 2025 budget. The proposed 2025 budget recommends a net reduction of 10 positions across the NCUA's three regions. The draft budget is based on certain adjustments to the examination program that result in a net decrease in the staff time required to carry out the examination program. These changes would provide incentives for federally insured credit unions with assets between \$1 billion and \$10 billion to remain very sound. In return, sound practices at credit unions would allow the regions more flexibility to work with state regulators on coordinating joint examinations and reduce the time between exams for certain federal credit unions whose practices and management necessitate closer scrutiny. These changes would also result in a further cycle-time extension between exams for well-managed and well-capitalized smaller and mid-sized credit unions.

Support for Small Credit Unions and Minority Depository Institutions

Small credit unions with less than \$100 million in assets and MDIs are uniquely positioned to improve financial inclusion by offering their communities access to safe, fair, and affordable credit and other services. The NCUA's Small Credit Union and MDI Support Program is designed to support and preserve these credit unions. This program provides dedicated resource hours for field staff to conduct this important work, and the proposed 2025 budget continues to support this important effort.

Program assistance focuses on identifying available resources, providing training and guidance, and supporting credit union management in their efforts to address operational matters. Additional benefits of the program include:

- Building greater awareness of the unique needs of small credit unions and MDIs and their role serving underserved communities.
- Expanding opportunities for these credit unions to receive support through NCUA grants, training, and other initiatives.
- Furthering partnerships with organizations and industry mentors that can support small credit unions and MDIs.

Fair Lending and Consumer Financial Protection

The NCUA's consumer financial protection program supports the agency's statutory responsibility and strategic goal of ensuring a safe, sound, and viable system of cooperative credit that protects consumers. Within the division of fair lending supervision, NCUA staff conduct targeted fair lending examinations at federal credit unions to assess compliance with federal fair lending laws and regulations. These reviews are critical to identifying discriminatory lending patterns or practices and to reducing barriers to economic equity. Past examinations conducted by NCUA examiners have identified patterns or practices of discrimination violations, illegal race-based redlining, indirect lending pricing concerns, systemic Home Mortgage Disclosure Act violations, Regulation B notification and government monitoring information violations, and numerous instances of inadequate fair lending compliance management systems, including those related to discrimination based on age and marital status.

In 2024, the NCUA joined the other Federal Financial Institution Examination Council agencies to issue a statement of examination principles related to valuation discrimination and bias in residential real estate lending. The staff draft budget includes funding for the current division of fair lending supervision and for one new program officer who will help to develop Home Mortgage Disclosure Act analyses and examinations, oversee the annual fair lending examination selection process through outlier analysis, and fulfill fair lending speaking and Freedom of Information Act requests submitted by the public.

The agency is also engaged in a project to develop an expanded consumer compliance examination and enforcement program. That project will develop and be implemented over the course of several years.

Chartering Investments

Credit unions are an important part of the financial services industry and can play a key role in helping families achieve financial freedom by building generational wealth, aiding entrepreneurs in starting a business, and helping to create jobs and strengthen communities. To extend financial services to more individuals and communities, the 2025 capital budget supports a multi-year process automation project to implement an external facing portal that will make it

easier for organizing groups to submit new charter applications. When this project is complete, organizing groups will be able to upload forms and supporting files and track the status of their submissions through an intuitive, user-friendly interface, significantly reducing the time to process these requests.

IT Enhancements: MERIT and Cloud Migration

Two information technology investments in the 2025 budget support efforts to create cost efficiencies and avoid cost escalation in future years.

The NCUA recompeted the operations and maintenance contract for NCUA's examination platform in 2024. The new contract reduced the estimated cost of core MERIT Operations and Maintenance (O&M) support activities by \$1.7 million for the 2025 operating budget when compared to the cost of the previous support vendor.

Migrating to a cloud computing environment offers significant advantages by enhancing efficiencies and improving security. By moving IT services from physical datacenters to cloud service providers, the NCUA can lower the risk and expense of maintaining physical infrastructure such as servers, storage, and networking equipment. Cloud infrastructure also enables faster and more efficient deployment of new services and system

upgrades. This scalability leads to greater operational flexibility, reducing the time and cost of managing information technology operations. Furthermore, cloud service providers offer advanced cybersecurity measures, ensuring that data is protected with the latest encryption and security standards, enhancing the reliability and security of the NCUA's information technology environment. By leveraging cloud services, the NCUA can focus its resources on innovation and mission-critical tasks, rather than on costly and resource-intensive management of physical infrastructure.

NCUA Organizational Changes

The staff draft budget proposes a new Office of the Executive Secretary, which is a common function in many other federal agencies. The new office will centralize responsibility for the NCUA's policy review and decision-making processes, coordinate the clearance and submission of all policy documents to the Chairman and the NCUA Board, as appropriate, for review and approval, and facilitate discussions between the NCUA's program offices to align appropriate policies, among other things. Policy documents include regulations, recommendation memos, action memos, briefing memos, responses to correspondence, reports to Congress, and other policy documents. Appendix A includes a separate table

illustrating the budget for the proposed Office of the Executive Secretary.

IV. Operating Budget

Overview

The NCUA Operating Budget provides the resources required for the agency to conduct activities prescribed by the Federal Credit Union Act. These mandates include: (1) chartering new federal credit unions; (2) approving field of membership applications of federal credit unions; (3) promulgating regulations and providing guidance; (4) performing regulatory compliance and safety and soundness examinations; (5) implementing and administering enforcement actions, such as prohibition orders, orders to cease and desist, orders of conservatorship and orders of liquidation; and (6) administering the Share Insurance Fund. The NCUA must also implement mandates required by other statutes including those related to BSA compliance, consumer financial protection, and diversity, equity, and inclusion.

Operating Budget Categories

There are five major expenditure categories in the Operating Budget. This section explains how these expenditures support the NCUA's operations and presents an overview of the Operating Budget.

2025 - 2026 NCUA OPERATING BUDGET SUMMARY							
Budget Cost Category	2024 Board Approved Budget	2025 Requested Budget	2024-2025 Change	Change Percent	2026 Requested Budget	2025-2026 Change	Change Percent
Employee compensation	\$ 292,783,000	\$ 312,275,000	19,492,000	6.7%	\$ 329,172,000	16,897,000	5.4%
Salaries	\$ 202,972,000	\$ 217,680,000	14,708,000	7.2%	\$ 230,427,000	12,747,000	5.9%
Benefits	\$ 89,811,000	\$ 94,595,000	4,784,000	5.3%	\$ 98,745,000	4,150,000	4.4%
Travel	\$ 20,012,000	\$ 22,105,000	2,093,000	10.5%	\$ 24,210,000	2,105,000	9.5%
Rent /Comm/Utilities	\$ 7,136,000	\$ 6,832,000	(304,000)	-4.3%	\$ 7,882,000	1,050,000	15.4%
Administrative	\$ 7,494,000	\$ 5,109,000	(2,385,000)	-31.8%	\$ 5,859,000	750,000	14.7%
Contracted Services	\$ 47,069,000	\$ 73,004,000	25,935,000	55.1%	\$ 83,484,000	10,480,000	14.4%
Total	\$ 374,494,000	\$ 419,325,000	44,831,000	12.0%	\$ 450,607,000	31,282,000	7.5%

Pay and Benefits. Pay and benefits increase by \$19.5 million in 2025, or 6.7 percent compared to 2024, for a total of \$312.3 million. Pay and benefits costs make up approximately 74.5 percent of the annual NCUA Operating Budget. There are four primary drivers of increased costs in 2025 for the pay and benefits category:

- Merit and locality pay increases for the NCUA's employees are paid per the agency's Collective Bargaining Agreement (CBA) and its merit-based pay system.
- Contributions for employee retirement to the Federal Employee Retirement System (FERS), which are set by the U.S. Office of Personnel Management (OPM) based on actuarial

estimates and cannot be negotiated or changed by the NCUA. The mandatory FERS contribution rate increases total NCUA benefits costs by 2.7 percent in 2025 compared to 2024. OPM's current assumptions for actuarial valuation of FERS remain unchanged in 2025 but remain a cost driver for the agency's pay and benefits growth. Because the NCUA must contribute 18.4 percent of

employee salaries to the retirement fund in 2025, the estimated impact on the NCUA budget is an increase of approximately \$2.5 million in mandatory payments.

- Contributions for employee health insurance are also set by OPM. This insurance contribution increases total NCUA benefits costs by 1.3 percent in 2025 compared to 2024. The annual OPM estimate for the 2025 government share of the Federal Employees Health Benefits Program (FEHBP) premiums is expected to be released in October 2024, and the budget will be updated if there are material changes to FEHBP costs estimates.

- The employee salary and benefits category includes costs associated with other mandatory employer contributions such as Social Security, Medicare, transportation subsidies, unemployment, and workers' compensation. The limit on employee earnings subject to Social Security taxes increased in 2025 and applies to all employers in the United States. The projected additional employer Social Security contributions that result from

this increase account for approximately one percent of the total adjustment to employee salaries.

Attracting a well-qualified workforce requires the agency to pay competitive salaries. In 2025, the NCUA's compensation levels will continue to "maintain comparability with other federal bank regulatory agencies" as required by the Federal Credit Union Act.¹³ More than 85 percent of the NCUA workforce has earned a bachelor's degree or higher, compared to approximately 35 percent of the private-sector workforce.

The pay and benefits budget includes all employee pay raises for 2025, such as merit and locality increases consistent with the CBA in place for 2024, and those for promotions, reassignments, and other changes, as described below. Consistent with other federal pay systems, the NCUA's compensation includes base pay and locality pay components.

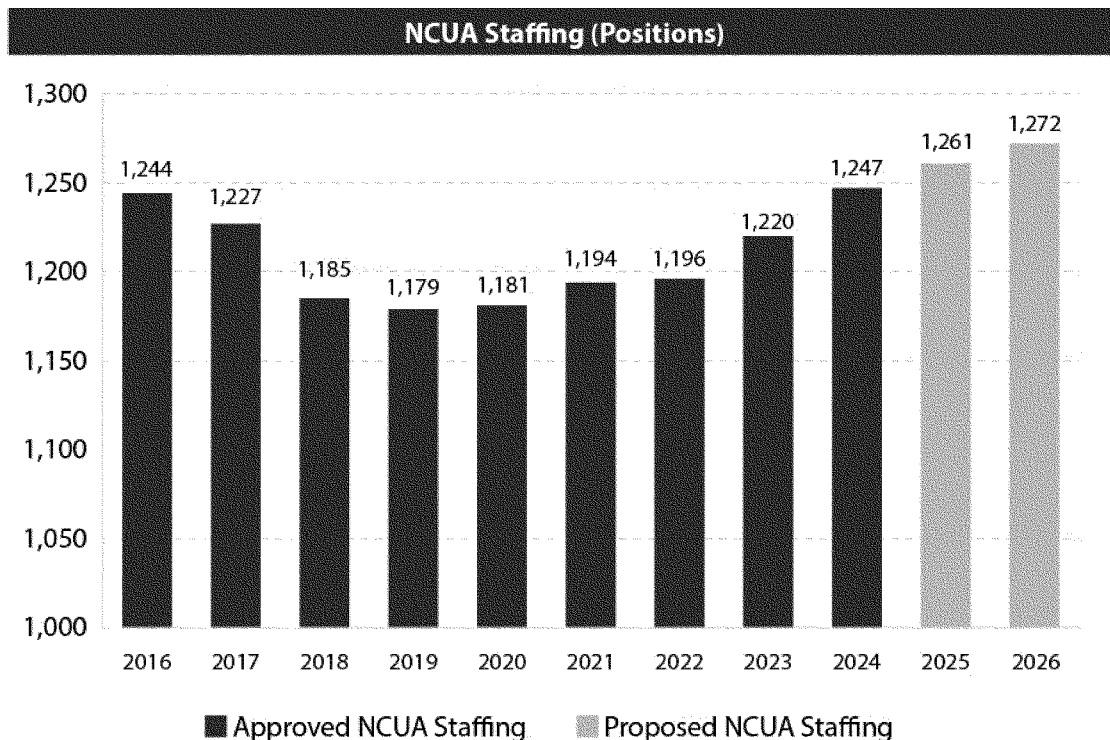
The proposed 2025 Operating Budget supports a total agency staffing level of 1,261 positions.¹⁴ This is a net increase of 14 positions, or 1.1 percent, compared to the agency's 2024 staffing

level. The net increase includes 12 new positions, four of which were approved by the NCUA Board in the 2024 budget for 2025 and incorporates into the 2025 budget two existing positions currently unfunded in the 2024 budget. The first-year cost of the 12 net new positions for 2025 is estimated to be approximately \$1.9 million. The cost for 2025 of the two existing positions currently unfunded is estimated to be approximately \$0.7 million.

The proposed 2025–2026 draft budget includes funding for the NCUA to increase permanent staffing in critical areas necessary to operate more effectively and address emerging risks. The staffing levels proposed for 2025 also reflect the resource requirements that support the NCUA's continued efforts to ensure its examination processes keep pace with the growing scale and complexity of the credit union system while the agency enhances the efficiency and effectiveness of its supervisory efforts.

The following chart illustrates the NCUA's staffing levels in recent years.

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Note: Total NCUA staffing excludes positions funded by the CLF.

¹³ The Federal Credit Union Act states that, "In setting and adjusting the total amount of compensation and benefits for employees of the

Board, the Board shall seek to maintain comparability with other federal bank regulatory agencies." See 12 U.S.C. 1766(j)(2).

¹⁴ Does not include five positions assigned to the CLF.

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The proposed changes for the NCUA's 2025 staffing level include:

- Reducing the number of generalist examiners by a net of eight positions across the NCUA's three regional offices, including the reduction of one supervisory examiner.
- Adding two new Division of Supervision Director positions (one each in the Eastern and Western regions) while simultaneously reducing the number of regional Division of Supervision Deputy Director positions by four positions. The net change in regional staff is a reduction of two positions.
- Creating a new Office of the Executive Secretary with two dedicated staff positions authorized for 2025 and a third position for 2026. This office will centralize responsibility for coordinating the review of documents, related decision-making processes, and the clearance and submission of all documents to the NCUA Board members, as appropriate.
- Increasing ONES by three positions. The three new positions include a supervisor for the capital planning and stress testing division, a financial data analyst, and a new executive position to lead the financial risk management team. Additionally, three positions are recommended for 2026: one national credit union examiner, one national lending specialist, and one national payment systems officer.
- Increasing the Office of Business Innovation by two positions. The new positions include one artificial intelligence (AI) officer and one business innovation officer. Additionally, two new AI officers are recommended for 2026.
- Adding one new senior Equal Employment Opportunity (EEO) specialist in the Office of Minority and Women Inclusion.
- Increasing the Office of Consumer Financial Protection (OCFP) by three positions. The new positions include one consumer affairs specialist, one fair lending program officer, and a new division director in 2025.
- Increasing the Office of Examination and Insurance by three positions. The new positions include two new fraud officers and one climate financial risk officer in 2025. Additionally, one new systems officer is recommended for 2026.
- Increasing the Office of External Affairs and Communications by three positions. The new positions include one section 508 compliance manager and two division directors in 2025. Additionally, two new positions are recommended for 2026. These include

one technical writer/editor and one stakeholder relations specialist.

- Funding two positions previously unfunded but authorized within the total NCUA staffing plan. These positions are both within the Office of Human Resources.

The proposed 2026 budget for pay and benefits is estimated at \$329.2 million, a \$16.9 million increase from the 2025 level. Included within this total is the full-year cost impact of new positions proposed for 2025 (approximately \$4 million), \$1.6 million for 11 new positions (three in ONES, two in the Office of Business Innovation, two in the Office of General Counsel, two in the Office of External Affairs and Communications, one in the Office of the Executive Secretary, and one in the Office of Examination and Insurance). The 2026 budget for pay and benefits also includes projected merit and locality pay increases consistent with recent compensation agreements (approximately \$8.8 million), and associated increases in benefits for all employees (approximately \$2.5 million).

Travel. The proposed travel budget increases by \$2.1 million, or 10.5 percent, compared to 2024, for a total of \$22.1 million. The travel cost category includes expenses for employees' airfare, lodging, meals, auto rentals, reimbursements for privately owned vehicle usage, and other travel-related expenses. These are necessary expenses for examiners' onsite work in credit unions. Close to two-thirds of the NCUA's workforce is comprised of field staff who spend part of their time traveling to conduct the examination and supervision program. The NCUA staff also travel for routine and specialized training and other work assignments.

During the COVID-19 pandemic, the NCUA and its employees transitioned to an offsite examination posture, developing new procedures and processes to continue examination and supervisory work. In 2025, the NCUA will continue to conduct portions of examinations offsite, which is expected to constrain the growth of future travel budgets. Nevertheless, per trip costs have increased in recent years due to price inflation across the U.S. economy. Despite the projected growth in travel expenses for 2025, the total budget for travel is approximately \$4.7 million, or 17.4 percent, below the pre-pandemic 2019 travel budget of \$26.8 million.

The proposed 2026 budget for travel is estimated at \$24.2 million, a 9.5 percent increase compared to the 2025 level. This budget level reflects an expectation for continued travel-related cost inflation and travel to support a

national training conference planned for 2026.

Rent, Communications, and Utilities. The proposed budget for rent, communications, and utilities decreases by \$0.3 million in 2025, or 4.3 percent compared to 2024, for a budget of \$6.8 million. The 2025 decrease is largely driven by a one-time reduction in the first-year rent for the new Southern Region office lease.

Funding within this budget category pays for facilities-related costs, telecommunications services, data storage, and information technology network support. Telecommunications charges include leased data lines and data service subscriptions, Voice over Internet Protocol and mobile telephony, and other network charges. Facilities-related budgets pay for the cost of the office leases, utilities, rental of the disaster recovery and continuity of operations sites, meeting space rental for offsite events, and postage.

The proposed 2026 budget for the rent, communications, and utilities category is \$7.9 million, or a 15.4 percent increase compared to 2025. The full, second-year cost of the Southern Region office lease is the primary driver for this increase.

Administrative Expenses. The draft budget proposes a \$2.4 million decrease in administrative expenses for 2025, which is a reduction of 31.8 percent compared to 2024, for a budget of \$5.1 million. The 2025 decrease is driven almost entirely by reclassifying the \$2.4 million Federal Financial Institutions Examinations Council costs from this budget category to the contracted services budget category, which more accurately captures the nature of this spending.

Recurring costs in the administrative expenses category include employee relocation expenses, recruitment and advertising expenses, shipping, printing, subscriptions, examiner training and meeting supplies, office furniture, and employee supplies and materials. The NCUA pays relocation costs to employees who are competitively selected for a promotion or new job within the agency in a different geographic area than where they live.

The proposed 2026 budget for administrative expenses is \$5.9 million, an increase of \$0.8 million, or 14.7 percent increase from the level proposed in the 2025 budget. The costs associated with a planned agency-wide National Training Conference is the major contributor to the budget increase.

Contracted Services. The proposed budget for contracted services increases by \$25.9 million in 2025, or 55.1

percent compared to 2024, for a total budget of \$73.0 million.¹⁵ A significant portion of the growth in this budget results from the assumption that approximately \$18.0 million in 2024 contracted services funded by carryover budget surplus from previous years will not be available for 2025. Since 2021, the NCUA has used unspent budget amounts from previous years to reduce its budget levels in the following year.

The remaining \$7.9 million of budgetary growth is driven by a combination of factors, including operations and maintenance costs for newly delivered capital projects, inflationary cost increases for contracted services, and additional analytic and operational tools necessary to address cybersecurity threats and growing complexity and risk in the credit union system.

Acquiring specific expertise or services from contract providers is often the most cost-effective way for the NCUA to accomplish its mission. Such services include critical mission support such as information technology equipment and software development, accounting and auditing services, and specialized subject matter expertise that enable staff to focus on executing core mission requirements. Most of the funding in the contracted services category supports the NCUA's supervision framework, including tools

used to identify and address risk concerns such as interest rate risk, credit risk, and industry concentration risk.

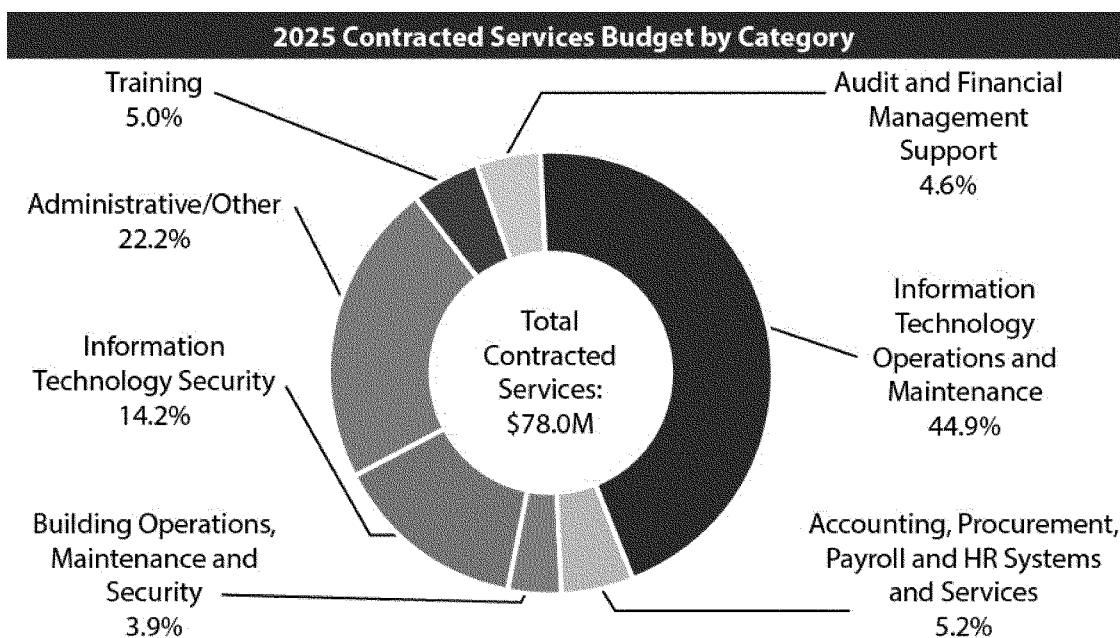
Growth in the contracted services budget category also results from new operations and maintenance costs for deployed capital investment projects. Other costs include core NCUA business operation systems such as accounting and payroll processing, and various recurring costs, as described in the following seven major categories:

- Information Technology Operations and Maintenance (44.9 percent of contracted services)
 - IT network support services and help desk support
 - Contractor program and web support and network and equipment maintenance services
 - Administration of software products such as Microsoft Office, SharePoint, and audio-visual services
- Administrative Support and Other Services (22.2 percent of contracted services)
 - Examination and supervision program support
 - Technical support for examination and cybersecurity training programs
 - Equipment maintenance services
 - Legal services and other expert consulting support
 - FFIEC reimbursements
- IT Security (14.2 percent of contracted services)
 - Secure data storage and operations

- Information security programs
- Security system assessment services
- Accounting, Procurement, Payroll, and Human Resources Systems (5.2 percent of contracted services)
 - Accounting and procurement systems and support
 - Human resources, payroll, and employee services
 - EEO and diversity programs
- Training (5.0 percent of contracted services)
 - Technical and specialized training and professional development for staff
- Audit and Financial Management Support (4.6 percent of contracted services)
 - Annual audit support services
 - Material loss reviews
 - Investigation support services
 - Financial management support services
- Building Operations, Maintenance, and Security (3.9 percent of contracted services)
 - Headquarters facility operations and maintenance
 - Building security and continuity programs
 - Personnel security and administrative programs

The following chart illustrates the breakout of the seven categories for the total proposed 2025 contracted services budget of \$78.0 million, of which \$5.0 million is funded from prior year available balances.

¹⁵ The total budget for Contracted Services in 2025 before offsets of prior year unspent funds is estimated to be \$78.0 million.



Note: Minor rounding differences may occur in totals.

Major programs within the contracted services category include:

- **Training requirements for the examiner workforce.** The NCUA's most important resource is its highly educated, experienced, and skilled workforce. Staff must have the proper knowledge, skills, and abilities to perform assigned duties and meet emerging needs. Each year, examiners complete a wide range of training classes to ensure their skills and industry knowledge remain current, including in core areas such as capital markets, consumer compliance, and specialized lending. Major training deliverables for 2025 include examiner training development, including subject matter expert conferences, and planned leadership forums for all the NCUA's executives and managers. The NCUA continues to control training costs with a blended schedule of both in-person and virtual sessions.

- **Information security program.** This NCUA program supports ongoing efforts to strengthen the agency's cybersecurity and ensure its compliance with the Federal Information Security Modernization Act and other standards for federal agencies.

- **Agency financial management services, human resources technology support, and payroll services.** The NCUA contracts for these back-office support services with the U.S. Department of Transportation's Enterprise Service Center and the General Services Administration. The NCUA's human resource system, also

adopted by other federal agencies, is a shared solution that automates routine human resource tasks and improves time and attendance functionality.

- **Audit.** The NCUA's Office of the Inspector General (OIG) contracts with an accounting firm to conduct the annual audit of the agency's four permanent funds. The results of these audits are posted annually on the NCUA website and included as part of the agency's Annual Report.

A significant share of the budget for contracted services finances ongoing IT infrastructure support for the agency. The 2025 budget includes operations and maintenance of the MERIT system, which replaced the legacy Automated Integrated Regulatory Examination System (AIRES) in 2021. Several of the NCUA's other core information technology systems and processes also require contract support in 2025, which results in increased costs for contracted services, as described below.

Within the Office of Chief Information Officer's budget, an additional \$2.0 million compared to the 2024 budget level is required for:

- **Implementation of the NCUA's Cybersecurity Supply Chain Risk Management tools,** which help identify, assess, and mitigate risks to ensure integrity and security of products and services purchased by the agency. NIST standards require implementation of robust supply risk management procedures.

- **IT software, infrastructure services, and operations and maintenance labor**

support for NCUA systems, including legacy applications.

- **O&M associated with the agency's new onboarding and offboarding system,** which is being designed to fulfill new personnel background investigation standards required by the Defense Counterintelligence and Security Agency.

The Asset Management Assistance Center's contracted services budget increases by \$1.1 million compared to the 2024 budget level. These funds will provide additional examination support for NCUA's field examiners and ensure sufficient surge resources are available to respond to emergent matters.

The Office of External Affairs and Communication's contracted services budget increases by \$688,000 compared to the 2024 budget level. These funds will provide for a new website hosting and services support.

Within the Office of General Counsel, the contracted services budget increases by \$470,000 compared to the 2024 budget level. This increase primarily relates to anticipated legal fees associated with agency consumer financial protection efforts.

Within the Office of Business Innovation, the contracted services budget increases by approximately \$331,000 compared to the 2024 budget level. These funds will provide contract support for the agency's information system security processes and fund a survey administered by a third party about credit unions' examination experiences.

The proposed contracted services budget for 2026 is \$83.5 million. Excluding the \$5.0 million from surplus carryover used in 2025, the 2026 budget level represents a net increase of \$5.5 million, or approximately 7.1 percent.

V. Capital Budget

Overview

Annually, the NCUA carries out a rigorous review of agency’s needs for IT, facility improvements and repairs, and other multi-year capital investments. The NCUA’s executives and staff review the agency’s inventory of IT systems, IT hardware, and owned facilities and equipment to determine what requires repair, major renovation, or replacement. The staff then make recommendations for prioritized investments to the NCUA Board.

The proposed 2025 Capital Budget is \$8.2 million. This amount includes \$7.7 million for IT development projects and investments and \$480,000 for central office building minor construction and maintenance projects. Within the total 2025 Capital Budget, the agency has identified \$1.5 million of past-year

capital project budget surpluses, which reduces by the same amount the level of new capital funding provided for 2025.

IT systems and hardware require significant capital expenditures for modern organizations. The 2025 Capital Budget’s highest priorities include continuing investments to bolster the NCUA’s cybersecurity posture and enable the agency to comply with E.O. 14028, *Improving the Nation’s Cybersecurity*, along with enhancements to the MERIT platform. The budget also supports ongoing efforts to modernize the NCUA’s IT infrastructure and applications through the Information Technology Infrastructure, Platform and Security Refresh project. Finally, the 2025 Capital Budget continues support for two multi-year projects: development of a personnel security system in compliance with the Trusted Workforce 2.0 directive from the Office of the Director of National Intelligence (ODNI) and OPM, and further technology enhancements to streamline and automate NCUA processes for reviewing field of membership and new charter requests from credit unions and organizing groups.

Routine repairs and lifecycle-driven property renovations are also necessary to maintain investments in the NCUA-owned facilities. Each year the NCUA assesses the physical condition of the agency’s properties to determine the need for essential repairs, replacement of building systems that have reached the end of their engineered lives, or renovations required to support changes in the agency’s organizational structure, or address revisions to building standards and codes. The 2025 Capital Budget includes funding for the costs associated with routine repairs, maintenance, and lifecycle-driven property renovations for the agency’s Alexandria, Virginia, headquarters. Following an assessment and recommendations presented to the Board, a decision was made to sell the NCUA-owned office building in Austin, Texas, which is expected to be completed in 2025. Given potential challenges in the commercial real estate market, however, proceeds from this transaction have not been factored into the 2025 staff draft budget.

2025–2026 NCUA CAPITAL BUDGET								
	2024 Board Approved Budget	2025 Requested Budget	Change (2024-2025)	Percent Change (2024-2025)	2026 Requested Budget	Change (2025-2026)	Percent Change (2025-2026)	
Information technology investments	\$ 5,712,000	\$ 7,729,000	\$ 2,017,000	35.3%	\$ 12,050,000	\$ 4,321,000	55.9%	
Capital building improvements and repairs	\$ 477,000	\$ 480,000	\$ 3,000	0.6%	\$ 450,000	\$ (30,000)	-6.3%	
Total	\$ 6,189,000	\$ 8,209,000	\$ 2,020,000	32.6%	\$ 12,500,000	\$ 4,291,000	52.3%	

Detailed descriptions of all proposed 2025 capital projects, including a discussion of how each project helps the agency achieve its goals and objectives, are provided in Appendix B.

Summary of Capital Projects

Examination and Supervision Solution/ MERIT Enhancements (\$1.8 Million)

Investments in the MERIT platform in 2025 will focus on upgrading the MERIT system platform to take advantage of security improvements, a streamlined interface, and new record management capability; modifying the ISE output files for more efficient import into MERIT; and implementing single sign-on for Partner Gateway applications including for new reports.

Cloud Migration and Modernization (\$1.3 Million)

The Cloud Migration and Modernization project is a major multi-year investment that involves moving applications, data, and IT infrastructure from servers located at NCUA controlled facilities to cloud computing environments. This project will also include updating and optimizing existing applications for cloud-native capabilities. By leveraging cloud computing solutions, the NCUA can reduce costs related to data center hosting, IT hardware purchasing, IT maintenance, and associated IT labor costs. The cloud computing environment also provides enhanced security functionality for the agency’s systems. Aspects of this project were included under the “Executive Order on Improving the Nation’s Cybersecurity” project in past years’ budgets.

Network Access Control (\$1.0 Million)

This project will strengthen the NCUA’s network security by automating and enhancing security patch management and scanning functions for users connected to the agency’s networks. In addition, this project will integrate the NCUA’s firewall services within the overall network infrastructure and with the new patch and scanning functionality.

CURE Process Automation (\$1.0 Million)

This capital investment supports the development of initial requirements and scoping for a public-facing portal that credit unions and organizing groups will use to submit their field of membership and new charter requests.

E.O. on Improving the Nation's Cybersecurity (\$0.9 Million)

The purpose of this capital investment is to ensure the NCUA complies with E.O. 14028. The project will continue efforts to enable Multi-Factor Authentication for certain NCUA applications, adhere to best practices for supply chain risk management, and implement Zero Trust Architecture for the agency's infrastructure and applications.

Information Technology Infrastructure, Platform, and Security Refresh (\$0.8 Million)

This capital project will improve system availability and stability by replacing outdated or end-of-life network and platform hardware to ensure business continuity and efficient operations. Proposed projects for 2025 include refreshing hardware and software, and costs associated with backup storage at the NCUA's disaster recovery site.

Performance Management System (\$0.8 Million)

This investment will support a modernized, phased workflow, dashboards, and automated management of over 350 performance plan packages to facilitate the employee performance management program for the NCUA's employees.

Enterprise Laptop Refresh (\$0.6 Million)

The purpose of this multi-year capital investment is to boost overall agency productivity, efficiency, and security by providing the NCUA staff with new laptops that offer improved processing power and speed to multitask more effectively, enhanced mobility features like reduced weight and longer battery life, and advanced security features to better combat evolving cyber threats. The budgeted amount for 2025 will support testing and selection of new, standard laptop configurations that will work with the NCUA's business applications and requirements.

Headquarters Building Minor Construction and Maintenance Projects (\$0.5 Million)

The proposed 2025 budget supports the NCUA's multi-year headquarters building improvement plan that identifies projects that can be completed incrementally, prioritizing the replacement of health and safety infrastructure. The headquarters building is 30 years old, and many original components need replacement. The ongoing multi-year approach recognizes the critical building management and maintenance needs

while reducing the potential budgetary impact of such projects in a single budget year.

System Updates for Significant Regulatory Changes (\$0.3 Million)

This project will allow NCUA to update applications and databases to accommodate new regulatory requirements or initiatives. Multiple legacy systems are often impacted when regulatory changes are finalized, or new initiatives are approved by the NCUA Board. These changes can require significant time and programming resources to ensure that related systems maintain their functionality before updated rules take effect.

Onboarding/Offboarding Solution and Personnel Security Case Management System (\$0.3 Million)

The purpose of this project is to develop a new personnel security management system for the NCUA in compliance with the Trusted Workforce 2.0 directive promulgated by ODNI and OPM. This system will centralize personnel security case management and serve as a repository for agencywide onboarding/offboarding actions.

Management Automated Resource System (MARS), Time Management System (TMS), and Credit Union Service Organization (CUSO) Development and Reports (\$0.3 Million)

This project funds short-term contractor support to develop CUSO Reports, data collection forms such as the CUSO Registry Online form, and to realign MARS and TMS development in support of regional redistricting, new work code classifications, new examiner specialties, and new supervisory examiner groups.

Off-Site Monitoring Project (\$0.3 Million)

The goal of this capital investment is to leverage data analytics solutions to minimize technology burdens on examination staff during off-site monitoring while streamlining the way that offices identify emerging and increasing risks to the Share Insurance Fund.

ONES Dedicated Computing Resources (\$0.05 Million)

This capital investment will provide dedicated computing resources required for data ingested through the ONES large credit union data collection program.

Generative AI Licensing (\$0.03 Million)

This capital project investment will fund a pilot program to test the

capability of Microsoft's AI tool, Microsoft 365 Copilot, for possible development across the NCUA.

VI. Share Insurance Fund Administrative Expenses Budget**Overview**

The Share Insurance Fund Administrative Expenses Budget funds direct costs associated with authorized Share Insurance Fund activities.¹⁶ Direct costs to the Share Insurance Fund include items such as travel for state examiners attending NCUA-sponsored training, data subscriptions and technology tools for ONES' analysis of large credit unions, audit support for the Share Insurance Fund's financial statements, and certain insurance-related expenses for AMAC operations.

The Share Insurance Fund Administrative Expenses Budget also pays for costs associated with the corporate resolution program and related NCUA Guaranteed Notes (NGN) program. On June 14, 2021, the last outstanding NGN Trust matured. Given the significantly reduced size of the legacy asset portfolio in the corporate asset management estates, the proposed 2025 budget for the corporate resolution program continues to decrease compared to the 2024 funding levels. The remaining assets held by the NCUA are subject to ongoing litigation and will be sold once all claims to ownership of underlying assets are resolved.

Budget Requirements and Description

The proposed 2025 Share Insurance Fund Administrative Expenses Budget is \$5.5 million, which is \$0.4 million, or 7.0 percent, higher than 2024.

The proposed 2025 budget increase is primarily driven by an increase in the projected costs of state examiners traveling to NCUA-sponsored training, increases in the cost of data and analytic models used for analysis of large credit unions, costs of AMAC activities, and inflationary growth in the cost of audit support. The proposed 2024 Share Insurance Fund Administrative Expenses Budget includes:

- \$2.5 million for operating and maintenance costs of the Asset and Liabilities Management system, which allows the NCUA to build internal

¹⁶ Direct costs do not include any costs that are shared with the Operating Fund through the Overhead Transfer Rate, and with payments available upon requisition by the Board, without fiscal year limitation, for insurance under section 1787 of the Federal Credit Union Act, and for providing assistance and making expenditures under section 1788 of the Federal Credit Union Act in connection with the liquidation or threatened liquidation of insured credit unions as it may determine to be proper.

analytical capabilities to conduct supervisory stress testing analyses and to perform other quantitative risk assessments of large credit unions.

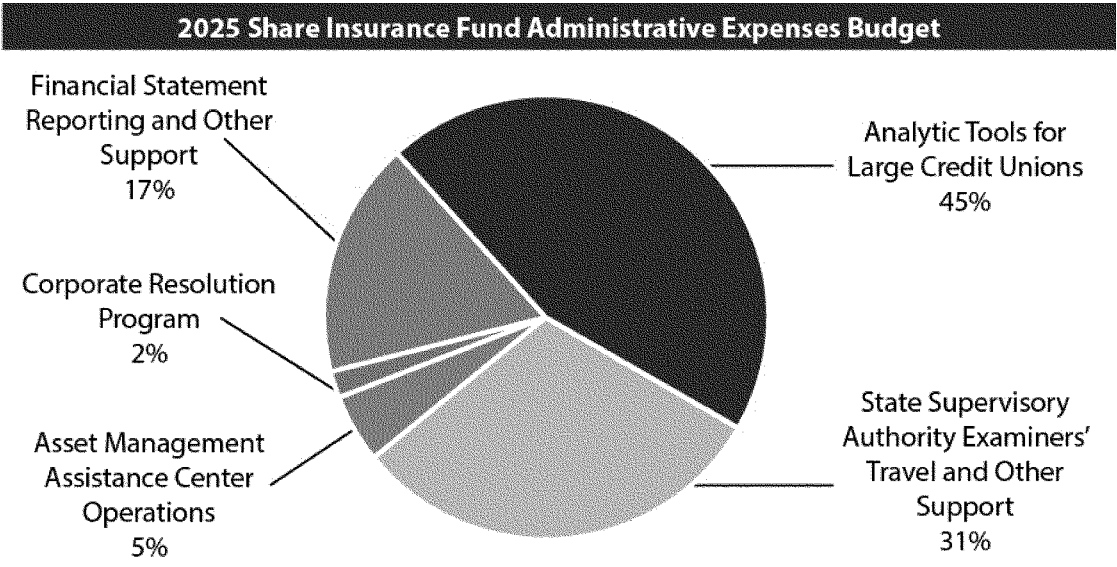
- \$0.3 million for certain insurance-related activities and expenses of AMAC, such as consulting expenses necessary to avoid or attempt to prevent a liquidation or conservatorship and staff travel for consultation on complex or problem cases.

- \$1.5 million for state examiner travel to NCUA-sponsored training classes and \$0.2 million to ensure that state supervisory authorities can securely and efficiently access NCUA applications and the NCUA’s MERIT system for state examination and supervision activities.
- \$0.9 million for financial reporting, including the annual financial audit and

for contractor support to ensure effective internal controls for the fund.

- \$0.1 million for corporate resolution program legacy asset waterfall models and valuation analysis support and data. The budget for NGN support decreases by 60.1 percent between 2024 and 2025.

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2025–2026 SHARE INSURANCE FUND ADMINISTRATIVE EXPENSES BUDGET					
	2024 Board Approved Budget	2025 Requested Budget	Change (2024-2025)	Percent Change (2024-2025)	2026 Requested Budget
SIF Direct Expenses					
Travel					
OHR: State Examiner Training	1,015	1,490	475	46.8%	1,490
AMAC: Staff travel for problem cases	15	15	-	0.0%	15
Subtotal, Travel (SIF Direct Expenses)	1,030	1,505	475	46.1%	1,505
Administrative Expenses					
ONES: Analytic Tools for Large Credit Unions	116	160	44	37.9%	140
AMAC: Shipping and Miscellaneous Admin	54	48	-6	-11.1%	48
Subtotal Administrative Expenses (SIF Direct Expenses)	170	208	38	22.4%	188
Contracted Services					
ONES: Analytic Tools for Large Credit Unions	2,286	2,300	14	0.6%	2,300
OCFO: Financial Accounting, Audit Support, Bank Charges and Other Support	925	937	12	1.3%	937
OBI: SSA costs for MERIT	216	216	-	0.0%	216
AMAC: Corp. Resolution Study (2022), legal, other contracts	229	220	-9	-3.9%	220
Subtotal, Contracted Services (SIF Direct Expenses)	3,656	3,673	17	0.5%	3,673
Total, SIF Direct Expenses	4,856	5,386	530	10.9%	5,366
Corporate Resolution Program					
Administrative Expenses					
E&I: Software and Data Subscriptions	186	64	-122	-65.6%	-
Contracted Services					
E&I: Valuation Services, Contract Support, Training	100	50	-50	-50.0%	-
Total, Corporate Resolution Program	286	114	-172	-60.1%	-
Total SIF Budget	\$ 5,142	\$ 5,500	\$ 358	7.0%	\$ 5,366

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The proposed 2026 budget supports similar workload and resources for the Share Insurance Fund, which at \$5.4 million is \$0.1 million lower than the proposed 2025 level. With the anticipated wind-down of the program in 2025 (subject to the status of ongoing litigation), there is no corporate resolution budget planned for 2026 at this time.

VII. Financing the NCUA's Programs*Overview*

The NCUA incurs various expenses to achieve its statutory mission, including those involved in examining and supervising federally insured credit unions. The NCUA Board adopts an Operating Budget, a Capital Budget, and a Share Insurance Fund Administrative Expenses Budget each year to fund most of the costs to operate the agency.¹⁷ When formulating the annual budget, the NCUA is mindful that its funding comes from credit unions and strives to

operate in an efficient, effective, transparent, and fully accountable manner.

The Federal Credit Union Act authorizes two primary sources to fund the Operating Budget:

(1) Requisitions from the Share Insurance Fund “for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper,”¹⁸ and

(2) “[F]ees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].”¹⁹ Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 United States Code (U.S.C.) 1755 “and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act], including the examination and supervision of [federal credit unions].”

Taken together, these authorities effectively require the Board to determine which expenses are appropriately paid from each source

while giving the Board broad discretion in allocating expenses.

In 1972, the U.S. Government Accountability Office recommended the NCUA adopt a method for allocating Operating Budget costs—that is, the portion of the NCUA’s budget funded by requisitions from the Share Insurance Fund and the portion covered by operating fees paid by federal credit unions.²⁰ The NCUA has since used an allocation methodology known as the OTR to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

The NCUA uses the OTR methodology to allocate agency expenses between these two primary funding sources. Specifically, the OTR is the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II of the Act. Almost all other operating expenses are funded through collecting annual

¹⁷ Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to SSAs are directly charged to the Share Insurance Fund.

¹⁸ 12 U.S.C. 1783(a).

¹⁹ 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget have included interest income, funds from publication sales, parking fee income, and rental income.

²⁰ See <https://www.gao.gov/products/b-1640314-31>.

operating fees paid by federal credit unions.²¹

Two statutory provisions directly limit the Board’s discretion with respect to Share Insurance Fund requisitions for the NCUA’s Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.²² Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.²³

The NCUA conducts a comprehensive workload analysis annually. This analysis estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions to carry out the NCUA’s dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the year. These estimates are informed by the overall parameters of the NCUA’s examination program, as most recently updated by the Exam Flexibility Initiative approved by the Board.²⁴ The workload estimates are then refined by regional managers

and submitted to the NCUA headquarters for the annual budget proposal. The OTR methodology accounts for the costs of the NCUA, not the costs of state regulators. Therefore, there are no calculations made for state examiner hours.

Overhead Transfer Rate

There have not been any major changes to the parameters of the examination program since the current OTR methodology went into effect.²⁵ The minor variations in the OTR since 2018 are the result of routine, small fluctuations in the variables that affect the OTR, including normal fluctuations in the workload budget from one calendar year to the next.

The NCUA Board approved the current methodology for calculating the OTR at its November 2017 open meeting.²⁶ In 2023, the Board published in the **Federal Register** a request for comment regarding the OTR methodology but did not propose or adopt any changes to the current methodology.²⁷ The OTR is designed to cover the NCUA’s costs of examining and supervising the risk to the Share

Insurance Fund posed by all federally insured credit unions, as well as the costs of administering the fund. The OTR represents the percentage of the agency’s operating budget paid for by a transfer from the Share Insurance Fund. Federally insured credit unions are not billed for and do not have to remit the OTR amount; instead, it is transferred directly to the Operating Fund from the Share Insurance Fund. This transfer, therefore, represents a cost to all federally insured credit unions.

Based on the Board-approved methodology and the proposed budget, the OTR for 2025 is estimated to be 61.7 percent, which is the same percentage as 2024.²⁸ Thus, 61.7 percent of the total 2025 Operating Budget is estimated to be paid out of the Share Insurance Fund. The remaining 38.3 percent of the Operating Budget is estimated to be paid for by operating fees collected from federal credit unions. The explicit and implicit distribution of total Operating Budget costs for federal credit unions and federally insured, state-chartered credit unions (FISCUs) is outlined in the table below:

2025 Estimated Distribution: Overhead Transfer Rate and Operating Fee		
Est. Share of the Operating Budget covered by:	Federal Credit Unions	Federally Insured, State-Chartered Credit Unions
Federal Credit Union Operating Fee	38.3%	0.0%
Overhead Transfer Rate x Percent of Insured Shares *	31.0%	30.7%
	(61.7% x 50.2%)	61.7% x 49.8%
Total	69.3%	30.7%

* Insured Shares are as of June 2024.

At the start of each year, the Office of the Chief Financial Officer estimates the share of annual spending that will be paid by the Share Insurance Fund through the OTR and calculates a monthly cash advance that is transferred from the Share Insurance Fund to the Operating Fund at the start of each month. During the financial close at the end of each month, the OTR is multiplied by each month’s actual Operating Fund cash disbursement and

expenditures, and the product of that calculation is transferred from the Operating Fund to the Share Insurance Fund or vice versa depending upon whether the Share Insurance Fund share of the cash disbursements was lower or higher than the OTR cash advance. This monthly reconciliation captures the variance between actual and budgeted amounts, so that when the NCUA’s expenditures are less than budgeted, the amount charged to the Share Insurance

Fund is also less—and those lower expenditures benefit both federally chartered and federally insured, state-chartered credit unions.

The following chart illustrates the share of the proposed 2025 Operating Budget that would be paid by federal credit unions (69.3%) and federally insured, state-chartered credit unions (30.7%).

²¹ Annual operating fees must “be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [federal credit unions] to pay the fee.” 12 U.S.C. 1755(b).

²² 12 U.S.C. 1783(a).

²³ The Act in 12 U.S.C. 1755(a) states, “[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an

annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.” See also 12 U.S.C. 1766(j)(3).

²⁴ The Exam Flexibility Initiative started with the January 1, 2017, examination cycle, and it allows for extended examination cycles for eligible credit unions. Letters to Credit Unions 16–CU–12, December 2016.

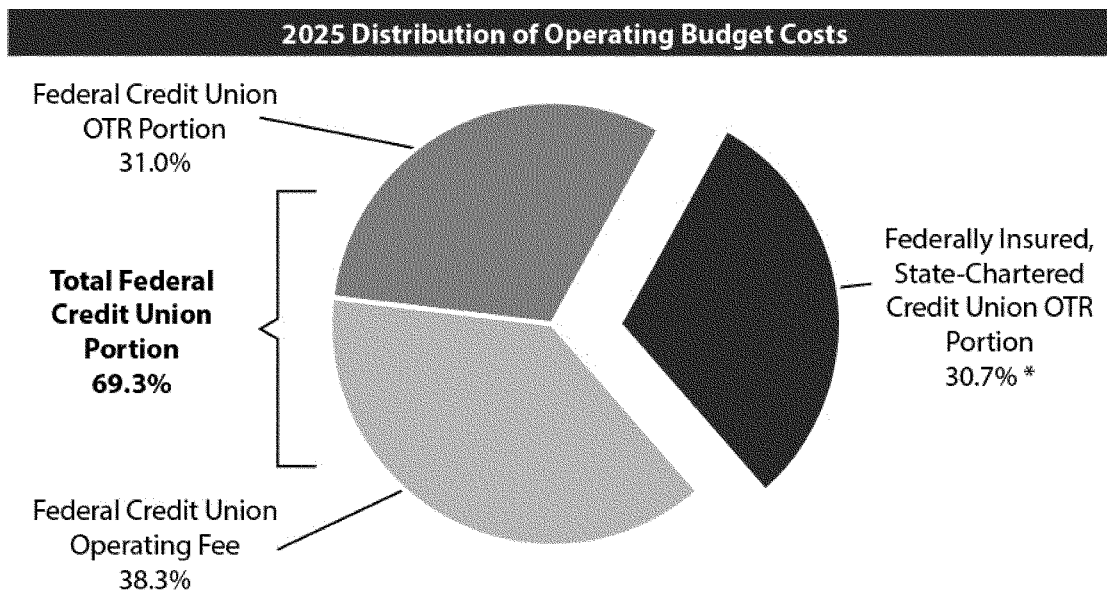
²⁵ On November 16, 2017, the NCUA Board adopted a new methodology for calculating the Overhead Transfer Rate starting with the 2018

Overhead Transfer Rate. 82 FR 55644, November 22, 2017.

²⁶ 82 FR 55644 (Nov. 22, 2017).

²⁷ See <https://www.federalregister.gov/documents/2023/12/20/2023-28000/request-for-comment-regarding-overhead-transfer-rate-methodology>.

²⁸ See <https://www.federalregister.gov/documents/2020/12/28/2020-28487/overhead-transfer-rate-methodology-and-operating-fee-schedule-methodology>.



*Note: Federally insured, state-chartered credit unions typically pay supervisory fees to their respective State Supervisory Authority.

Operating Fee

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the operating fee and to set the fee schedule as calculated per the approved methodology. In December 2023, the Board approved and published in the **Federal Register** the current operating fee methodology, which forms the basis for how the operating fee is calculated in this section.²⁹ Consistent with its triennial schedule for regulatory reviews, the NCUA requested public comment about the operating fee methodology in 2023. At its December 2023 open meeting, the NCUA Board approved three changes to the methodology for computing the operating fee. First, for purposes of calculating the operating fee, the asset exemption threshold was increased from \$1 million to \$2 million. Second, the NCUA Board agreed to adjust the asset exemption threshold annually in future years by the computed rate of aggregate asset growth at Federal Credit Unions. Third, in response to comments from the public, as part of future reviews of the operating fee schedule methodology the NCUA Board plans to analyze options to adjust the distribution of operating fee costs.³⁰

Under the current methodology to determine the annual operating fee assessed on federal credit unions serving consumers, the NCUA first calculates the average of total assets reported in the preceding four calendar quarters available at the time of the calculation, net of any reported Paycheck Protection Program loans. Credit unions with assets less than approximately \$2 million are not assessed an operating fee and their assets are therefore excluded from this calculation.³¹

Based on the Board-approved operating fee methodology, which is summarized in the following tables, the share of the proposed 2025 budget funded by the operating fee is \$155.8 million. This equates to 0.01354 percent of the actual average of natural person federal credit union assets for the four calendar quarters ending on June 30, 2024. The calculated operating fee rate for 2025 increases by 9.02 percent compared to the rate in 2024. This computation is shown in the table on the following page.

As part of the Board-approved operating fee methodology, the NCUA can adjust the share of the budget funded by the operating fee based on an analysis of the agency's future cash flow requirements compared to past years'

collections that were not spent as planned. Any projected surplus cash from past years' fee collections not required to finance agency operations can accordingly be used to lower the operating fee share of the proposed budget. Because such cash surpluses result from past years' operating fee collections, they do not offset the portion of the budget funded by the OTR. As the final 2025–2026 budget is prepared for consideration by the NCUA Board, the Chief Financial Officer will evaluate the agency's cash position and make a recommendation about any surplus cash that can be credited to the operating fee.

To set the assessment scale for 2025, total growth in natural person federal credit union assets is calculated as the change between the average of the four most-current quarters (that is, the third and fourth quarters of 2023 and the first two quarters of 2024) and the previous four quarters (that is, the third and fourth quarters of 2022 and the first two quarters of 2023), which is calculated as 4.01 percent. The fee exemption threshold and the asset level dividing points for the fee tiers are likewise increased by this same growth rate to preserve the same relative relationship of the scale to the applicable asset base.

²⁹ See <https://www.federalregister.gov/documents/2023/12/26/2023-28303/national-credit-union-administration-operating-fee-schedule-methodology>.

³⁰ See <https://ncua.gov/newsroom/press-release/2023/board-approves-ncua-2024-2025-and-central-liquidity-facility-budgets>.

³¹ The exemption threshold for 2025 is estimated at \$2,080,250, which accounts for 4.01% aggregate growth in credit union system assets.

PROJECTED 2025 OPERATING FEE REQUIREMENTS

(\$ in millions)

			2025 Budget
1	Proposed Operating Budget		\$ 419.325
2	Add Capital Investments		\$ 8.209
3	Miscellaneous Revenue		\$ (0.570)
4	Operating Budget to apply OTR		\$ 426.964
5	Overhead Transfer Rate	61.7%	\$ (263.437)
6	Interest Income		\$ (7.728)
7	Net (sum lines 4 - 6)		\$ 155.799
8	Operating Fund adjustment		\$ -
9	Budgeted Operating Fee/Capital Requirements (sum lines 7 - 8)		\$ 155.799
10	Corporate Federal CU Operating Fees		\$ (0.325)
11	Natural Person FCU Operating Fees Required (sum lines 9 - 10)		\$ 155.474
12	Fees projected with Asset Growth of	4.01%	\$ (142.609)
13	Difference (lines 11 & 12)		\$ 12.865
14	Average Rate Adjustment Indicated (line 13 divided by line 12)		9.02%

Operating Fee Scale

To illustrate the rate for each asset tier for which operating fees are charged, the

tables below show the effect of the average 9.02 percent increase in the operating fee for natural person federal

credit unions, using the current \$2.08 million exemption threshold.

PROPOSED 2025 OPERATING FEE SCALE

2024 Natural Person Federal Credit Union Scale						
Asset Level			Operating Fee Assessment			
\$0	TO	\$2,000,000	\$0.00			
\$2,000,000	TO	\$2,354,802,962	\$0.00	+	0.00019094	X total assets over \$2,000,000.00
\$2,354,802,962	TO	\$7,125,598,385	\$449,626	+	0.00005565	X total assets over \$2,354,802,962
\$7,125,598,385	AND	Over	\$715,121	+	0.00001859	X total assets over \$7,125,598,385

2025 (Proposed) Natural Person Federal Credit Union Scale						
Projected FCU asset growth rate		4.01%	Change in asset level dividing points			
Operating fee rate change		9.02%	Change in assessment rate percentages			
Asset Level			Operating Fee Assessment			
\$0	TO	\$2,080,250	\$0.00			
\$2,080,250	TO	\$2,449,289,570	\$0.00	+	0.00020816	X total assets over \$0.00
\$2,449,289,570	TO	\$7,411,513,440	\$509,844	+	0.00006067	X total assets over \$2,449,289,570
\$7,411,513,440	AND	Over	\$810,902	+	0.00002027	X total assets over \$7,411,513,440

2025 (Proposed) Corporate Federal Credit Union Scale						
Asset Level			Operating Fee Assessment			
\$50,000,000	TO	\$100,000,000	\$10,725	+	0.00019870	X total assets over \$50,000,000
\$100,000,000	AND	Over	\$20,660	+	0.00001230	X total assets over \$100,000,000

VIII. Appendix A: Supplemental Budget Information*Budget by Strategic Goal*

The table below shows the combined total of the 2025 Operating, Capital, and

Share Insurance Fund Administrative Expenses budgets, organized by the NCUA's three current strategic goals.

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Strategic Goal	2025 Staff Draft Budget	
	Dollars (in Millions)	Positions
Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers	\$281.06	1,027
Goal 2: Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services	\$19.28	65
Goal 3: Maximize organizational performance to enable mission success	\$128.23	159
Office of Inspector General	\$4.46	10
Total	\$433.03	1,261

Budgets for the Offices of the Board, Executive Director, General Counsel, Ethics Council, External Affairs and Communications, and Chief Financial Officer and the Capital Budget are allocated across all strategic goals.

Note: Position totals do not include five positions funded by the CLF. Minor rounding differences may occur in totals.

Office Budget Summary

2025–2026 NCUA OPERATING BUDGET										
Office	2024 Board Approved Budget	2025 Requested Budget	2024 - 2025 Change		2026 Requested Budget	2025 - 2026 Change		Authorized Positions		
								2024	2025	2026
Eastern Region	57,973,649	62,638,779	4,665,131	8.0%	65,091,236	2,452,457	3.9%	264	260	260
Southern Region	51,534,265	53,728,361	2,194,095	4.3%	56,070,559	2,342,198	4.4%	234	232	232
Western Region	56,971,428	60,164,601	3,193,173	5.6%	61,990,580	1,825,979	3.0%	248	244	244
Office of National Examinations and Supervision	16,887,934	17,918,056	1,030,122	6.1%	19,496,522	1,578,466	8.8%	54	57	60
Office of Consumer Financial Protection	8,295,407	9,077,484	782,077	9.4%	9,868,920	791,436	8.7%	31	34	34
Subtotal, Examination and Supervision	191,662,683	203,527,280	11,864,598	6.2%	212,517,817	8,990,536	4.4%	831	827	830
Office of the Board	3,998,314	4,040,586	42,271	1.1%	4,205,477	164,891	4.1%	13	13	13
Office of the Executive Director	4,180,635	4,711,005	530,370	12.7%	4,882,908	171,903	3.6%	10	10	10
Federal Financial Institutions Examination Council	2,350,000	2,400,000	50,000	2.1%	2,400,000	-	0.0%	-	-	-
Office of the Executive Secretary	-	460,971	460,971	N/A	977,167	516,196	112.0%	-	2	3
Office of the Ombudsman	581,052	830,849	249,798	43.0%	865,045	34,195	4.1%	2	3	3
Office of Ethics Counsel	2,233,522	2,307,806	74,284	3.3%	2,413,996	106,190	4.6%	7	7	7
Office of Business Innovation	4,931,853	6,114,966	1,183,113	24.0%	7,412,670	1,297,703	21.2%	15	17	19
Office of Continuity and Security Management	5,797,907	6,210,198	412,292	7.1%	6,382,859	172,661	2.8%	12	13	13
Office of Minority and Women Inclusion	4,414,174	4,513,851	99,677	2.3%	4,801,961	288,111	6.4%	10	11	11
Office of the Chief Economist	2,963,274	3,210,643	247,370	8.3%	3,498,588	287,944	9.0%	8	9	9
Office of the Chief Financial Officer	25,264,361	25,755,151	490,791	1.9%	27,244,562	1,489,410	5.8%	55	55	55
Cross-cutting agency expenses	(18,622,495)	(51,198)	18,571,297	-99.7%	7,590,709	7,641,907	14926.1%	-	-	-
Office of the Chief Information Officer	62,568,571	65,259,655	2,691,084	4.3%	68,484,805	3,225,150	4.9%	50	50	50
Credit Union Resources and Expansion	10,873,394	11,719,405	846,011	7.8%	12,222,546	503,140	4.3%	41	41	41
Office of Examination & Insurance	16,554,806	18,059,038	1,504,231	9.1%	19,379,184	1,320,146	7.3%	53	56	57
Office of General Counsel	14,926,034	15,630,421	704,387	4.7%	16,777,081	1,146,660	7.3%	46	47	49
Office of Inspector General	4,290,027	4,460,090	170,063	4.0%	4,617,238	157,148	3.5%	10	10	10
Office of Human Resources	22,640,418	24,827,962	2,187,545	9.7%	27,612,004	2,784,042	11.2%	46	49	49
Office of External Affairs and Communication	6,469,138	7,750,358	1,281,219	19.8%	8,442,712	692,355	8.9%	15	18	20
Asset Management and Assistance Center	6,416,332	7,585,960	1,169,628	18.2%	7,877,673	291,713	3.8%	23	23	23
Subtotal, Other Offices	182,831,318	215,797,720	32,966,402	18.0%	238,089,184	22,291,465	10.3%	416	434	442
Total, Operating Budget	\$374,494,000	\$419,325,000	\$44,831,000	12.0%	\$450,607,000	\$31,282,000	7.5%	1,247	1,261	1,272

Note: minor rounding differences may occur in totals.

Office Budgets

OFFICE OF THE CHAIRMAN: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	4.0	4.0	-	0.0%	4.0	-	0.0%
Employee Compensation	1,089,761	1,111,969	22,209	2.0%	1,164,636	52,667	4.7%
Salaries	765,019	773,628	8,610	1.1%	814,075	40,446	5.2%
Benefits	324,742	338,341	13,599	4.2%	350,562	12,221	3.6%
Travel	50,000	50,000	-	0.0%	50,000	-	0.0%
Rent /Comm/Util	2,250	2,250	-	0.0%	2,250	-	0.0%
Administrative	10,000	10,000	-	0.0%	10,000	-	0.0%
Contracted Services	39,000	29,000	(10,000)	-25.6%	29,000	-	0.0%
Total	\$ 1,191,011	\$ 1,203,219	\$ 12,209	1.0%	\$ 1,255,886	\$ 52,667	4.4%

VICE CHAIRMAN HAUPTMAN: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	3.0	3.0	-	0.0%	3.0	-	0.0%
Employee Compensation	752,009	748,786	(3,223)	-0.4%	780,281	31,495	4.2%
Salaries	525,639	522,117	(3,522)	-0.7%	546,257	24,140	4.6%
Benefits	226,370	226,669	299	0.1%	234,024	7,354	3.2%
Travel	50,000	65,000	15,000	30.0%	65,000	-	0.0%
Rent /Comm/Util	6,750	6,750	-	0.0%	6,750	-	0.0%
Administrative	14,000	14,000	-	0.0%	14,000	-	0.0%
Contracted Services	83,000	68,000	(15,000)	-18.1%	68,000	-	0.0%
Total	\$ 905,759	\$ 902,536	\$ (3,223)	-0.4%	\$ 934,031	\$ 31,495	3.5%

BOARD MEMBER OTSUKA: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	3.0	3.0	-	0.0%	3.0	-	0.0%
Employee Compensation	784,822	777,197	(7,624)	-1.0%	814,303	37,105	4.8%
Salaries	551,586	543,832	(7,753)	-1.4%	572,265	28,432	5.2%
Benefits	233,236	233,365	129	0.1%	242,038	8,673	3.7%
Travel	65,000	65,000	-	0.0%	65,000	-	0.0%
Rent /Comm/Util	6,750	6,750	-	0.0%	6,750	-	0.0%
Administrative	14,000	14,000	-	0.0%	14,000	-	0.0%
Contracted Services	98,000	98,000	-	0.0%	98,000	-	0.0%
Total	\$ 968,572	\$ 960,947	\$ (7,624)	-0.8%	\$ 998,053	\$ 37,105	3.9%

Note: Minor rounding differences may occur in totals.

OFFICE OF THE BOARD: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	13.0	13.0	-	-	13.0	-	0.0%
Employee Compensation	3,484,564	3,536,836	52,271	1.5%	3,701,727	164,891	4.7%
Salaries	2,452,739	2,481,200	28,461	1.2%	2,607,763	126,564	5.1%
Benefits	1,031,825	1,055,636	23,811	2.3%	1,093,964	38,328	3.6%
Travel	169,000	185,000	16,000	9.5%	185,000	-	0.0%
Rent /Comm/Util	16,250	16,250	-	0.0%	16,250	-	0.0%
Administrative	40,500	40,500	-	0.0%	40,500	-	0.0%
Contracted Services	288,000	262,000	(26,000)	-9.0%	262,000	-	0.0%
Total	\$ 3,998,314	\$ 4,040,586	\$ 42,271	1.1%	\$ 4,205,477	\$ 164,891	4.1%

OFFICE OF THE EXECUTIVE DIRECTOR: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions*	10.0	10.0	-	0.0%	10.0	-	0.0%
Employee Compensation	3,284,885	3,560,255	275,370	8.4%	3,732,158	171,903	4.8%
Salaries	2,318,339	2,530,899	212,561	9.2%	2,663,218	132,319	5.2%
Benefits	966,546	1,029,356	62,809	6.5%	1,068,940	39,584	3.8%
Travel	30,000	85,000	55,000	183.3%	85,000	-	0.0%
Rent /Comm/Util	20,000	20,000	-	0.0%	20,000	-	0.0%
Administrative	2,375,250	25,250	(2,350,000)	-98.9%	25,250	-	0.0%
ED Core	25,250	25,250	-	0.0%	25,250	-	0.0%
FFIEC	2,350,000	-	(2,350,000)	-100.0%	-	-	0.0%
Contracted Services	820,500	3,420,500	2,600,000	316.9%	3,420,500	-	0.0%
ED Core	820,500	1,020,500	200,000	24.4%	1,020,500	-	0.0%
FFIEC	-	2,400,000	2,400,000	-	2,400,000	-	0.0%
Total	\$ 6,530,635	\$ 7,111,005	\$ 580,370	8.9%	\$ 7,282,908	\$ 171,903	2.4%

OFFICE OF THE EXECUTIVE SECRETARY: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	-	2.0	2.0	N/A	3.0	1.0	50.0%
Employee Compensation	-	390,971	390,971	N/A	907,168	516,197	132.0%
Salaries	-	278,762	278,762	N/A	655,037	376,275	135.0%
Benefits	-	112,210	112,210	N/A	252,131	139,921	124.7%
Travel	-	10,000	10,000	N/A	10,000	-	0.0%
Rent /Comm/Util	-	-	-	-	-	-	-
Administrative	-	-	-	-	-	-	-
Contracted Services	-	60,000	60,000	N/A	60,000	-	0.0%
Total	-	\$ 460,971	\$ 460,971	N/A	\$ 977,168	\$ 516,197	112.0%

Note: Minor rounding differences may occur in totals.

OFFICE OF THE OMBUDSMAN: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	2.0	3.0	1.0	50.0%	3.0	-	0.0%
Employee Compensation	568,552	803,349	234,798	41.3%	837,545	34,195	4.3%
Salaries	402,580	574,899	172,318	42.8%	601,070	26,172	4.6%
Benefits	165,971	228,451	62,479	37.6%	236,474	8,023	3.5%
Travel	2,500	9,500	7,000	280.0%	9,500	-	0.0%
Rent /Comm/Util	2,000	2,000	-	0.0%	2,000	-	0.0%
Administrative	1,000	9,000	8,000	800.0%	9,000	-	0.0%
Contracted Services	7,000	7,000	-	0.0%	7,000	-	0.0%
Total	\$ 581,052	\$ 830,849	\$ 249,798	43.0%	\$ 865,045	\$ 34,195	4.1%

OFFICE OF ETHICS COUNSEL: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	7.0	7.0	-	0.0%	7.0	-	0.0%
Employee Compensation	2,123,270	2,196,091	72,821	3.4%	2,302,281	106,190	4.8%
Salaries	1,514,785	1,569,800	55,014	3.6%	1,651,871	82,071	5.2%
Benefits	608,485	626,291	17,806	2.9%	650,410	24,119	3.9%
Travel	15,000	15,000	-	0.0%	15,000	-	0.0%
Rent /Comm/Util	-	-	-	N/A	-	-	0.0%
Administrative	3,000	3,000	-	0.0%	3,000	-	0.0%
Contracted Services	92,252	93,715	1,463	1.6%	93,715	-	0.0%
Total	\$ 2,233,522	\$ 2,307,806	\$ 74,284	3.3%	\$ 2,413,996	\$ 106,190	4.6%

OFFICE OF BUSINESS INNOVATION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	15.0	17.0	2.0	13.3%	19.0	2.0	11.8%
Employee Compensation	4,103,729	4,884,293	780,564	19.0%	5,681,997	797,703	16.3%
Salaries	2,905,330	3,477,112	571,782	19.7%	4,056,775	579,663	16.7%
Benefits	1,198,400	1,407,182	208,782	17.4%	1,625,221	218,040	15.5%
Travel	100,000	170,000	70,000	70.0%	170,000	-	0.0%
Rent /Comm/Util	9,000	10,000	1,000	11.1%	10,000	-	0.0%
Administrative	6,300	6,500	200	3.2%	6,500	-	0.0%
Contracted Services	712,824	1,044,173	331,349	46.5%	1,544,173	500,000	47.9%
Total	\$ 4,931,853	\$ 6,114,966	\$ 1,183,113	24.0%	\$ 7,412,670	\$ 1,297,703	21.2%

Note: Minor rounding differences may occur in totals.

OFFICE OF CONTINUITY AND SECURITY MANAGEMENT: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	12.0	13.0	1.0	0.1	13.0	-	0.0%
Employee Compensation	3,403,080	3,696,069	292,990	8.6%	3,868,730	172,661	4.7%
Salaries	2,414,873	2,629,409	214,535	8.9%	2,762,366	132,957	5.1%
Benefits	988,206	1,066,661	78,454	7.9%	1,106,365	39,704	3.7%
Travel	25,000	25,000	-	0.0%	25,000	-	0.0%
Rent /Comm/Util	55,000	110,000	55,000	100.0%	110,000	-	0.0%
Administrative	36,000	41,000	5,000	13.9%	41,000	-	0.0%
Contracted Services	2,278,827	2,338,129	59,302	2.6%	2,338,129	-	0.0%
Total	\$ 5,797,907	\$ 6,210,198	\$ 412,292	7.1%	\$ 6,382,859	\$ 172,661	2.8%

OFFICE OF MINORITY AND WOMEN INCLUSION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	10.0	11.0	1.0	10.0%	11.0	-	0.0%
Employee Compensation	2,904,975	3,232,926	327,951	11.3%	3,521,036	288,111	8.9%
Salaries	2,062,228	2,304,208	241,979	11.7%	2,518,582	214,374	9.3%
Benefits	842,747	928,718	85,972	10.2%	1,002,455	73,736	7.9%
Travel	60,000	63,925	3,925	6.5%	63,925	-	0.0%
Rent /Comm/Util	11,550	5,000	(6,550)	-56.7%	5,000	-	0.0%
Administrative	184,180	198,500	14,320	7.8%	198,500	-	0.0%
Contracted Services	1,253,469	1,013,500	(239,969)	-19.1%	1,013,500	-	0.0%
Total	\$ 4,414,174	\$ 4,513,851	\$ 99,677	2.3%	\$ 4,801,961	\$ 288,111	6.4%

OFFICE OF THE CHIEF ECONOMIST: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	8.0	9.0	1.0	12.5%	9.0	-	0.0%
Employee Compensation	2,629,911	2,877,280	247,370	9.4%	3,165,225	287,944	10.0%
Salaries	1,885,251	2,064,856	179,605	9.5%	2,280,049	215,192	10.4%
Benefits	744,659	812,424	67,764	9.1%	885,176	72,752	9.0%
Travel	20,000	20,000	-	0.0%	20,000	-	0.0%
Rent /Comm/Util	4,200	4,200	-	0.0%	4,200	-	0.0%
Administrative	304,849	304,849	-	0.0%	304,849	-	0.0%
Contracted Services	4,314	4,314	-	0.0%	4,314	-	0.0%
Total	\$ 2,963,274	\$ 3,210,643	\$ 247,370	8.3%	\$ 3,498,588	\$ 287,944	9.0%

Note: Minor rounding differences may occur in totals.

OFFICE OF CONSUMER FINANCIAL PROTECTION: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	31.0	34.0	3.0	9.7%	34.0	-	0.0%
Employee Compensation	7,491,112	8,184,404	693,292	9.3%	8,975,840	791,436	9.7%
Salaries	5,240,507	5,740,197	499,690	9.5%	6,322,334	582,138	10.1%
Benefits	2,250,605	2,444,207	193,602	8.6%	2,653,506	209,298	8.6%
Travel	650,000	650,300	300	0.0%	650,300	-	0.0%
Rent /Comm/Util	36,795	33,600	(3,195)	-8.7%	33,600	-	0.0%
Administrative	17,500	14,180	(3,320)	-19.0%	14,180	-	0.0%
Contracted Services	100,000	195,000	95,000	95.0%	195,000	-	0.0%
Total	\$ 8,295,407	\$ 9,077,484	\$ 782,077	9.4%	\$ 9,868,920	\$ 791,436	8.7%

OFFICE OF THE CHIEF FINANCIAL OFFICER: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	55.0	55.0	-	0.0%	55.0	-	0.0%
Employee Compensation	17,352,685	18,631,679	1,278,995	7.4%	19,482,997	851,317	4.6%
Salaries	11,679,275	13,058,472	1,379,198	11.8%	13,702,458	643,986	4.9%
OCFO	9,885,627	10,421,444	535,818	5.4%	10,966,292	544,847	5.2%
Crosscutting	1,793,648	2,637,028	843,380	47.0%	2,736,166	99,138	3.8%
Benefits	5,673,410	5,573,207	(100,203)	-1.8%	5,780,539	207,332	3.7%
OCFO	4,182,687	4,362,453	179,766	4.3%	4,527,016	164,563	3.8%
Crosscutting	1,490,723	1,210,754	(279,969)	-18.8%	1,253,523	42,769	3.5%
Travel	51,720	(200,005)	(251,725)	-486.7%	(200,005)	-	0.0%
OCFO	50,000	50,000	-	0.0%	50,000	-	0.0%
Crosscutting	1,720	(250,005)	(251,725)	-14635.2%	(250,005)	-	0.0%
Rent /Comm/Util	1,972,375	1,287,225	(685,150)	-34.7%	1,787,225	500,000	38.8%
OCFO	1,972,300	1,286,807	(685,493)	-34.8%	1,286,807	-	0.0%
Crosscutting	75	418	343	457.3%	500,418	500,000	119617.2%
Administrative	2,068,280	2,138,336	70,056	3.4%	2,638,336	500,000	23.4%
OCFO	718,000	788,500	70,500	9.8%	788,500	-	0.0%
Crosscutting	1,350,280	1,349,836	(444)	0.0%	1,849,836	500,000	37.0%
Contracted Services	(14,803,194)	3,846,718	18,649,912	126.0%	11,126,718	7,280,000	189.3%
OCFO	8,455,747	8,845,947	390,200	4.6%	9,625,947	780,000	8.8%
Crosscutting	(23,258,941)	(4,999,229)	18,259,712	78.5%	1,500,771	6,500,000	130.0%
Total	\$ 6,641,866	\$ 25,703,953	\$ 19,062,087	287.0%	\$ 34,835,271	\$ 9,131,317	35.5%
OCFO Total	25,264,361	25,755,151	490,791	1.9%	27,244,562	1,489,410	5.8%
Crosscutting	(18,622,495)	(51,198)	18,571,297	99.7%	7,590,709	7,641,907	14926.1%

Note: Minor rounding differences may occur in totals.

OFFICE OF THE CHIEF INFORMATION OFFICER: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	50.0	50.0	-	0.0%	50.0	-	0.0%
Employee Compensation	14,440,258	15,051,986	611,728	4.2%	15,777,136	725,150	4.8%
Salaries	10,246,520	10,709,260	462,740	4.5%	11,269,155	559,895	5.2%
Benefits	4,193,738	4,342,726	148,988	3.6%	4,507,981	165,255	3.8%
Travel	60,000	60,000	-	0.0%	60,000	-	0.0%
Rent /Comm/Util	3,580,607	3,678,850	98,243	2.7%	3,678,850	-	0.0%
Administrative	30,000	30,000	-	0.0%	30,000	-	0.0%
Contracted Services	44,457,706	46,438,819	1,981,113	4.5%	48,938,819	2,500,000	5.4%
Total	\$ 62,568,571	\$ 65,259,655	\$ 2,691,085	4.3%	\$ 68,484,805	\$ 3,225,150	4.9%

OFFICE OF NATIONAL EXAMINATIONS AND SUPERVISION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	54.0	57.0	3.0	5.6%	60.0	3.0	5.3%
Employee Compensation	15,268,184	16,253,442	985,258	6.5%	17,831,909	1,578,466	9.7%
Salaries	10,808,978	11,532,251	723,273	6.7%	12,700,642	1,168,391	10.1%
Benefits	4,459,206	4,721,192	261,985	5.9%	5,131,267	410,075	8.7%
Travel	1,200,000	1,300,000	100,000	8.3%	1,300,000	-	0.0%
Rent /Comm/Util	50,000	63,350	13,350	26.7%	63,350	-	0.0%
Administrative	44,040	51,710	7,670	17.4%	51,710	-	0.0%
Contracted Services	325,710	249,554	(76,157)	-23.4%	249,554	-	0.0%
Total	\$ 16,887,934	\$ 17,918,056	\$ 1,030,122	6.1%	\$ 19,496,522	\$ 1,578,466	8.8%

OFFICE OF CREDIT UNION RESOURCES AND EXPANSION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	41.0	41.0	-	0.0%	41.0	-	0.0%
Employee Compensation	10,043,394	10,491,905	448,511	4.5%	10,995,046	503,140	4.8%
Salaries	7,028,250	7,363,259	335,009	4.8%	7,748,221	384,961	5.2%
Benefits	3,015,144	3,128,646	113,502	3.8%	3,246,825	118,179	3.8%
Travel	200,000	250,000	50,000	25.0%	250,000	-	0.0%
Rent /Comm/Util	34,000	32,000	(2,000)	-5.9%	32,000	-	0.0%
Administrative	35,000	39,500	4,500	12.9%	39,500	-	0.0%
Contracted Services	561,000	906,000	345,000	61.5%	906,000	-	0.0%
Total	10,873,394	11,719,405	846,011	7.8%	12,222,546	\$503,140	4.3%

Note: Minor rounding differences may occur in totals.

OFFICE OF EXAMINATION AND INSURANCE: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	53.0	56.0	3.0	5.7%	57.0	1.0	1.8%
Employee Compensation	14,706,706	16,299,586	1,592,879	10.8%	17,619,732	1,320,146	8.1%
Salaries	10,400,782	11,588,725	1,187,943	11.4%	12,573,589	984,864	8.5%
Benefits	4,305,924	4,710,860	404,936	9.4%	5,046,142	335,282	7.1%
Travel	445,000	550,000	105,000	23.6%	550,000	-	0.0%
Rent /Comm/Util	34,500	35,000	500	1.4%	35,000	-	0.0%
Administrative	248,600	286,665	38,065	15.3%	286,665	-	0.0%
Contracted Services	1,120,000	887,787	(232,213)	-20.7%	887,787	-	0.0%
Total	\$ 16,554,806	\$ 18,059,038	\$ 1,504,231	9.1%	\$ 19,379,184	\$ 1,320,146	7.3%

OFFICE OF GENERAL COUNSEL: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	46.0	47.0	1.0	2.2%	49.0	2.0	4.3%
Employee Compensation	14,348,034	14,581,421	233,387	1.6%	15,728,081	1,146,660	7.9%
Salaries	10,253,644	10,420,391	166,747	1.6%	11,274,456	854,064	8.2%
Benefits	4,094,390	4,161,030	66,640	1.6%	4,453,625	292,595	7.0%
Travel	90,000	90,000	-	0.0%	90,000	-	0.0%
Rent /Comm/Util	3,000	4,000	1,000	33.3%	4,000	-	0.0%
Administrative	5,000	5,000	-	0.0%	5,000	-	0.0%
Contracted Services	480,000	950,000	470,000	97.9%	950,000	-	0.0%
Total	\$ 14,926,034	\$ 15,630,421	\$ 704,387	4.7%	\$ 16,777,081	\$ 1,146,660	7.3%

OFFICE OF HUMAN RESOURCES: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	46.0	49.0	3.0	6.5%	49.0	-	0.0%
Employee Compensation	13,496,410	15,309,490	1,813,081	13.4%	16,093,532	784,042	5.1%
Salaries	8,512,523	9,708,362	1,195,839	14.0%	10,303,181	594,819	6.1%
Benefits	4,983,887	5,601,129	617,242	12.4%	5,790,351	189,223	3.4%
Travel	2,460,000	2,747,500	287,500	11.7%	3,747,500	1,000,000	36.4%
Rent /Comm/Util	328,600	469,000	140,400	42.7%	1,019,000	550,000	117.3%
Administrative	1,165,950	975,693	(190,257)	-16.3%	1,225,693	250,000	25.6%
Contracted Services	5,189,458	5,326,279	136,821	2.6%	5,526,279	200,000	3.8%
Total	\$ 22,640,418	\$ 24,827,962	\$ 2,187,545	9.7%	\$ 27,612,004	\$ 2,784,042	11.2%

Note: Minor rounding differences may occur in totals.

OFFICE OF EXTERNAL AFFAIRS AND COMMUNICATION: 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	15.0	18.0	3.0	20.0%	20.0	2.0	11.1%
Employee Compensation	3,932,738	4,489,608	556,869	14.2%	5,181,962	692,355	15.4%
Salaries	2,775,240	3,168,537	393,297	14.2%	3,660,100	491,564	15.5%
Benefits	1,157,499	1,321,071	163,572	14.1%	1,521,862	200,791	15.2%
Travel	50,000	50,000	-	0.0%	50,000	-	0.0%
Rent /Comm/Util	32,500	30,500	(2,000)	-6.2%	30,500	-	0.0%
Administrative	174,400	212,750	38,350	22.0%	212,750	-	0.0%
Contracted Services	2,279,500	2,967,500	688,000	30.2%	2,967,500	-	0.0%
Total	\$ 6,469,138	\$ 7,750,358	\$ 1,281,219	19.8%	\$ 8,442,712	\$ 692,355	8.9%

ASSET MANAGEMENT AND ASSISTANCE CENTER 2025-2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	23.0	23.0	-	0.0%	23.0	-	0.0%
Employee Compensation	5,952,098	6,064,529	112,431	1.9%	6,356,242	291,713	4.8%
Salaries	4,185,609	4,270,599	84,990	2.0%	4,493,715	223,116	5.2%
Benefits	1,766,489	1,793,930	27,441	1.6%	1,862,527	68,597	3.8%
Travel	125,280	125,280	-	0.0%	125,280	-	0.0%
Rent /Comm/Util	6,113	12,150	6,037	98.8%	12,150	-	0.0%
Administrative	65,341	63,501	(1,840)	-2.8%	63,501	-	0.0%
Contracted Services	267,500	1,320,500	1,053,000	393.6%	1,320,500	-	0.0%
Total	\$ 6,416,332	\$ 7,585,960	\$ 1,169,628	18.2%	\$ 7,877,673	\$ 291,713	3.8%

Note: Minor rounding differences may occur in totals.

EASTERN REGION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	264.0	260.0	(4.0)	-1.5%	260.0	-	0.0%
Employee Compensation	53,701,839	57,750,269	4,048,431	7.5%	59,802,726	2,052,457	3.6%
Salaries	37,168,964	40,099,807	2,930,843	7.9%	41,686,669	1,586,862	4.0%
Benefits	16,532,875	17,650,463	1,117,588	6.8%	18,116,057	465,595	2.6%
Travel	3,650,000	4,125,000	475,000	13.0%	4,525,000	400,000	9.7%
Rent /Comm/Util	288,610	359,020	70,410	24.4%	359,020	-	0.0%
Administrative	189,200	225,490	36,290	19.2%	225,490	-	0.0%
Contracted Services	144,000	179,000	35,000	24.3%	179,000	-	0.0%
Total	\$ 57,973,649	\$ 62,638,779	\$ 4,665,131	8.0%	\$ 65,091,236	\$ 2,452,457	3.9%

SOUTHERN REGION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	234.0	232.0	(2.0)	-0.9%	232.0	-	0.0%
Employee Compensation	46,154,367	47,873,298	1,718,930	3.7%	49,815,496	1,942,198	4.1%
Salaries	31,811,713	33,112,094	1,300,381	4.1%	34,592,819	1,480,724	4.5%
Benefits	14,342,654	14,761,203	418,549	2.9%	15,222,677	461,474	3.1%
Travel	4,583,000	5,148,000	565,000	12.3%	5,548,000	400,000	7.8%
Rent /Comm/Util	392,400	373,855	(18,545)	-4.7%	373,855	-	0.0%
Administrative	228,410	153,445	(74,965)	-32.8%	153,445	-	0.0%
Contracted Services	176,088	179,763	3,675	2.1%	179,763	-	0.0%
Total	\$ 51,534,265	\$ 53,728,361	\$ 2,194,095	4.3%	\$ 56,070,559	\$ 2,342,198	4.4%

WESTERN REGION: 2025–2026 BUDGET SUMMARY							
	2024 Board Approved Budget	2025 Proposed Budget	2024-2025 Change	Percent Change	2026 Proposed Budget	2025-2026 Change	Percent Change
Positions	248.0	244.0	(4.0)	-1.6%	244.0	-	0.0%
Employee Compensation	50,259,328	52,825,801	2,566,473	5.1%	54,346,780	1,520,979	2.9%
Salaries	34,694,296	36,670,463	1,976,167	5.7%	37,854,863	1,184,399	3.2%
Benefits	15,565,031	16,155,338	590,306	3.8%	16,491,917	336,579	2.1%
Travel	6,000,000	6,600,000	600,000	10.0%	6,905,000	305,000	4.6%
Rent /Comm/Util	258,500	286,000	27,500	10.6%	286,000	-	0.0%
Administrative	241,600	252,800	11,200	4.6%	252,800	-	0.0%
Contracted Services	212,000	200,000	(12,000)	-5.7%	200,000	-	0.0%
Total	\$ 56,971,428	\$ 60,164,601	\$ 3,193,174	5.6%	\$ 61,990,580	\$ 1,825,979	3.0%

Note: Minor rounding differences may occur in totals.

IX. Appendix B: Capital Projects

NATIONAL CREDIT UNION ADMINISTRATION: CAPITAL INVESTMENT PROJECTS			
Description	2024 Board Approved	2025 Requested	2026 Requested
Information Technology Investments			
Examination and Supervision Solution/MERIT Enhancements	\$ 540,000	\$ 1,771,000	\$ 576,000
Cloud Migration & Modernization	\$ -	\$ 1,300,000	\$ 2,806,000
Network Access Control	\$ -	\$ 1,050,000	\$ -
EO on Improving the Nation's Cybersecurity	\$ 2,408,000	\$ 850,000	\$ 250,000
IT Infrastructure, Platform and Security Refresh	\$ 1,294,000	\$ 775,000	\$ -
Performance Management System	\$ -	\$ 750,000	\$ -
Enterprise Laptop Refresh	\$ -	\$ 550,000	\$ 4,385,000
Onboarding/ Offboarding Solution and Personnel Security Case Management System	\$ 730,000	\$ 300,000	\$ -
MARS and CUSO Development and Reports	\$ -	\$ 260,000	\$ -
Generative AI Licensing	\$ -	\$ 25,000	\$ -
System Updates for Significant Regulatory Changes	\$ -	\$ 300,000	\$ 300,000
CURE Process Automation	\$ 1,100,000	\$ 1,000,000	\$ -
Off-Site Monitoring Project	\$ -	\$ 250,000	\$ -
ONES Dedicated Computing Resources	\$ -	\$ 48,000	\$ -
Data Collection and Sharing Solution	\$ 208,000	\$ -	\$ -
Microsoft Power Platform/M365 Enhancements	\$ 500,000	\$ -	\$ -
NCUA Website Development	\$ 100,000	\$ -	\$ -
Balances from completed prior-year projects	\$ (1,168,000)	\$ (1,500,000)	\$ -
Anticipated Additional Information Technology Investments	\$ -	\$ -	\$ 3,733,000
Total, Information Technology Investments	\$ 5,712,000	\$ 7,729,000	\$ 12,050,000
Capital building improvements and repairs			
Central Office maintenance and repair	\$ 477,000	\$ 480,000	\$ 450,000
Grand Total, Capital Projects	\$ 6,189,000	\$ 8,209,000	\$ 12,500,000

Project name	Examination and Supervision Solution/MERIT Enhancements					
Project sponsor	Office of Business Innovation Office of the Chief Information Officer (OCIO)					
Customers/ beneficiaries	Internal: Office of Examination and Insurance (E&I), ONES, All Field Program Offices, OCIO, CURE, OHR, and OCFP External: Credit Unions, State Supervisory Authorities (SSAs)					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$540	\$1,771	\$576	\$1,600	\$1,600
	Operations and Maintenance	\$11,944	\$9,358	\$10,904	\$12,427	\$12,604
	SIF	\$216	\$216	TBD	TBD	TBD
Link to NCUA strategic goals	<u>Strategic Goal 1: Ensure a Safe and Sound Credit Union System.</u> Examination and Supervision Solutions (ESS) tools will enable credit union examiners to fulfill NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by providing a more effective and secure examination tool. <u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> ESS will enable credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation."					
Detailed project description	In addition to on-going operations maintenance, the 2025 capital investment will focus on upgrading the MERIT system platform to take advantage of security improvements, a streamlined interface and new record management capability; partnering with E&I to modify the Information Security Examination program toolbox to generate files that can be imported into MERIT, which will result in new examiner efficiencies; and supporting OCIO with the implementation of single sign-on for applications including new reports via NCUA Connect.					

Project name	Cloud Migration & Modernization					
Project sponsor	OCIO					
Customers/ beneficiaries	All internal and external users of NCUA software products.					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$1,300	\$2,806	\$3,100	\$1,000
	Operations and Maintenance	\$0	\$0	\$0	\$406	\$3,506
Link to NCUA strategic goals	Strategic Goal 3: Maximize organizational performance to enable mission success. This capital project supports strategic objective: 3.2, “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data” by updating and optimizing existing agency applications for cloud capabilities and moving them to cloud-based environments.					
Detailed project description	The Cloud Migration & Modernization capital project is a major multi-year investment that involves moving applications, data, and IT infrastructure from on-premises, or legacy systems, to cloud-based environments. This project will also include updating and optimizing existing applications for cloud-native capabilities. By leveraging the cloud, the NCUA can also avoid costs related to data center hosting, IT hardware purchasing, IT maintenance, and associated IT labor costs. IT Security will be enhanced as well with cloud security, network, firewall, and logging. By leveraging cloud infrastructure NCUA will be able to further adhere to federal strategies such as the Cloud Smart Strategy, Zero Trust Architecture, and independently operate a Trusted Internet Connection (TIC 3.0). This is a phased, multi-year project with Phase 1 beginning in 2025 and over 2–3 years, will involve moving numerous computing and storage infrastructure assets to a cloud-based environment.					

Project name	Network Access Control					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: All NCUA					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$1,050	TBD	TBD	TBD
	Operations and Maintenance	\$0	TBD	TBD	TBD	TBD
Link to NCUA strategic goals	Strategic Goal 3: Maximize organizational performance to enable mission success. This capital investment supports strategic objective 3.2, to “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data” by identifying and implementing service improvements to replace end-of-life and unsupported systems currently in place at the NCUA. This investment will implement more secure and user-enhanced services that will reduce the impact of current services that present a higher risk of vulnerabilities.					
Detailed project description	This project will strengthen the NCUA’s network security by automating and enhancing security patch management and scanning functions for users connected to the agency’s networks. In addition, this project will integrate the NCUA’s firewall services within the overall network infrastructure and with the new patch and scanning functionality.					

Project name	Executive Order on Improving the Nation's Cybersecurity					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: All NCUA External: All Credit Unions					
Budget	\$ in thousands	2024	2025	2026	2027*	2028*
	Acquisition	\$2,408	\$850	\$250	TBD	TBD
	Operations and Maintenance	\$0	\$0	\$536	\$825	\$867
* Budget estimates for 2027 and beyond are dependent on guidance from the Office of Management and Budget and the Cybersecurity and Infrastructure Security Agency related to the various domains of the EO.						
Link to NCUA strategic goals	Strategic Goal 3: Maximize organizational performance to enable mission success. This multi-year capital investment supports strategic objective 3.2, to “deliver an efficient organizational design supported by improved business processes and innovation” by enabling compliance with EO 14208, <i>Improving the Nation's Cybersecurity</i> .					
Detailed project description	The purpose of this capital investment is to ensure that the NCUA complies with EO 14208, <i>Improving the Nation's Cybersecurity</i> . The project will enable the appropriate applications to use Multi-Factor Authentication, ensure adherence to Supply Chain Risk Management best practices, and implement Zero Trust Architecture for the NCUA's infrastructure and applications.					

Project name	Information Technology Infrastructure, Platform and Security Refresh					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: All NCUA					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$1,294	\$775	TBD	TBD	TBD
	Operations & Maintenance	\$1,068	TBD	TBD	TBD	TBD
Link to NCUA strategic goals	Strategic Goal 3: Maximize organizational performance to enable mission success. This capital investment will help the NCUA achieve strategic objective 3.2, to “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data” by replacing end-of-life and unsupported systems currently in place at the NCUA. This investment reduces risk to agency systems by implementing more secure and user enhanced services.					
Detailed project description	This project will allow the NCUA OCIO to refresh network and platform hardware, as well as infrastructure components to ensure business continuity and efficient operations by improving system availability, stability, and security. Projects include refreshing infrastructure, hardware, and the professional services required to migrate and harden the IT services for production readiness.					

Project name	Performance Management System					
Project sponsor	Office of Human Resources OCIO					
Customers/ beneficiaries	Internal: All NCUA Offices					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$750	\$0	\$0	\$0
	Operations and Maintenance	\$0	\$0	\$136	\$136	\$136
Link to NCUA strategic goals	Strategic Goal 3: Maximize organizational performance to enable mission success. The Performance Management System (PMS) replacement project will assist all NCUA employees to perform their work more effectively and efficiently, supporting strategic objective 3.2, “deliver an efficient organizational design supported by improved business processes and innovation.” The new PMS will be the NCUA’s primary system for maintaining performance plans and annual performance evaluations.					
Detailed project description	This capital investment will facilitate the employee performance management program for all NCUA employees by supporting modernized, phased workflows for performance plans and evaluations, user and administrator dashboards, and overall management of over 350 performance plan templates.					

Project name	Enterprise Laptop Refresh					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: All NCUA					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$550	\$4,385	\$150	\$150
	Operations & Maintenance	\$0	\$0	\$0	\$0	\$0
Link to NCUA strategic goals	<u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> The 2025–26 Enterprise Laptop Refresh project will help employees perform their work more effectively, efficiently, and securely, supporting strategic objective 3.2, “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data.” Upgraded hardware provides staff with new functionality and enhanced security features that improve user productivity, increase mobile functionality, and lower IT administrative costs due to a decreased need for support services.					
Detailed project description	The purpose of this capital investment is to boost overall agency productivity, efficiency, and security by providing the NCUA staff with laptops that offer improved processing power and speed to run multiple applications more effectively, enhanced mobility features like reduced weight and longer battery life, and advanced security features to better combat evolving cyber threats. In 2025, capital funding will provide for the selection of new, standard laptop configurations and testing of those laptops and their operating system with the NCUA’s existing business applications. Future year costs are associated with the expected purchase of additional laptops and peripherals. By including hardware and operating system support in the purchase contract (and following a 3-year replacement lifecycle), the NCUA will be able to keep pace with changes in workstation and operating system technology in a cost-effective manner.					

Project name	Onboarding/Offboarding Solution and Personnel Security Case Management System					
Project sponsor	Office of Continuity and Security Management OCIO					
Customers/ beneficiaries	Internal: All NCUA					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$630*	\$300	\$0	\$0	\$0
	Operations and Maintenance	\$0	\$315	\$331	\$348	\$365
*Excludes a \$100K reprogramming approved in 2024.						
Link to NCUA strategic goals	<u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> Specifically, this capital investment will help achieve strategic objective 3.2 to, “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data.”					
Detailed project description	The purpose of this project is to develop a new personnel security management system for NCUA in compliance with the Trusted Workforce 2.0 directive promulgated by the ODNI and OPM. The NCUA currently lacks a centralized system to manage employee and contractor onboarding and offboarding data. Instead, the agency relies upon a combination of legacy SharePoint applications, the <u>HRLinks</u> employee timekeeping system, and the <u>USASTaffing</u> recruitment system to track and manage this information. This capital investment will deploy a centralized IT solution to maintain onboarding and offboarding data for both Federal and contractor staff per requirements established by the ODNI and OPM.					

Project name	MARS and CUSO Development and Reports					
Project sponsor	Office of Examination and Insurance					
Customers/ beneficiaries	Internal: All NCUA External: SSAs, Credit unions, CUSOs, credit union leagues, vendors, and consumers					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$260	\$0	\$0	\$0
	Operations and Maintenance	\$0	\$0	\$0	\$0	\$0
Link to NCUA strategic goals	<u>Strategic Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers.</u> This capital investment facilitates strategic objective 1.2, “provide effective and efficient supervision,” by collecting and reporting data that supports the examination and supervision process efficiently using improved technology. For example, MARS development improves the agency’s management of the annual examination resource planning processes and improvements in TMS accurately capture examiner time to guide resource planning. <u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> This capital investment also supports strategic objective 3.2, “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data” by enhancing existing systems at a just-in-time schedule to match agency data collection cycles, regulatory changes, increased risk in the industry, and the annual exam resource budget process.					
Detailed project description	This project will fund short-term contractor support to develop data collection forms and CUSO Reports, such as the CUSO Registry Online form and realign MARS and TMS development in support of redistricting, new work code classifications, new examiner specialties, and new supervisory examiner groups.					

Project name	Generative AI Licensing					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: All NCUA					
Budget*	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$25	\$0	\$0	\$0
	Operations & Maintenance	\$0	\$0	\$662	\$713	\$766
* The 2025 budget amounts fund initial licenses to pilot and test the use of AI tools at the NCUA. Future year budget amounts reflect assumed deployment of the tool to the agency.						
Link to NCUA strategic goals	<u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> This capital project will support strategic objective 3.2, “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data” by leveraging the power of next-generation AI to increase individual and organizational performance.					
Detailed project description	This capital investment will fund a pilot program to test the capability of an AI tool for possible development across the NCUA.					

Project name	System Updates for Significant Regulatory Changes					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: Various NCUA offices External: Credit Unions, Credit Union Members, SSAs					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$300	\$300	\$300	\$300
	Operations and Maintenance	\$0	\$0	\$0	\$0	\$0
Link to NCUA strategic goals	<u>Strategic Goal 1: Ensure a Safe and Sound Credit Union System.</u> This capital investment will enable agency staff to better fulfill NCUA strategic objective 1.2, to “provide high-quality and efficient supervision” by providing high-quality, low defect, and secure applications that support examination and supervision functions. <u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> This investment also supports strategic objective 3.2, to “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data.”					
Detailed project description	This project will allow NCUA to update applications and databases to accommodate new regulatory requirements or initiatives. Often, multiple legacy systems are impacted when regulatory changes are finalized, or new initiatives are approved by the NCUA Board. These changes can be significant, requiring additional time and resources to ensure that the affected systems are updated before the rule takes place.					

Project name	CURE Process Automation					
Project sponsor	Office of Credit Union Resources and Expansion Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: CURE and Regional Staff External: All credit unions and organizing groups					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$1,100	\$1,000	\$0	\$0	\$0
	Operations and Maintenance	\$0	\$0	TBD	TBD	TBD
Link to NCUA strategic goals	<u>Strategic Goal 2: Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services.</u> This capital investment will develop an external-facing portal for organizing groups to submit charter applications for new credit unions. This project directly supports the strategic goal by making it easier for stakeholders to charter new credit unions, which will provide financial products and services to additional groups and expanded geographic areas.					
Detailed project description	This multi-year process automation project will implement an external-facing portal for organizing groups to submit their new charter applications. The portal is expected to include forms for submission of information and data, the ability to upload supporting files, and a visible timeline so that applicants can track the status of their submission. In addition, the project will incorporate the NCUA's current tool for submitting field of membership expansion requests, CAPRIS, and the agency's document file and workflow system, MAGIC.					

Project name	Off-Site Monitoring Project					
Project sponsor	Office of Examination and Insurance					
Customers/ beneficiaries	Internal: All NCUA					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$250	TBD	TBD	TBD
	Operations and Maintenance	\$0	\$0	TBD	TBD	TBD
Link to NCUA strategic goals	<u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> The off-site monitoring project will improve the agency's ability to gather and review information in a timely manner while reducing the needed resources. This will improve the efficiency of the NCUA's primary work activities in support of NCUA strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data."					
Detailed project description	The goal of this investment is to reduce burdens on examination staff during off-site monitoring while streamlining the way that offices identify emerging and increasing risks to the Share Insurance Fund.					

Project name	Office of National Examination and Supervision (ONES) Dedicated Computing Resources					
Project sponsor	Office of National Examination and Supervision					
Customers/ beneficiaries	Internal: ONES, Regional Large Credit Union Program examinations External: Credit Unions with greater than \$10 billion in assets					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$0	\$48	\$0	\$0	\$0
	Operations and Maintenance	\$0	\$0	\$48–\$77	\$48–\$77	\$48–\$77
Link to NCUA strategic goals	<u>Strategic Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers.</u> This capital investment facilitates strategic objective 1.2, “provide effective and efficient supervision,” by collecting and reporting data that supports the examination and supervision process efficiently using improved technology. <u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> This capital investment will help achieve strategic objective 3.2 to, “deliver improved business processes supported by secure, innovative, and reliable technology solutions and data.”					
Detailed project description	This capital investment will provide dedicated computing resources to support the ONES data quality and assurance team’s current and anticipated quarterly data collection through the large credit union data collection program.					

Project name	Central Office Maintenance and Repair					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: All NCUA headquarters building occupants External: All NCUA headquarters building visitors					
Budget	\$ in thousands	2024	2025	2026	2027	2028
	Acquisition	\$477	\$480	\$450	\$450	\$425
	Operations and Maintenance	\$0	\$0	\$0	\$0	\$0
Link to NCUA strategic goals	<u>Strategic Goal 3: Maximize organizational performance to enable mission success.</u> Investments in minor construction and maintenance projects will improve facility operations and building efficiency, safety, and functionality at the NCUA’s Central Office building. The Central Office facility was built in 1993. The average life span of building components is between 20–25 years. Aged, outdated and failing building components and systems pose a threat to the performance of the NCUA mission. Collectively these investments will maximize organizational performance and enable mission success, for example, by improving building accessibility for NCUA employees and the public through installation of Americans with Disability Act-compliant entryways; conserving natural resources through installation of energy efficient devices and equipment; and protecting and maintaining the building’s exterior and interior finishes.					
Detailed project description	In 2025, this capital investment will provide the funding necessary for six planned projects. Several of these projects are multi-year in nature, requiring an incremental approach: building automation and system controls replacement; roof drain repair and replacement; and office and common area painting. Other projects include plumbing repairs, waterproofing within the Central Office garage, and a modest amount for unforeseen repairs that may occur during the year.					

BILLING CODE 7535-01-C

X. Appendix C: Glossary of Terms and Acronyms**A**

Asset Management and Assistance Center (AMAC): The office at the NCUA responsible for conducting credit union liquidations and performing management and recovery of assets. Additionally, this office supports the NCUA's regional offices' review of large complex loan portfolios and actual or potential bond claims.

Automated Cybersecurity Evaluation Toolbox (ACET): The NCUA's ACET application provides credit unions the capability to conduct a maturity assessment aligned with the FFIEC's Cybersecurity Assessment Tool. Using the assessment within the toolbox allows institutions of all sizes to easily determine and measure their own cybersecurity preparedness over time.

Automated Integrated Regulatory Examination System (AIRES): AIRES is the NCUA's legacy examination system, which was replaced by MERIT.

C

CAMELS: The NCUA's composite CAMELS rating consists of an assessment of a credit union's Capital adequacy, Asset quality, Management, Earnings, Liquidity risk, and Sensitivity to market risk.

Central Liquidity Facility (CLF): The CLF is a mixed-ownership government corporation that serves as a source for emergency funding for consumer credit unions and corporate credit unions that join the facility.

Credit Union Resources and Expansion (CURE): The NCUA's Office of Credit Union Resources and Expansion supports credit union growth and development. CURE assists low-income and minority credit unions, as well as all credit unions seeking assistance with chartering, charter conversions, bylaw amendments, field-of-membership expansion requests and low-income designations. CURE also provides access to online training and resources and to grants and loans through the Community Development Revolving Loan Fund.

E

Office of Examination and Insurance (E&I): The office at the NCUA responsible for supervision programs, which ensure the safety and soundness of the credit union system and that manages risk to the Share Insurance Fund.

F

Federal Credit Union: A federal credit union is a member-owned and controlled, not-for-profit, cooperative financial institution chartered by the NCUA and formed to provide its members with affordable and safe financial services.

Federal Information Security Modernization Act: A federal statute enacted in 2014 that enables the government to better respond to cyberattacks on departments and agencies.

Federal Employees Retirement System (FERS): FERS is a defined-benefit retirement plan for civilian employees of the federal government.

Field of Membership: A credit union's field of membership defines who is eligible to join the credit union.

Federally Insured, State-chartered Credit Union (FISCU): A FISCU is a member-owned and controlled, not-for-profit, cooperative financial institution chartered by the state in which it is located. FISCUs are insured by the NCUA and supervised jointly with the state supervisory authority that chartered them.

I

Information Security Examination (ISE): A risk-focused approach to examine credit unions' information security focused on areas of material current or potential risk relevant to each credit union's unique business model.

M

Modern Examination and Risk Identification Tool (MERIT) examination system: MERIT is the NCUA's new web-based examination platform that replaced AIRES.

Minority Deposit Institution (MDI): By law, MDI describes a federally insured credit union in which a majority of its current members, its board of directors, and the community it services, as designated in its charter, fall within any of the eligible minority groups described in Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.³²

O

Office of the Chief Informational Officer (OCIO): The office at the NCUA responsible for establishing the organization's enterprise IT vision, security strategy, roadmap and related policies and management controls.

Office of Consumer Financial Protection (OCFP): The office at the

NCUA responsible for the consumer financial literacy efforts, the NCUA's Consumer Assistance Center, consumer financial protection compliance policy and rulemaking, fair lending examinations, interagency coordination on consumer financial protection compliance matters, and the agency's consumer-focused website *MyCreditUnion.gov*.

Office of the Inspector General (OIG): The office at the NCUA responsible for promoting the economy, efficiency, and effectiveness of NCUA programs and operations, and detects and deters fraud, waste and abuse, thereby supporting the NCUA's mission of monitoring and promoting safe and sound federally insured credit unions. OIG conducts independent audits, investigations, and other activities, and keeps the NCUA Board and U.S. Congress fully and currently informed of its work.

Office of Management and Budget (OMB): An agency within the Executive Office of the President responsible for overseeing the performance of federal agencies and administering the federal budget.

Office of National Examination and Supervision (ONES): The office at the NCUA responsible for overseeing the examination and supervision issues related to consumer credit unions with assets greater than \$15 billion and all corporate credit unions.

U.S. Office of Personnel Management (OPM): An agency responsible for human resources matters and personnel policy for the federal government.

Overhead Transfer Rate (OTR): The share of the NCUA's operating and capital budgets that comes from the Share Insurance Fund. The OTR represents the insurance-related costs that are paid for out of the Share Insurance Fund.

[FR Doc. 2024-25568 Filed 11-1-24; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL SCIENCE FOUNDATION**Sunshine Act Meetings**

The National Science Board's (NSB) Committee on Strategy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, November 7, 2024, from 11:00 a.m.–12:00 p.m. Eastern.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

³² See <https://www.federalreserve.gov/publications/2013-preserving-minority-depository-institutions-section-308-firrea.htm>.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Chair's Opening Remarks; Development of 2026–2030 Strategic Plan and Learning Agenda.

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Michelle McCrackin (mmccrack@nsf.gov) 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. Visit <https://www.youtube.com/watch?v=MlogDDOiDiM>.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2024–25600 Filed 10–31–24; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0171]

Update to the Performance Review Board for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointments.

SUMMARY: On October 1, 2024, the U.S. Nuclear Regulatory Commission (NRC) announced appointments to the NRC Performance Review Board (PRB) responsible for making recommendations on performance appraisal ratings and performance awards for NRC Senior Executives and Senior Level System employees. This notice provides an update to the list of PRB member appointees.

DATES: November 4, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0171 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0171. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search “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.

FOR FURTHER INFORMATION CONTACT:

Jennifer M. Golder, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–0741, email: Jennifer.Golder@nrc.gov.

SUPPLEMENTARY INFORMATION: On October 1, 2024, the NRC published a notice announcing members to the NRC PRB (89 FR 79976). Since then, the NRC has added one new member to list of PRB member appointees. The following individual, appointed as a member of the NRC PRB, is responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees:

- Robert J. Lewis Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs, Office of the Executive Director for Operations.

All appointments are made pursuant to chapter 43 of title 5 of the *United States Code*, section 4314.

Dated: October 30, 2024.

For the Nuclear Regulatory Commission.

Jennifer M. Golder,

Secretary, Executive Resources Board.

[FR Doc. 2024–25578 Filed 11–1–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–35; CP2024–43; MC2025–174 and K2025–172; MC2025–175 and K2025–173; MC2025–176 and K2025–174; MC2025–177 and K2025–175; MC2025–178 and K2025–176; MC2025–179 and K2025–177; MC2025–180 and K2025–178; MC2025–181 and K2025–179; MC2025–182 and K2025–180; MC2025–183 and K2025–181; MC2025–184 and K2025–182; MC2025–185 and K2025–183; MC2025–186 and K2025–184; MC2025–187 and K2025–185; and MC2025–188 and K2025–186]

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:* November 4, 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. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

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

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such 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 and 39 CFR 3000.114 (Public Representative). Section II also

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).

establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. 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 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).*: CP2023–35; *Filing Title*: Request of the United States Postal Service Concerning Modification Two to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11, Which Includes an Extension of that Agreement; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3632, 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative*: Katalin Clendenin; *Comments Due*: November 5, 2024.

2. *Docket No(s).*: CP2024–43; *Filing Title*: Request of the United States Postal Service Concerning Modification One to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 30, Which Includes an Extension of that Agreement; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3632, 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative*: Katalin Clendenin; *Comments Due*: November 5, 2024.

3. *Docket No(s).*: MC2025–174 and K2025–172; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage

Contract 549 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: November 5, 2024.

4. *Docket No(s).*: MC2025–175 and K2025–173; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 550 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Anaswar Jayakumar; *Comments Due*: November 5, 2024.

5. *Docket No(s).*: MC2025–176 and K2025–174; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 551 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Anaswar Jayakumar; *Comments Due*: November 5, 2024.

6. *Docket No(s).*: MC2025–177 and K2025–175; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 553 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Anaswar Jayakumar; *Comments Due*: November 5, 2024.

7. *Docket No(s).*: MC2025–178 and K2025–176; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 553 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: November 5, 2024.

8. *Docket No(s).*: MC2025–179 and K2025–177; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 554 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: November 5, 2024.

9. *Docket No(s).*: MC2025–180 and K2025–178; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 411 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 5, 2024.

10. *Docket No(s).*: MC2025–181 and K2025–179; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 412 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 5, 2024.

11. *Docket No(s).*: MC2025–182 and K2025–180; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 555 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: November 5, 2024.

12. *Docket No(s).*: MC2025–183 and K2025–181; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 556 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: November 5, 2024.

13. *Docket No(s).*: MC2025–184 and K2025–182; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 557 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jana Slovinska; *Comments Due*: November 5, 2024.

14. *Docket No(s).*: MC2025–185 and K2025–183; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 558 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 28, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*:

Maxine Bradley; *Comments Due:* November 5, 2024.

15. *Docket No(s):* MC2025–186 and K2025–184; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 559 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 28, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 5, 2024.

16. *Docket No(s):* MC2025–187 and K2025–185; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 560 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 28, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 5, 2024.

17. *Docket No(s):* MC2025–188 and K2025–186; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 561 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 28, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 5, 2024.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–25572 Filed 11–1–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Wednesday, November 13, 2024, at 9:00 a.m.; Thursday, November 14, 2024, at 10:00 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Wednesday, November 13, 2024, at 9:00 a.m.—Closed. Thursday, November 14, 2024, at 10:00 a.m.—Open.

MATTERS TO BE CONSIDERED:

Meeting of the Board of Governors

Wednesday, November 13, 2024, at 9:00 a.m. (Closed)

1. Strategic Matters.
2. Financial and Operational Matters.
3. Executive Session.
4. Compensation and Personnel Matters.
5. Administrative Items.

Thursday, November 14, 2024, at 10:00 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of the Minutes.
4. Election of the Chairman.
5. Election of the Vice Chairman.
6. Committee Reports.
7. Financial Matters.
 - a. FY2024 Annual Financial Report.
 - b. FY2024 10K and Financial Statements.
 - c. Annual Report to Congress.
 - d. FY2025 Integrated Financial Plan and Liquidity Outlook.
 - e. Authorization to Borrow Money and Issue Obligations.
 - f. FY2026 Congressional Reimbursement Request.
8. Annual Service Performance Report.
9. Approval of Tentative Agenda for the February 7, 2025 Meeting.
10. Adjournment

A public comment period will begin immediately following the adjournment of the open session on November 14, 2024. During the public comment period, members of the public present at the meeting, or who have previously registered to participate virtually, may comment on any item or subject listed on the agenda for the open session. Registration of speakers at the public comment period is required. Speakers must register online at <https://www.surveymonkey.com/r/bog-11-14-2024>. Each registered speaker will be allowed two (2) minutes for comment. Registration to speak during the public comment period shall end on November 12, 2024, at 9 a.m. ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,
Secretary.

[FR Doc. 2024–25716 Filed 10–31–24; 4:15 pm]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., November 13, 2024

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to SecretarytotheBoard@rrb.gov.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Introduction of New Chief Information Officer

Office of Legislative Affairs Briefing

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b.

Dated: October 30, 2024.

Stephanie Hillyard,
Secretary to the Board.

[FR Doc. 2024–25653 Filed 10–31–24; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, November 7, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: October 31, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-25678 Filed 10-31-24; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101467; File No. SR-CboeBYX-2024-038]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Temporary Discount for Certain Purchases of BYX Historical Depth Data

October 29, 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 October 18, 2024, Cboe BYX Exchange, Inc. (“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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://markets.cboe.com/us/>

[equities/regulation/rule_filings/BYX/](http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary discount on fees assessed to BYX Members (“Members”)³ and non-Members that purchase \$20,000 or more of ad hoc purchases of historical BYX Historical Depth Data (“Historical Depth Reports”), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange’s depth of book real-time feed, which provides depth-of-book quotations and execution information based on equity orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.*, T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Historical Depth Report available for

purchase to Users on the LiveVol DataShop website (datashop.cboe.com). The Historical Depth Data is available for purchase to Members and Non-Members; the Exchange charges a fee per month of historical data of \$1,000. The Historical Depth Report provided on a historical basis is only provided to data recipients for internal use only, and thus, no redistribution will be permitted. The Exchange notes that the Historical Depth Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.⁴

The Exchange’s affiliated equities and options exchanges (*i.e.*, Cboe Exchange, Inc. (“Cboe Options”), Cboe C2 Exchange, Inc. (“C2 Options”), Cboe EDGX Exchange, Inc. (“EDGX”), Cboe BZX Exchange, Inc. (“BZX”), and Cboe EDGA Exchange, Inc. (“EDGA”), (collectively, “Affiliates”) also offer similar data products.⁵ Particularly, each of the Exchange’s Affiliates offer a daily and historical archive of their depth of book real-time feed with execution information based on their trading activity that is substantially similar to the information provided by the Exchange through its Depth Data products.

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase Historical Depth Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of Historical Depth Data of \$20,000 or more.⁶ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 18, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted similar discount programs for other historical data products offered by the Exchange.⁷

⁴ See, *e.g.*, <https://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions#nom>; and https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

⁵ See, for example, EDGX Fee Schedule, BZX Fee Schedule, EDGA Fee Schedule.

⁶ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.*, receive a 20% discount of \$5,000).

⁷ See Securities Exchange Act Release No. 99181 (December 14, 2023), 88 FR 88176 (December 20,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical market depth data via Historical Depth Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry.

Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.¹²

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 13% of the equity market share.¹³ 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.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of Historical Depth Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases Historical Depth Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of Historical Depth Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the Historical Depth Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase Historical Depth Reports. Further, the proposed discount is intended to promote increased use of the Exchange’s

Historical Depth Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase Historical Depth Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the Historical Depth Reports, and the Exchange is not required to make Historical Depth Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted similar discount programs.¹⁵

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange’s Historical Depth Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of Historical Depth Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes

2023) (SR-CboeBYX-2023-017) and Securities Exchange Act Release No. 100331 (June 13, 2024), 89 FR 51916 (June 20, 2024) (SR-CboeBYX-2024-022).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(4).

¹² See *supra* note 4.

¹³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See Securities Exchange Act Release No. 99181 (December 14, 2023), 88 FR 88176 (December 20, 2023) (SR-CboeBYX-2023-017) and Securities Exchange Act Release No. 100331 (June 13, 2024), 89 FR 51916 (June 20, 2024) (SR-CboeBYX-2024-022).

will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of Historical Depth Reports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBYX-2024-038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeBYX-2024-038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/>

[rules/sro.shtml](https://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2024-038 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-25537 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101469; File No. SR-LCH SA-2024-004]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Cash Spreads and Fees on Securities Collateral

October 29, 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 October 23, 2024, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change ("Proposed Rule Change") described in Items I, II and III below, which Items have been

primarily prepared by LCH SA. LCH SA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(2)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend the fees it charges clearing members for cash and securities collateral posted as initial margin for its clearing services including CDS Clear (the "Proposed Rule Change").

The text of the Proposed Rule Change has been annexed as Exhibit 5 to File No. SR-LCH SA-2024-004.⁵ The implementation of the Proposed Rule Change will be contingent on LCH SA's receipt of all necessary regulatory approvals.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

LCH SA currently applies a spread for clearing member cash collateral and charges fees on securities collateral posted to cover initial margin requirements for its CDS Clear business. Cash collateral spreads are primarily based on underlying market conditions for a given currency and are subtracted from a reference index to determine a total rate to be applied to CDS Clear house and client accounts. Securities collateral fees are primarily based on a combination of factors, including, but not limited to operational costs to manage a specific non-cash collateral type, the liquidation profile and

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ All capitalized terms not defined herein have the same definition as in the CDS Clearing Rule Book available at https://www.lch.com/system/files/media_root/CDS_Clear_Rule_Book_01.02.2024.pdf.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

subsequent impact on LCH SA's liquidity coverage ratio of the securities collateral and commercial considerations such as competitive landscape. The securities collateral fees charged to clearing members varies based on the instrument type (e.g., government securities), whether the securities collateral is posted on behalf of the CDSClear house account or on behalf of CDSClear clients and the method of posting the collateral (i.e., full title transfer, pledge or tri-party).

The purpose of the Proposed Rule Change is for LCH SA to amend the cash spreads and securities collateral fees for margin collateral posted by clearing members.

i. Changes to Cash Collateral Spreads

LCH SA currently accepts euro, GBP and USD cash to satisfy initial margin requirements for its CDSClear business. Clearing members that post these eligible currencies as margin may receive interest on these balances based

on an associated benchmark index and cash collateral spreads applied by LCH SA. The total rate that clearing members and their clients may be eligible for is the difference between the value of the underlying benchmark index and the spreads applied by LCH SA. Interest earned on cash collateral is based on daily balances by account and posted monthly to clearing member accounts.

LCH SA currently applies the following cash collateral spreads for CDSClear house and client accounts:

Currency	Unsecured overnight index	Cash collateral fee/spread (bps)		
		All markets	CDSClear clients	Default funds
EUR	€STR	21.5	6.5	11.5
GBP	SONIA	35	20	
USD	FEDFUND	30	15	

LCH SA is proposing to decrease the cash collateral spread for EUR, GBP and USD by 2bps. Accordingly, LCH SA will apply a revised spread of 19.5bps, 33bps and 28bps for EUR, GBP and USD cash collateral balances, respectively, posted for initial margin. In addition, LCH SA is proposing to add a column reflecting the current Default Fund spread for purposes of transparency, however LCH SA is not proposing any changes to this spread. LCH SA is also not proposing any changes to the cash collateral spread for CDSClear clients. LCH SA is proposing these changes primarily to encourage members to post more cash collateral, as non-cash collateral deposited has become a larger proportion of all margin collateral on deposit. An increase in the proportion of cash collateral on deposit will enhance LCH SA's Liquidity Coverage Ratio, provide LCH SA with the required operational liquidity to inject into the settlement and payment networks and to ensure there is no disruption in clearing services, should LCH SA liquidate the portfolio of a defaulted clearing member.

LCH SA is proposing to reduce the spreads for eligible cash collateral balances to encourage CDSClear clearing members to post more cash as initial margin for clearing and to better diversify the mix of collateral posted as initial margin from clearing members, as

non-cash collateral has become a greater portion of all margin collateral on deposit. LCH SA believes this will enhance its liquidity risk management processes by ensuring it maintains sufficient liquid resources (i.e., cash) to facilitate the timely settlement of its payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios. In addition, an increase in cash collateral will support LCH SA's ability to manage the ongoing operational liquidity needs for the purposes of injecting liquidity into the various settlement and payment networks and will further support LCH SA's default management process (e.g., during the liquidation of a member portfolio). LCH SA does not believe any changes are necessary to the cash collateral spreads for CDSClear Clients or with respect to cash posted to satisfy Default Fund requirements. CDSClear Clients will continue to benefit from a larger spread than CDSClear House accounts and the Default Fund cash collateral spread will remain unchanged, as clearing members must continue to meet their Default Fund obligations in cash collateral.

ii. Changes to Securities Collateral Fees

LCH SA is also proposing to amend the fees it charges clearing members for securities collateral posted as initial margin. Eligible securities collateral currently includes government

securities from select countries, select European supranational debt, government agency debt issued by Rentenbank (Germany), Kreditanstalt für Wiederaufbau (Germany) and CADES (France) and select equities listed on the EURO STOXX 50 index. The fees charged on each securities collateral type varies based on the mechanism of how the clearing member posts the collateral. For example, securities collateral may be deposited via Full Title Transfer (FTT) to an account opened by LCH SA at various central securities depositories (CSDs). Clearing members may also pledge securities collateral directly to LCH SA, whereby it will deposit securities via a Single Pledgor Pledged Account (SPPA) opened by LCH SA at Euroclear Bank. LCH SA also offers a Tri-Party solution whereby LCH SA and a Clearing member may appoint Euroclear Bank and/or Euroclear France as a triparty agent and authorize such triparty agent to enter settlement instructions on their behalf into the securities settlement system to affect movements of securities between a giver account and a taker account opened with the relevant triparty agent on a full title transfer basis for the purposes of transferring Collateral to LCH SA or releasing such collateral. LCH SA currently applies the following fees for securities collateral for CDSClear house and client accounts:

	Securities	House			Client
		Full title transfer	Pledge	Triparty	CDSClear clients
Government Securities	Australia	13	NA	NA	10
	Austria	11	15	9.5	10

	Securities	House			Client
		Full title transfer	Pledge	Triparty	CDSClear clients
Supranationals	Belgium	11	15	9.5	10
	Canada	13	NA	NA	10
	Denmark	13	NA	NA	10
	Finland	11	15	9.5	10
	France	11	15	9.5	10
	Germany	11	15	9.5	10
	Italy	11	15	9.5	10
	Japan	13	NA	NA	10
	Netherlands	11	15	9.5	10
	Norway	13	NA	NA	10
	Portugal	11	NA	9.5	10
	Spain	11	15	9.5	10
	Sweden	13	NA	NA	10
	Switzerland	13	NA	NA	10
	UK	11	15	NA	10
	USA	11	15	NA	10
	European Financial Stability Facility	13	15	11.5	10
	European Stability Mechanism	13	15	11.5	10
	European Investment Bank	13	15	11.5	10
	European Union	13	15	11.5	10
	Investment Bank for Reconstruction and Development	13	15	11.5	10
Agencies	Rentenbank	13	15	11.5	10
	Kreditanstalt für Wiederaufbau	13	15	11.5	10
	CADES	13	15	NA	10
Equities	All (as listed in Haircut Schedule)	13	NA	NA	NA

LCH SA is proposing to increase the fees for securities collateral posted via FTT or tri-party for clearing members by 1bp and by 10bps for securities collateral posted via pledge. LCH SA is also proposing to remove the second footnote to the securities collateral fee table, as the Triparty fees are now currently effective for all services. LCH SA is not proposing any changes to the fees charged to CDSClear Clients or for other non-cash collateral types. As previously noted, LCH SA charges different fees depending on the type of securities, the way that such securities are deposited, as well as the type of activity these cover. As a reminder, LCH SA has the capacity to raise euro liquidity by:

- pledging euro securities posted via FTT in the Banque de France 3G Pool; and
- executing cross-currency repo trades to borrow euro cash, collateralized by U.S. Treasuries and GBP Gilts posted via FTT.

However, securities posted by clearing members via pledge cannot be used for liquidity risk management purposes, and as such, are not considered liquid assets. LCH SA believes the increase in the fees for securities collateral and concurrent decrease in the spread for cash collateral will create an additional incentive for clearing members to post cash as initial margin. Consequently, this will strengthen LCH SA's Liquidity Coverage

Ratio and further enhance LCH SA's liquidity risk profile.

2. Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Exchange Act⁶ and the regulations thereunder applicable to LCH SA. Section 17A(b)(3)(D) of the Act⁷ requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

LCH SA believes the amendments to the spread applied to cash collateral and fees applied to securities collateral for the CDSClear business are reasonable. To ensure it continues to maintain sufficient liquid resources to meet the minimum liquid resource requirement as set forth in Exchange Act Rule 17Ad-22(e)(7)(i),⁸ LCH SA is proposing to increase the fees for securities collateral posted as margin to strengthen its Liquidity Coverage Ratio and further enhance LCH SA's liquidity risk profile. Concurrent with the increase in fees for securities collateral, LCH SA is proposing to decrease the spread for cash collateral. LCH SA assessed the impact of the Proposed Rule Change by applying the proposed cash spreads and securities collateral fees against the current portfolio of margin collateral for

CDSClear members and concluded these changes will not have a significant impact on expected revenues and are thus reasonable for CDSClear clearing members.

In addition, LCH SA believes the Proposed Rule Change is equitable for all participants. All CDSClear Members will continue to have the choice to post either securities collateral or cash collateral to satisfy initial margin requirements. Clearing members wishing to post securities collateral via FTT will continue to face a lower fee than posting via a pledge arrangements. Likewise, clearing members may continue to post securities collateral via the tri-party option at a lower fee rate than FTT or via pledge. LCH SA believes the change in securities collateral fees are equitable for all clearing members and enables LCH SA to strengthen its liquidity risk profile.

LCH SA also believes the amendments to the spreads applied to cash collateral and fees applied to securities collateral for the CDSClear business are consistent with the requirements set forth in Exchange Act Rule 17Ad-22(e)(7)(i).⁹ Exchange Act Rule 17Ad-22(e)(7)(i) requires clearing agencies to, *inter alia*, establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain sufficient liquid resources at the

⁶ 15 U.S.C. 78a *et seq.*

⁷ 15 U.S.C. 78q-1(b)(3)(D).

⁸ 17 CFR 240.17Ad-22(e)(7)(i).

⁹ *Id.*

minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.¹⁰ As previously noted, LCH SA anticipates the Proposed Rule Change will strengthen its Liquidity Coverage Ratio and further enhance its liquidity risk profile by incentivizing clearing members to increase the amount of cash to satisfy margin requirements. The additional cash will add to LCH SA's total liquid resources, which can be used for the settlement of daily payment obligations, including with respect to the default of the participant family generating the largest aggregate payment obligation for LCH SA.

For these reasons, LCH SA believes the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(D) of the Act¹¹ in that the amendments to the cash spreads and securities fees are reasonable and equitable among its participants. In addition, LCH SA believes that the Proposed Rule Change is consistent with the requirements of Exchange Act Rule 17Ad-22(e)(7)(i)¹² by enhancing LCH SA's liquidity risk profile.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act¹³ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. LCH SA does not believe that the Proposed Rule Change would impose any burden on competition. The Proposed Rule Change will enhance LCH SA's ability to manage the liquidity risks and related costs associated with converting securities collateral to cash and will apply equally to all participants. LCH SA also believes the proposed increase in fees for securities collateral will not be burdensome for participants, as participants will continue to have the option of posting securities collateral as initial margin or instead post cash collateral subject to the decreased spread. Therefore, LCH SA does not believe that the Proposed Rule Change

would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-LCH SA-2024-004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-LCH SA-2024-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at <http://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0>. 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-LCH SA-2024-004 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-25533 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35351A; 812-15580]

Institutional Investment Strategy Fund and Buena Capital Advisors, LLC

October 29, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based

¹⁰ *Id.*

¹¹ 15 U.S.C. 78q-1(b)(3)(D).

¹² 17 CFR 240.17Ad-22(e)(7)(i).

¹³ 15 U.S.C. 78q-1(b)(3)(I).

¹⁴ 17 CFR 200.30-3(a)(12).

distribution and/or service fees and early withdrawal charges.¹

APPLICANTS: Institutional Investment Strategy Fund and Buena Capital Advisors, LLC.

FILING DATES: The application was filed on May 29, 2024, and amended on August 28, 2024 and October 25, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: Arash Ghodoosi, Institutional Investment Strategy Fund, arash@buenacapital.com, with a copy to JoAnn M. Strasser, Esq., Thompson Hine LLP, JoAnn.Strasser@ThompsonHine.com, and Philip B. Sineneng, Esq., Thompson Hine LLP, Philip.Sineneng@ThompsonHine.com.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, dated October 25, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/>

[companysearch.html](https://www.sec.gov/companysearch.html). You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–25540 Filed 11–1–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–437, OMB Control No. 3235–0494]

Proposed Collection; Comment Request; Extension: Rule 30e–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 30e–2 (17 CFR 270.30e–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (“Investment Company Act”) requires registered unit investment trusts (“UITs”) that invest substantially all of their assets in shares of a management investment company (“fund”) to send their unitholders annual and semiannual reports containing financial information on the underlying company. Specifically, rule 30e–2 requires that the report contain all the applicable information and financial statements or their equivalent, required by rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1) to be included in reports of the underlying fund for the same fiscal period. Rule 30e–1 requires that the underlying fund's report contain, among other things, the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. The purpose of this requirement is to apprise current shareholders of the operational and financial condition of the UIT. Absent the requirement to disclose all material information in reports, investors would be unable to obtain accurate information upon which

to base investment decisions and consumer confidence in the securities industry might be adversely affected. Requiring the submission of these reports to the Commission permits us to verify compliance with securities law requirements.

Rule 30e–2, however, permits, under certain conditions, delivery of a single shareholder report to investors who share an address (“householding”). Specifically, rule 30e–2 permits householding of annual and semi-annual reports by UITs to satisfy the delivery requirements of rule 30e–2 if, in addition to the other conditions set forth in the rule, the UIT has obtained from each applicable investor written or implied consent to the householding of shareholder reports at such address. The rule requires UITs that wish to household shareholder reports with implied consent to send a notice to each applicable investor stating that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, UITs relying on the rule for householding must explain to investors who have provided written or implied consent how they can revoke their consent. The purpose of the notice and annual explanation requirements associated with the householding provisions of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

The Commission estimates that the annual burden associated with rule 30e–2 is 15 hours per respondent. The Commission estimates that there are currently approximately 660 UITs that file 1342 reports per year. Therefore, the Commission estimates that the total hour burden is approximately 10,065 hours. In addition to the burden hours, the Commission estimates that the annual cost of contracting for outside services associated with rule 30e–2 is \$6,667 per respondent, for a total cost of approximately \$4,495,700.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–2 is mandatory. The information provided under rule 30e–2 will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper

¹ The Commission issued a notice of application on October 8, 2024. Applicants subsequently amended the application on October 25, 2024, so a new notice is being issued.

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 3, 2025.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: October 29, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-25547 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101457; File No. SR-NYSEAMER-2024-61]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change Amending Section 1003 of the NYSE American LLC Company Guide To Provide for the Suspension and Delisting of Any Company That: (i) Has Effected One or More Reverse Stock Splits Over the Prior Two-Year Period With a Cumulative Ratio of 200 Shares or More to One; or (ii) Has Effectuated a Reverse Stock Split and the Effectuation of Such Reverse Stock Split Results in the Company's Security Falling Below Any of the Continued Listing Requirements of Section 1003

October 29, 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 October 16, 2024, NYSE American LLC ("NYSE American" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 1003 of the NYSE American LLC Company Guide to provide for the suspension and delisting of any company that: (i) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one; or (ii) has effectuated a reverse stock split and the effectuation of such reverse stock split results in the company's security falling below any of the continued listing requirements of Section 1003. 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 subsection (f) ("Other Events") of Section 1003 ("Application of Policies") of the Company Guide to add two additional circumstances under which the Exchange would have the authority to suspend and delist a listed company. Specifically, proposed Section 1003(f)(vi) would give the Exchange the authority to suspend and delist any listed company that has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one. In

addition, proposed Section 1003(f)(vii) would give the Exchange the authority to suspend and delist any listed company that has effected a reverse stock split if the effectuation of such reverse stock split results in the company's security falling below any of the continued listing requirements of Section 1003. Any action taken by a listed company that is governed by proposed Sections 1003(f)(vi) and 1003(f)(vii) would result in the immediate commencement of suspension and delisting procedures in accordance with the procedures set out in Section 1010 of the Company Guide.⁴ A listed issuer would not be eligible to follow the procedures outlined in Section 1009 with respect to any action in violation of proposed Sections 1003(f)(vi) or (vii).

Section 1003(f)(v) ("Low Selling Price Issues") of the Company Guide provides that, in the case of a common stock selling for a substantial period of time at a low price per share, the Exchange may suspend and delist a company if such company shall fail to effect a reverse split of such shares within a reasonable time after being notified that the Exchange deems such action to be appropriate under all the circumstances. In its review of the question of whether it deems a reverse split of a given issue to be appropriate, the Exchange will consider all pertinent factors including, market conditions in general, the number of shares outstanding, plans which may have been formulated by management, applicable regulations of the state or country of incorporation or of any governmental agency having jurisdiction over the issuer, the relationship to other Exchange policies regarding continued listing, and, in respect of securities of foreign issuers, the general practice in the country of origin of trading in low-selling price issues. Proposed Section 1003(f)(vii) is consistent with the provisions of Section 1003(f)(v) as described above, as well as with the Exchange's consistent policy that it would immediately suspend and delist a listed company if the company effects a reverse stock split to cure a low selling price issue under Section 1003(f)(v) and the company would fall below another quantitative continued listing standard as a direct result of effecting that reverse stock split.

Many companies seek to address low selling price issues under Section 1003(f)(v) by effectuating a reverse stock

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Part 12 of the Company Guide provides that these companies can seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange.

split. However, the Exchange has observed that some companies, typically those in financial distress or experiencing a prolonged operational downturn, engage in a pattern of repeated reverse stock splits. The Exchange believes that such behavior is often indicative of deep financial or operational distress within such companies rendering them inappropriate for trading on the Exchange for investor protection reasons. In these situations, the Exchange has observed that the challenges facing such companies, generally, are not temporary and may be so severe that the company is not likely to regain compliance on a sustained basis.

The Exchange believes that it is consistent with the protection of investors and the public interest to delist any company that (i) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one or (ii) takes a deliberate action that causes it to fall below an Exchange listing standard, including as in the current proposal, the effectuation of a reverse split that causes a company to fall below a quantitative continued listing standard.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposal is consistent with the protection of investors and the public interest because it enhances the Exchange's listing requirements and limits the ability of listed companies with a history of having a low stock price to use reverse stock splits as a means to remain qualified for listing. In that regard, the Exchange has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to remain compliant with Exchange

listing standards after curing its low selling price by means of a reverse stock split. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons within a short period of time. The Exchange believes that it is consistent with the protection of investors and the public interest to immediately commence suspension and delisting procedures with respect to any company that (i) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one or (ii) takes a deliberate action that causes it to fall below an Exchange listing standard, including as in the current proposal, the effectuation of a reverse split that causes a company to fall below a quantitative continued listing standard.

The Exchange believes the proposed rule change furthers the objectives of Section 6(b)(7) of the Act⁷ in that the Exchange continues to provide a fair procedure for companies subject to these enhanced listing requirements. Part 12 of the Company Guide provides that these companies can seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange. As a result, the Exchange believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.⁸ While the Exchange does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

The Exchange believes that the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to protect investors and facilitate a fair and orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives.

The Exchange does not believe that the proposed rule change imposes a burden on intra-market competition because the provisions apply to all market participants and issuers on the Exchange equally.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2024-61. 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(7).

⁸ 15 U.S.C. 78f(b)(8).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-61 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-25526 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-298, OMB Control No. 3235-0337]

Proposed Collection; Comment Request; Extension: Rule 17Ac2-2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ac2-2 (17 CFR 240.17Ac2-2) and Form TA-2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17Ac2-2 and Form TA-2 require registered transfer agents to file an

annual report of their business activities with the Commission. These reporting requirements are designed to ensure that all registered transfer agents are providing the Commission with sufficient information on an annual basis about the transfer agent community and to permit the Commission to effectively monitor business activities of transfer agents.

The amount of time needed to comply with the requirements of amended Rule 17Ac2-2 and Form TA-2 varies. Of the total 315 registered transfer agents, approximately 9.2% (or 29 registrants) would be required to complete only questions 1 through 3 and the signature section of amended Form TA-2, which the Commission estimates would take each registrant approximately 30 minutes, for a total burden of approximately 15 hours (29 × .5 hours = 14.5 rounded up to 15).

Approximately 26.5% of registrants (or 84 registrants) would be required to answer questions 1 through 5, question 11, and the signature section, which the Commission estimates would take approximately 1 hour and 30 minutes, for a total of 126 hours (84 × 1.5 hours). Approximately 64.2% of the registrants (or 203 registrants) would be required to complete the entire Form TA-2, which the Commission estimates would take approximately 6 hours, for a total of 1,218 hours (203 × 6 hours). The aggregate annual burden on all 315 registered transfer agents is thus approximately 1,359 hours (15 hours + 126 hours + 1,218 hours) and the average annual burden per transfer agent is approximately 4.314 hours (1,359 ÷ 315).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 3, 2025.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data

Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: October 29, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-25548 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101464; File No. SR-C2-2024-018]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 29, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2024, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the "Exchange" or "C2 Options") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 17 CFR 200.30-3(a)(12).

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Trading Permit Holders and non-Trading Permit Holders that purchase \$20,000 or more of ad hoc purchases of C2 Historical Depth Data ("Historical Depth Reports"), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange's depth of book real-time feed, which provides depth-of-book quotations and execution information based on options orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.* T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Historical Depth Report available for purchase to Users on the LiveVol DataShop website (datashop.cboe.com). The Historical Depth Data is available for purchase to Trading Permit Holders and non-Trading Permit Holders; the Exchange charges a fee per month of historical data of \$500. The Historical Depth Report provided on a historical basis is only provided to data recipients for internal use only, and thus, no redistribution will be permitted. The Exchange notes that the Historical Depth Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.³

The Exchange and affiliated equities and options exchanges (*i.e.*, Cboe Exchange, Inc. ("Cboe Options"), Cboe EDGX Exchange, Inc. ("EDGX"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX

Exchange, Inc. ("BZX"), and Cboe EDGA Exchange, Inc. ("EDGA") (collectively, "Affiliates") also offer similar data products.⁴ Particularly, each of the Exchange's Affiliates offer a daily and historical archive of their depth of book real-time feed with execution information based on their trading activity that is substantially similar to the information provided by the Exchange through its Depth Data products.

The Exchange proposes to provide a temporary pricing incentive program in which Trading Permit Holders or non-Trading Permit Holders that purchase Historical Depth Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of Historical Depth Data of \$20,000 or more.⁵ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 18, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted similar discount programs for other historical data products offered by the Exchange.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical depth of book data via Historical Depth Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the options industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.¹⁰

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹¹ 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

⁴ See, for example, EDGX Fee Schedule, BZX Fee Schedule, BYX Fee Schedule.

⁵ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.* receive a 20% discount of \$5,000).

⁶ See Securities Exchange Act Release No. 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR-C2-2023-023) and Securities Exchange Act Release No. 100427 (June 25, 2023), 89 FR 54552 (June 25, 2023) (SR-C2-2024-012).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ See *supra* note 4.

¹¹ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (October 1, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

³ See, e.g., https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#nom; and https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

investors and listed companies.”¹² Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Historical Depth Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases Historical Depth Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of Historical Depth Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the Historical Depth Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the Historical Depth Reports. Further, the proposed discount is intended to promote increased use of the Exchange’s Historical Depth Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Trading Permit Holders and non-Trading Permit Holders who purchase Historical Depth Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the Historical Depth Reports, and the Exchange is not required to make Historical Depth Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted this discount program at other times.¹³

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange’s Historical Depth Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of Historical Depth Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of Historical Depth Reports.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-C2-2024-018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-C2-2024-018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2024-018 and should be submitted on or before November 25, 2024.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ See Securities Exchange Act Release No. 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR-C2-2023-023) and Securities Exchange Act Release No. 100427 (June 25, 2023), 89 FR 54552 (June 25, 2023) (SR-C2-2024-012).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–25532 Filed 11–1–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101461; File No. SR–CboeBZX–2024–104]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 29, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 18, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Members³ and non-Members that purchase \$20,000 or more of ad hoc purchases of BZX Options Historical Depth Data (“Historical Depth Reports”), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange’s depth of book real-time feed, which provides depth-of-book quotations and execution information based on options orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.* T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Historical Depth Report available for purchase to Users on the LiveVol DataShop website (data.shop.cboe.com). The Historical Depth Data is available for purchase to Members and Non-Members; the Exchange charges a fee per month of historical data of \$500.⁴ The Historical Depth Report provided on a historical basis is only provided to data recipients for internal use only, and thus, no redistribution will be permitted. The Exchange notes that the Historical Depth Report is subject to direct competition from other

exchanges, as other exchanges offer similar products for a fee.⁵

The Exchange’s equities platform (“BZX Equities”) and affiliated equities and options exchanges (*i.e.*, Cboe Exchange, Inc. (“Cboe Options”), Cboe EDGX Exchange, Inc. (“EDGX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe C2 Exchange, Inc. (“C2 Options”) and Cboe EDGA Exchange, Inc. (“EDGA”) (collectively, “Affiliates”) also offer similar data products.⁶ Particularly, each of the Exchange’s Affiliates offer a daily and historical archive of their depth of book real-time feed with execution information based on their trading activity that is substantially similar to the information provided by the Exchange through its Depth Data products.

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase Historical Depth Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of Historical Depth Data of \$20,000 or more.⁷ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 18, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted similar discount programs for other historical data products offered by the Exchange.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

⁵ See, e.g., <https://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions#nom>; and https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

⁶ See, for example, EDGX Fee Schedule, Cboe Fee Schedule, BYX Fee Schedule.

⁷ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.* receive a 20% discount of \$5,000).

⁸ See Securities Exchange Act Release No. 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR–CboeBZX–2023–094) and Securities Exchange Act Release No. 100371 (June 18, 2024), 89 FR 53140 (June 25, 2024) (SR–CboeBZX–2024–047).

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

⁴ As part of the proposed rule change, the Exchange proposes to remove the fee related to delivery per 1TB drive of data as the Exchange no longer provides 1TB drives.

Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical depth of book data via Historical Depth Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the options industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.¹²

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹³ 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.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Historical Depth Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases Historical Depth Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of Historical Depth Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the Historical Depth Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the Historical Depth Reports. Further, the proposed discount is intended to promote increased use of the Exchange’s Historical Depth Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase Historical Depth Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the Historical Depth Reports, and the Exchange is not required to make Historical Depth Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above,

the Exchange has previously adopted this discount program at other times.¹⁵

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange’s Historical Depth Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of Historical Depth Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of Historical Depth Reports.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

¹² See *supra* note 4.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (October 1, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See Securities Exchange Act Release No. 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR-CboeBZX–2023–094) and Securities Exchange Act Release No. 100371 (June 18, 2024), 89 FR 53140 (June 25, 2024) (SR-CboeBZX–2024–047).

of the Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeBZX-2024-104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-104 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-25535 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101468; File No. S7-2024-07]

Notice of an Application of the New York Stock Exchange LLC for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 and Request for Comment

October 29, 2024.

On April 12, 2024, the Securities and Exchange Commission (the "Commission") received an application from the New York Stock Exchange LLC (the "NYSE") to amend an exemption granted to the NYSE on November 16, 2006 (the "2006 Exemption")¹ pursuant to Section 36² of the Securities Exchange Act of 1934 (the "Exchange Act"),³ in accordance with the procedures set forth in Exchange Act Rule 0-12.⁴ The 2006 Exemption granted exemptive relief from Section 12(a) of the Exchange Act⁵ to permit the NYSE's members, brokers and dealers to trade debt securities not registered

under the Exchange Act on the NYSE's Automated Bond System, now known as "NYSE Bonds," subject to certain conditions. One of those conditions is that an issuer of the debt securities, or the issuer's parent if the issuer is a wholly-owned subsidiary, have at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE.⁶ The NYSE seeks to amend the 2006 Exemption by revising the condition that the class of listed common or preferred equity securities be listed on the NYSE. The NYSE requests that debt securities not registered under the Exchange Act be permitted to trade on NYSE Bonds if their issuer, or the issuer's parent if the issuer is a wholly-owned subsidiary, has a class of common or preferred equity securities listed on any registered national securities exchange, not only the NYSE. All other terms of the 2006 Exemption would remain in effect.⁷ We are publishing this notice to provide interested persons with an opportunity to comment.

I. Background

Section 12(a) of the Exchange Act provides in relevant part that it "shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange." Section 12(b)⁸ of the Exchange Act dictates how the registration referred to in Section 12(a) must be accomplished. Accordingly, all equity and debt securities that are not "exempted securities"⁹ or are not otherwise exempt from Exchange Act registration must be registered by the issuer under the Exchange Act before a member, broker or dealer may trade that class of securities on a national securities exchange.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ Order Granting the New York Stock Exchange, Inc.'s (n/k/a the New York Stock Exchange LLC) Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934, Release No. 34-54766 (Nov. 16, 2006) [71 FR 67657 (Nov. 22, 2006)].

² 15 U.S.C. 78mm. Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

³ 15 U.S.C. 78a *et seq.*

⁴ 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth the procedures for filing applications for orders for exemptive relief pursuant to Section 36.

⁵ 15 U.S.C. 78l(a).

⁶ See 2006 Exemption, *supra* note 1. See also Letter from Mary Yeager, New York Stock Exchange, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 26, 2005 (NYSE's request for exemptive relief); Notice of an Application of the New York Stock Exchange, Inc. for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 and Request for Comment, Release No. 34-51998 (July 8, 2005) [70 FR 40748 (July 14, 2005)].

⁷ The NYSE's application for exemptive relief is included as an Appendix to this release.

⁸ 15 U.S.C. 78l(b).

⁹ An exempted security may be traded on a national securities exchange absent Exchange Act registration. Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)] defines exempted security to include securities such as government securities, municipal securities, various trust fund interests, pooled income fund interests and church plan interests.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

At the same time, brokers or dealers who trade debt securities other than on a national securities exchange may trade debt securities regardless of whether the issuer registered that class of debt under the Exchange Act. This is the case because, while the Exchange Act requires issuers to register certain equity securities that are not traded on a national securities exchange, it does not require issuers to register debt securities that are not traded on a national securities exchange. In particular, Section 12(g)¹⁰ of the Exchange Act, the only Exchange Act provision other than Section 12(a) to impose an affirmative Exchange Act registration requirement, requires the registration of equity securities only.¹¹

As the Commission has stated in the past, this disparate regulatory treatment between debt securities traded on an exchange versus “over-the-counter” (“OTC”) may have negatively and unnecessarily affected the structure and development of the debt markets.¹² Therefore, the Commission has taken steps to mitigate the effects of such disparate treatment. For example, in 1994, to reduce existing regulatory distinctions between exchange-traded debt securities and debt securities that trade in the OTC market, the Commission adopted Exchange Act Rule 3a12–11.¹³ Rule 3a12–11 provides for the automatic effectiveness of Form 8–A registration statements for exchange-traded debt securities, exempts exchange-traded debt from the borrowing restrictions under section 8(a) of the Exchange Act,¹⁴ and exempts exchange-traded debt from certain proxy and information statement requirements under sections 14(a), (b) and (c) of the Exchange Act.¹⁵

As another example, in 2002, the Commission approved the Financial Industry Regulatory Authority’s

(“FINRA”) rules for the Transaction Reporting and Compliance Engine (“TRACE”) to, among other things, improve price transparency in the corporate bond market.¹⁶ Since 2002, FINRA has increased transparency in the corporate bond market through TRACE by, most recently, reducing the 15-minute reporting timeframe for transactions reported to FINRA’s TRACE system to one minute.¹⁷

The Commission stated that granting the 2006 Exemption “will serve the public interest by minimizing unnecessary regulatory disparity and promoting competition” between the corporate debt security markets.¹⁸ The 2006 Exemption required the following conditions in order for debt securities not registered under the Exchange Act to trade on NYSE Bonds: (1) that the offer and sale of the debt securities traded on what is now NYSE Bonds be registered under the Securities Act; (2) that the issuer of the debt securities (or its parent if the issuer is a wholly-owned subsidiary) have at least one class of equity securities registered under Section 12(b) of the Exchange Act and listed on the NYSE; (3) that the transfer agent for the debt securities be registered under Section 17A of the Exchange Act; (4) that the trust indenture for the debt security be qualified under the Trust Indenture Act of 1939; (5) that the NYSE comply with the undertakings set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to the exemptive order;¹⁹ and (6) that the NYSE would delist a class of debt securities that is listed on the NYSE as of the date of the order only if the issuer of that class of debt security did not object to the delisting of those securities.²⁰

The NYSE posts on its website a list of the bonds that can be traded on the NYSE Bonds platform.²¹ As of October 2024, this list contained over 8,000 securities. In its application, the NYSE states that, of the bonds that can be traded on the NYSE Bonds platform, the listed bonds total more than 1,000 securities and represent a notional value

of about \$464 billion, and the unlisted bonds total more than 7,000 securities and represent a notional value of about \$840 billion.²²

II. Summary of the Application

In its application, the NYSE requests that we amend one of the conditions in the 2006 Exemption. That exemption permits the NYSE to trade debt securities²³ not registered under Section 12(b) of the Exchange Act on NYSE Bonds subject to certain conditions. One of those conditions requires that an issuer, or the issuer’s parent if the issuer is a wholly-owned subsidiary, have at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE. The NYSE asks the Commission to amend item (ii) to require that an issuer have at least one class of preferred or common equity securities that is listed on *any* registered national security exchange, not just the NYSE. All other conditions of the 2006 Exemption, including item (i), would remain the same. Specifically, debt securities traded on NYSE Bonds would be required to meet the following conditions:

(a) The issuer of the debt security has registered the offer and sale of such security under the Securities Act of 1933;²⁴

(b) The issuer of the debt security or the issuer’s parent company if the issuer is a wholly-owned subsidiary, has at least one class of common or preferred equity securities registered under Section 12(b)²⁵ of the Exchange Act and listed on a registered national security exchange;

(c) The transfer agent of the debt security is registered under Section 17A²⁶ of the Exchange Act;

²² See the NYSE’s application for exemptive relief, Appendix at 1.

²³ The 2006 Exemption defines “debt security” as any security that, if the class of securities were listed on the NYSE, would be listed under Sections 102.03 or 103.05 of the NYSE’s Listed Company Manual. Under this definition, a debt security does not include any security that, if the class of securities were listed on the NYSE, would be listed under Sections 703.19 or 703.21 of the NYSE’s Listed Company Manual. A debt security also does not include any security that is defined as an “equity security” under Section 3(a)(11) of the Exchange Act [15 U.S.C. 78c(a)(11)]. The references to Section 102.03, 103.05, 703.19 and 703.21 of the NYSE’s Listed Company Manual are to those sections as in effect on January 31, 2005. The proposed exemptive order would not change this definition.

²⁴ 15 U.S.C. 77a.

²⁵ 15 U.S.C. 78l(b).

²⁶ 15 U.S.C. 78qA.

¹⁰ 15 U.S.C. 78l(g).

¹¹ Section 12(g)(1) of the Exchange Act and Rule 12g–1 [17 CFR 240.12g–1] promulgated thereunder require an issuer to register a class of equity securities if the issuer of the securities, at the end of its fiscal year, has more than \$10,000,000 in total assets and a class of equity securities held by either 2,000 persons or 500 persons who are not accredited investors. When Congress amended the Exchange Act in 1964 to add Section 12(g), it extended the registration requirement to specified equity securities that are not exchange-traded. No comparable provision was provided for debt securities that are not exchange-traded.

¹² See discussion of Exchange Act Rule 3a12–11 in the NYSE’s application for exemptive relief. See also Release Nos. 34–34922 (Nov. 1, 1994) [59 FR 55342 (Nov. 7, 1994)], and 34–34139 (June 1, 1994) [59 FR 29398 (June 7, 1994)]. See also *supra* note 1.

¹³ 17 CFR 240.3a12–11. Release No. 34–34922 (Nov. 1, 1994) [59 FR 55342 (Nov. 7, 1994)].

¹⁴ 15 U.S.C. 78h(a).

¹⁵ 15 U.S.C. 78n(a), (b) and (c).

¹⁶ See Release No. 34–43873 (Jan. 23, 2001) [66 FR 8131 (Jan. 29, 2001)] (Order Approving File No. SR–NASD–99–65).

¹⁷ See Release No. 34–101121 (Sept. 20, 2024) [89 FR 78930 (Sept. 26, 2024)] (Order Approving File No. SR–FINRA–2024–004).

¹⁸ See *supra* note 1 at 67658.

¹⁹ For a description of the undertakings, see the NYSE’s application for exemptive relief, Appendix at 3.

²⁰ See *supra* note 1 at 67659.

²¹ See <https://www.nyse.com/products/bonds>.

(d) The trust indenture for the debt security is qualified under the Trust Indenture Act of 1939;²⁷

(e) The NYSE has complied with the undertakings (see below) set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to this requested exemptive relief; and

(f) The NYSE will delist a class of debt securities that were listed on the NYSE as of November 16, 2006 only if the issuer of such class of debt securities does not object to the delisting of those securities.

The NYSE states that it would continue to comply with the undertakings that are a condition of the 2006 Exemption in connection with its current request.²⁸ Specifically, in its application the NYSE states that it would continue to:

(a) Provide definitions of “listed” debt securities and “traded” debt securities on NYSE Bonds and on the NYSE’s website;

(b) Identify on NYSE Bonds and on the NYSE’s website whether a particular debt security is “listed” or “traded”;²⁹

(c) Directly provide members and member organizations notification prior to the date that trading of the debt securities commences on NYSE Bonds to clarify the distinction between “listed” debt securities and “traded” debt securities and to provide notification that eligible debt securities will be traded on NYSE Bonds;

(d) Issue a press release upon approval of this exemption request stating that “listed” debt securities would trade alongside “traded” debt securities on NYSE Bonds; and

(e) Obtain corporate action information from a third-party bond issue tracking service for debt securities covered by this request.³⁰

The NYSE states that the current regulatory landscape puts the NYSE at a competitive disadvantage vis-à-vis Alternative Trading Systems (“ATs”), which are permitted to trade any corporate bond that is currently available to trade in the secondary market.³¹ NYSE states that NYSE Bonds is the only regulated platform for corporate bonds that offers firm prices that are live and executable versus what it describes as “subject pricing” on ATs.³² NYSE also states that NYSE Bonds, in contrast to the OTC bond markets, disseminates both last sale prices as they occur on NYSE Bonds exclusive of any mark-ups, mark-downs, or other charges, and bid and ask quotations. In addition, the NYSE states that such market data is accessible instantaneously on NYSE Bonds.³³ The NYSE further states that it is not aware of any comparable level of transparency that exists currently elsewhere for corporate bond trading.³⁴

Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

In order to facilitate investor protection, we propose the following additional condition: the NYSE will ensure daily monitoring of delistings of equity securities of each issuer whose debt securities are listed for trading on NYSE Bonds or, if the issuer of the debt securities is a wholly-owned subsidiary, equity securities of the issuer’s parent company. The Commission preliminarily believes that this condition will help protect investors by

facilitating appropriate monitoring and timely handling of equity security delistings for each issuer whose debt securities are listed for trading on NYSE Bonds or, if the issuer of the debt securities is a wholly-owned subsidiary, equity securities of the issuer’s parent company.

III. Request for Comment

We request and encourage any interested person to submit comments regarding the NYSE’s application, including whether the request should be granted. In particular, we solicit comment on the following questions:

1. Is the scope of the requested exemption appropriate? If not, please explain and provide examples of an appropriate scope.

2. Please describe how the requested exemption would or would not protect investors and the public interest. For example, would investors lose access to any material information?

3. Please describe how the requested exemption would or would not help to maintain fair and orderly markets.

4. Would the requested exemption impact competition between exchanges and the OTC markets for trading in corporate bonds? If so, please describe the impact on competition, and how this impact would occur.

5. Would the requested exemption increase the transparency of the public debt markets? If so, please describe the kind of transparency it would foster.

6. Increased trading on the NYSE Bonds platform that might follow from the requested exemption would result in greater dissemination of last sale prices as they occur on NYSE Bonds exclusive of any mark-ups, mark-downs, or other charges, and bid and ask quotations. To what extent would the information disseminated by NYSE Bonds and, in particular, the pre-trade information improve overall market quality in the corporate bond market in terms of access to information, liquidity or other factors?

7. Would the requested exemption impact competition between national securities exchanges? If so, explain how.

8. Would issuers be more or less likely to issue debt securities to trade on NYSE Bonds in accordance with this exemptive relief?

9. Are there differences between issuers, in terms of industry, capitalization or other characteristics, who list their equity securities on the NYSE and those who list their equity securities on other registered national securities exchanges? If so, are there any such differences that warrant not expanding the 2006 Exemption as requested?

²⁷ 15 U.S.C. 77aaa–77bbbb.

²⁸ See the NYSE’s application for exemptive relief, Appendix at 3.

²⁹ The NYSE states that it would distinguish debt securities “listed” on NYSE Bonds from those “traded” on NYSE Bonds in the following manner: (1) The NYSE would uniquely identify “listed” and “traded” debt securities on the NYSE Bonds Bond Directory located on the NYSE’s website; (2) The NYSE would also make such information available on the NYSE Bonds Security Master File on a daily basis through ICE Data Services (“IDS”); and (3) The NYSE would publish a Trader Update to notify members and member organizations each time a debt security becomes available to trade on NYSE Bonds.

³⁰ In its application for exemptive relief, the NYSE states that the third-party bond issue tracking service it currently uses is IDS. It also states in its application that it would use information from IDS and FactSet to comply with NYSE Listing Manual Rule 1401.

³¹ See the NYSE’s application for exemptive relief, Appendix at 6.

³² As stated in NYSE’s application for exemptive relief, ATs typically offer dealers on their platforms a “last look” to an otherwise firm price, which allows the dealer to review the posted price prior to any execution. The “last look” allows the dealer to reject the order if the price is no longer advantageous. NYSE states that this practice “can create a false sense of liquidity in the market.” See the NYSE’s application for exemptive relief, Appendix at 6.

³³ FINRA members generally are required to report transactions in corporate bonds to TRACE as soon as practicable but no later than 15 minutes from the time of execution. See FINRA Rule 6730(a)(1). FINRA publicly disseminates information on the transactions reported to TRACE immediately upon receipt. See FINRA Rule 6750(a).

³⁴ See the NYSE’s application for exemptive relief, Appendix at 7.

10. Are there differences between the listing standards for equity securities among national securities exchanges that warrant not expanding the 2006 Exemption as requested?

11. The current condition requiring the issuer of the debt security to have at least one class of common or preferred equity securities registered under Section 12(b) of the Exchange Act and listed on the NYSE was designed to assure that the issuer of debt securities has a significant and continuous listing (and oversight) relationship with the NYSE. Does the loss of such a direct relationship with the issuer under the requested exemption warrant not expanding the 2006 Exemption as requested?

12. Are there particular listing standards for an issuer's listed securities the presence of which should be a condition for expanding the 2006 Exemption?

13. Any new or amended listing standards must be filed with the Commission, meet the statutory standard and comply with Rule 19b-4, and be approved by the Commission. Would approving this request affect the incentives of each of the national securities exchanges, including the NYSE, to maintain or change its listing standards?

14. Are there differences between exchange-traded debt securities and debt securities traded in the OTC market broadly or on ATSS in particular that have developed since 2006 that warrant not expanding the 2006 Exemption as requested?

15. Are there any implications or concerns that may arise because NYSE members would be able to trade a debt security of an issuer that is not subject to the rules of the NYSE (even with respect to its equity securities) and where the NYSE has no formal listing agreement with the issuer, and the issuer's equity securities are listed on a national securities exchange other than the NYSE?

16. Should we condition the requested exemption on any additional listing standards on any exchange where the issuer's securities are listed?

17. Are the conditions sufficiently designed so that investors are appropriately protected?

18. Is the undertaking regarding the use of corporate action information from a third party bond issue tracking service adequate to provide the NYSE and its members with sufficient information regarding corporate actions relevant to debt securities traded on NYSE Bonds? Is such undertaking sufficient for NYSE to ascertain compliance with the requirements of NYSE Rule 1401, on

initial and continued trading? If not, what additional information or measures would be appropriate? Should any such additional information or measures be required as an additional condition of the exemption?

19. Should the provision of corporate action information provided by a third-party bond issue tracking service to the NYSE and its members be a condition of the exemption?

20. Should we require additional conditions to the requested exemption if any of the events identified in the information to be provided by the third-party bond issue tracking service to the NYSE were to occur?

21. The NYSE states that it would continue to "[i]dentify on NYSE Bonds and on the NYSE's website whether a particular debt security is "listed" or "traded" and the NYSE explains the manner in which it would do so.³⁵ Should the NYSE also be required to identify the exchanges where the equity securities of its NYSE Bond issuers are listed? If so, should this identification be required as a condition of the exemptive order?

22. Should we add the proposed condition that the NYSE ensure daily monitoring of delistings of equity securities of each issuer whose debt securities are listed for trading on NYSE Bonds or, if the issuer of the debt securities is a wholly-owned subsidiary, equity securities of the issuer's parent company? Would that condition help to ensure compliance with the requested exemption and timely handling of an event of delisting of such equity securities?

23. Should we make any other modifications to the existing conditions or add any other conditions?

24. Would the requested change to the listing condition impact any of the other conditions to the exemption? If so, which condition or conditions, and why?

25. Would there be any adverse consequences to market participants if we granted this exemption as requested?

Comments should be received on or before December 4, 2024. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/exorders.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-2024-07 on the subject line.

³⁵ See the NYSE's application for exemptive relief, Appendix at 3.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2024-07. 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/exorders.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the notice that are filed with the Commission, and all written communications relating to the notice 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.

For further information, you may contact Ingram Weber, Special Counsel, Office of Rulemaking, at (202) 551-3430, in the Division of Corporation Finance or Justin Pica, Assistant Director, at (202) 551-7476, in the Division of Trading and Markets; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

By the Commission.

Dated: October 29, 2024.

Sherry R. Haywood,
Assistant Secretary.

Appendix: The New York Stock Exchange LLC's Application for an Exemption Pursuant to Section 36 of the Exchange Act

Appendix

April 12, 2024

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Dear Ms. Countryman:

The New York Stock Exchange LLC (the "Exchange" or "NYSE") requests that the Securities and Exchange Commission (the "Commission") amend a single term of previously granted exemptive relief to permit Exchange members and member organizations to trade certain debt securities that are not registered under Section 12(b)¹ of the Securities Exchange Act of 1934 (the "Exchange Act").²

Background/Exemptive Relief Requested

Section 12(a)³ of the Exchange Act provides that it shall be unlawful for any "member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange."

In 2006, the Commission granted exemptive relief from Section 12(a) of the Exchange Act to permit Exchange members and member organizations to trade unregistered debt securities on the NYSE's Automated Bond System (ABS),⁴ now known as "NYSE Bonds."⁵

The 2006 Exemption is limited to debt securities of an issuer, or a wholly-owned subsidiary of an issuer, with at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE. The Exchange now asks the Commission to amend this single limitation. As amended, unregistered debt securities could be traded on NYSE Bonds if their issuer (or their issuer's parent) had a class of common or preferred equity listed on *any* registered national securities exchange, not just the NYSE. All other terms of the 2006 Exemption would remain in effect.

More specifically, if the Commission were to grant the Exchange's request, in order for an unregistered debt security to be traded on NYSE Bonds, the debt security would have to meet the following conditions:

(a) The issuer of the debt securities registered the offer and sale of that class of debt securities under the Securities Act of 1933, as amended (the "1933 Act");⁶

(b) The issuer of the debt securities or the issuer's parent, if the issuer is a wholly-owned subsidiary, has at least one class of common or preferred equity securities registered under Section 12(b)⁷ of the

Exchange Act and listed on *any* registered national securities exchange;

(c) The transfer agent for the debt securities is registered under Section 17A⁸ of the Exchange Act;⁹

(d) The trust indenture for the debt security is qualified under the Trust Indenture Act of 1939;¹⁰

(e) The NYSE has complied with the undertakings (see below) set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to this requested exemptive relief; and

(f) The NYSE will delist a class of debt securities that were listed on the NYSE as of November 16, 2006 only if the issuer of such class of debt securities does not object to the delisting of those securities.

In connection with the 2006 Exemption, the Exchange undertook that it would take or had taken a number of specified steps. The Exchange undertakes that it will continue to provide this same information in connection with this request. Specifically, the NYSE will continue to:

(a) Provide definitions of "listed" debt securities and "traded" debt securities on NYSE Bonds and on the NYSE's website;

(b) Identify on NYSE Bonds and on the NYSE's website whether a particular debt security is "listed" or "traded";¹¹

(c) The NYSE will directly provide members and member organizations notification prior to the date that trading of the debt securities commences on NYSE Bonds to clarify the distinction between "listed" debt securities and "traded" debt securities and to provide notification that eligible debt securities will be traded on NYSE Bonds;

(d) Issue a press release upon approval of this exemption request stating that "listed" debt securities would trade alongside "traded" debt securities on NYSE Bonds; and

(e) Obtain corporate action information from IDS for debt securities covered by this request.

With respect to undertaking (e), IDS, an affiliate of the Exchange, is a bond issue tracking service that provides the NYSE a

customized on-line reference for corporate actions relevant to bonds. The tracking system provides information and data electronically to the NYSE, and provides:

- Notification of calls (redemptions) of traded bonds,
- Notification of tender offers for traded bonds,
- Notice of defaults in payment of interest on traded bonds,
- Notice of consent solicitations for traded bonds, and
- Notice of corporate actions for traded bonds (includes tender offers, issuer name changes, CUSIP number changes).

The tracking system does not provide notification of changes in trustees, obligors or transfer agents with respect to traded debt securities. NYSE receives this information electronically from IDS on a daily basis. IDS independently obtains, researches and organizes the information. The NYSE does not itself verify the information provided by IDS.

NYSE currently has rules that set forth the requirements for trading unlisted debt securities on NYSE Bonds.¹² Rule 1400 provides:

"The term Debt Securities includes only securities that, if they were to be listed on the NYSE, would be listed under Sections 102.03 or 103.05 of the NYSE's Listed Company Manual; provided, however, that such securities shall not include any security that is defined as an "equity security" under Section 3(a)(11) of the Exchange Act.

For the avoidance of doubt, note that the term Debt Securities does not include a security that, if listed on the NYSE, would have been listed under Section 703.19 of the NYSE's Listed Company Manual or any equity-linked debt securities listed under Rule 5P. The references in this Rule to Sections 102.03, 103.05, and 703.19 of the NYSE's Listed Company Manual are to those sections as in effect on January 31, 2005."

Rule 1401 specifies that only Debt Securities with an outstanding market value or principal amount of at least \$5 million will be permitted to be traded by NYSE members and member organizations. Rule 1401 also specifies that trading in Debt Securities will be suspended if (a) the outstanding aggregate market value or principal amount of the Debt Securities has fallen to less than \$1,000,000, or (b) the Debt Securities either (1) no longer qualify for a statutory exemption from the registration requirements of Section 12(b) of the Exchange Act, or (2) may no longer be traded by NYSE members or member organizations on an unregistered basis pursuant to the 2006 Exemption.

In order to ensure that Debt Securities have at least \$5,000,000 in aggregate market value or principal amount at the time trading commences, as required under Rule 1401(1), the NYSE, as it currently does, will review two existing corporate bond issue databases (IDS and FactSet) that provide issue size information for the preponderance of corporate bonds.

To monitor the \$1,000,000 suspension threshold, as required under Rule 1401(2),

⁸ 15 U.S.C. 78qA.

⁹ If the Commission grants exemptive relief from Section 12(a), members, brokers and dealers would be able to trade on the NYSE eligible debt securities that have not been registered under Section 12(b), which prescribes the procedures for an issuer's registration of a security and the information required to be submitted. Similarly, the Exchange would no longer need to comply with the provisions of Section 12(d) regarding the certification of listing and registration of debt securities.

¹⁰ 15 U.S.C. 77aaa-77bbb.

¹¹ The NYSE will distinguish debt securities "listed" on NYSE Bonds from those "traded" on NYSE Bonds in the following manner: (1) The Exchange will uniquely identify "listed" and "traded" debt securities on the NYSE Bonds Bond Directory located on the NYSE's website; (2) The Exchange will also make such information available on the NYSE Bonds Security Master File on a daily basis through ICE Data Services ("IDS"); and (3) The Exchange will publish a Trader Update to notify members and member organizations each time a debt security becomes available to trade on NYSE Bonds.

¹² See NYSE Rules 1400 and 1401.

¹ 15 U.S.C. 78l(b).

² 15 U.S.C. 78a.

³ 15 U.S.C. 78l(a).

⁴ See Exchange Act Release No. 54766 (November 16, 2006), 71 FR 67657 (November 22, 2006) (Order Granting the New York Stock Exchange Inc.'s (n/k/a the New York Stock Exchange LLC) Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934) (the "2006 Exemption"). See also Letter from Mary Yeager, New York Stock Exchange, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 26, 2005 (NYSE's request for exemptive relief).

⁵ See Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007) (SR-NYSE-2006-37) (Order Granting Accelerated Approval of Proposed Rule Change Relating to the Establishment of NYSE Bonds).

⁶ 15 U.S.C. 77a.

⁷ 15 U.S.C. 78l(b).

the NYSE will generally utilize, as it currently does, IDS' tracking system to monitor partial redemptions and tender offers. The most prevalent reason for outstanding principal amounts to fall below \$1 million is when an issuer commences a partial redemption of the bonds resulting in a smaller amount of bonds outstanding and by extension, a drop in the aggregate market value or principal amount to below the \$1,000,000 threshold.

The NYSE intends to provide an opportunity for NYSE members and member organizations to trade all eligible debt securities. Once eligible debt securities are identified, the NYSE will notify NYSE members and member organizations that such debt securities are eligible to be traded on NYSE Bonds through Trader Updates and postings on the NYSE website. Debt securities that would be ineligible for trading include convertible debt securities, debt securities that were listed under Section 703.19 of the NYSE's Listed Company Manual, debt issued by listed company subsidiaries that are not wholly-owned, and foreign government debt.

Discussion

The NYSE believes that increased exchange trading of debt securities will have substantial benefits to market participants in the form of greater transparency around pricing and issuer information. The regulatory structure around trading of debt securities, however, has not sufficiently incentivized trading on a regulated national securities exchange. Presently, all equity and debt securities that are not "exempted securities" or are not otherwise exempt from Exchange Act registration must be registered by the issuer under the Exchange Act before a member, broker or dealer may trade that class of securities on a national securities exchange. By contrast, brokers or dealers who trade debt securities in the over-the-counter, or OTC, market may trade debt securities regardless of whether the issuer registered that class of debt under the Exchange Act. In fact, debt securities traded OTC need not even be issued by reporting companies.

The Commission has taken a number of steps over the years to address its view "that this disparate regulatory treatment may have negatively and unnecessarily affected the structure and development of the debt markets."¹³ In 1994, the Commission adopted Exchange Act Rule 3a12-11 to "reduce regulatory distinctions between exchange-traded debt securities required to be registered under Section 12 of the Exchange Act and bonds traded over-the-counter for which such registration is not required."¹⁴

The Commission has also sought to increase the level of transparency in the public debt markets. In this regard, the National Association of Securities Dealers, Inc. ("NASD"), now the Financial Industry Regulatory Authority, Inc. ("FINRA"),

introduced TRACE (Trade Reporting and Compliance Engine) to bring transparency to the bond market by providing comprehensive, real-time access to bond price information. Introduced in 2002, TRACE captures and disseminates consolidated information on secondary market transactions in publicly traded TRACE-eligible securities—representing all OTC market activity in these bonds.

The Commission's 2006 Exemption was another step to "serve the public interest by minimizing unnecessary regulatory disparity and promoting competition."¹⁵ Pursuant to the 2006 Exemption, the Exchange currently lists on its NYSE Bonds platform more than 1,000 CUSIPs, representing a notional value of about \$464 billion, and trades more than 7,000 CUSIPs, representing a notional value of about \$840 billion. The Exchange believes that its present request will further increase exchange trading of debt securities to the benefit of investors and other market participants.

NYSE Bonds

NYSE Bonds is an electronic order-driven matching system¹⁶ for fixed income securities to which Exchange members and member organizations subscribe and through which they enter and match customer bond orders on a strict price and time priority basis. The system provides member subscribers with access to the order book in each bond which displays orders and in the time sequence received. Completed, locked-in trades are submitted to the clearing corporation (*i.e.*, Depository Trust Clearing Corporation) with calculated accrued interest. NYSE Bonds centralizes bond trading and publishes a real-time bond data feed to NYSE Bonds customers and subscribers that reflects all orders in time sequence on the NYSE Bonds order book. NYSE Bonds is an order-driven system and, therefore, the Exchange does not disseminate any information on a particular bond if there are no orders entered on the order book for such bond.

NYSE Bonds primarily serves the "small-lot" corporate bond market. Small-lot bond buyers and sellers are primarily individuals, bank trust accounts, and small institutions. In addition, bond dealers use NYSE Bonds to offset so-called "tail-end" bond positions acquired in the course of large-lot trading. NYSE Bonds is the only system that provides the public with real-time disclosure of quotations and trade prices, exclusive of mark-ups/mark-downs, commissions, or other charges.

Growth in electronic trading of corporate bonds has been noteworthy. It has been decades in the making, but electronic trading in corporate bonds has made notable inroads in a market known for its low-tech ways. In November 2023, 45% of US investment-grade bond volume was traded electronically.¹⁷ During that month, the average daily notional volume traded grew 13% year over year to

\$43 billion, with \$18.8 billion of corporate bonds trading electronically, representing an 18% growth from November of 2022.¹⁸ The vast majority of those electronic transactions occur on Alternative Trading Systems ("ATSs"), which are permitted to trade any corporate bond that is currently available to trade in the secondary market. This universe of bonds represents approximately 62,000 CUSIPs with a notional value of over \$10 trillion. The current regulatory landscape not only puts NYSE Bonds at a competitive disadvantage to the ATSs, it also puts investors at a disadvantage given that NYSE Bonds is the only regulated platform for corporate bonds that offers firm prices that are live and executable versus subject pricing on ATSs which can create a false sense of liquidity in the market. ATSs typically offer dealers on their platforms a "last look" to an otherwise firm price, which allows the dealer to review the posted price prior to any execution. The "last look" allows the dealer to reject the order if the price is no longer advantageous. On the contrary, all prices on NYSE Bonds are live and executable and are matched based on price/time priority automatically by the matching engine.

In addition, the Exchange believes that investors in debt securities are adversely impacted by the competitive constraints on exchanges trading debt securities. In contrast to OTC markets trading debt securities, the Exchange's bond market disseminates *both* last sale prices as they occur on the Exchange *exclusive of any mark-ups, mark-downs, or other charges*, and bid and ask quotations. This market data is available through some 400,000 market data displays providing subscribers—primarily securities firms and financial institutions—with direct *instantaneous* access to this information, throughout each trading day. The Exchange is not aware of any comparable level of transparency—trade prices, quotations, and speed of availability for corporate bond prices—that exists currently elsewhere. This transparency is absent when a bond delists from, or is not traded on, the Exchange.¹⁹

Bond Issue Information

The Exchange believes that increasing the universe of unregistered debt securities that may be traded on the Exchange will have significant benefits to market participants. First, the Exchange's proposal will not result in any loss of debt security or issuer information to investors for the following reasons: The Exchange is only requesting exemptive relief with respect to the trading by Exchange members and member organization of debt securities issued by companies listed on a national securities

¹⁸ *Id.*

¹⁹ One instance in which this transparency may be lost is when a company with both listed equity and debt is merged or reorganizes with another company. The successor may list its stock on the Exchange but leave its debt in a now wholly-owned subsidiary, which may seek to delist its debt to avoid separate Section 13 reporting requirements. Once delisted from the Exchange, the debt is traded only OTC, and the Exchange believes that investors lose the benefit of the transparency provided by the *real time reporting of quotations and trades* on the Exchange.

¹³ See 2006 Exemption, *supra* note 4, at 67658.

¹⁴ 17 CFR 240.3a12-11. The Commission, among other things, exempted debt securities listed on a national securities exchange from Sections 14(a), 14(b) and 14(c) of the Exchange Act. 15 U.S.C. 78n(a), (b) and (c).

¹⁵ See 2006 Exemption, *supra* note 4, at 67659.

¹⁶ See *supra* note 5.

¹⁷ See Kevin McPartland, *Is the Corporate Bond E-Trading Drought Over?*, Greenwich Associates (2023).

exchange and their wholly-owned subsidiaries. All such issuers are already subject to the requirements of Section 13 of the Exchange Act, and thus information about an issuer will be available to investors, even in the absence of an Exchange Act registration requirement for the debt securities of these issuers or their wholly-owned subsidiaries.

Only debt securities that are registered under the 1933 Act would be eligible to be traded by NYSE members and member organizations on NYSE Bonds. Additionally, under Section 15(d) of the Exchange Act, issuers not required to register their debt securities under Section 12 of the Exchange Act are subject to Section 13 reporting requirements for the fiscal year following the effective date of a registration statement filed under the 1933 Act.²⁰ Issuers must continue to file such reports so long as they have a class of securities with at least 300 “holders of record” as defined under Exchange Act Rule 12g5-1.²¹ Therefore, with respect to eligible debt securities that have been issued by the wholly-owned subsidiary of a listed company, that wholly-owned subsidiary may or may not itself be currently subject to the requirements of Section 15(d) or Section 13 of the Exchange Act.

The 1933 Act registration statements themselves supply much of the relevant information needed by the bond markets and investors. Indeed, for the most part, the Exchange Act registration Form 8-A simply incorporates by reference the information found in the 1933 Act registration statement. The 1933 Act registration statement also contains a much more detailed and relevant description of the debt issue than is required by Rule 12b-3 of the Exchange Act.²² The description contained in the term sheet of the registration statement provides the information necessary to *trade* that issue—whether on an exchange or OTC. The issue description contained in the Form 8-A registration statement does not provide the information needed to trade bonds.

Most of the other disclosure items required in connection with debt securities arise with respect to Forms 8-K, 10-Q and 10-K. These forms would continue to be filed by eligible listed companies and, where required by Sections 15(d) or 13 under the Exchange Act, by eligible wholly-owned subsidiaries, regardless of whether the debt securities are registered under the Exchange Act. Item 2.04 of Form 8-K requires disclosure of any triggering event, such as a default, that accelerates or increases a direct financial obligation. Item 3.03 of Form 8-K requires disclosure of any material modification to the rights of security holders. Item 601(b)(4) of Regulation S-K (required to be included in

10-Ks and 10-Qs) discusses the definition of the rights of debt holders. Part II—Item 3(a) of Form 10-Q requires that, to the extent that the registrant has not previously disclosed such information on Form 8-K, the registrant must provide information regarding defaults in the payment of principal, interest, sinking fund, etc., “with respect to *any* indebtedness of the registrant or any of its *significant subsidiaries* exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries . . .” (emphasis added). Thus, the Form 10-Q requires disclosure of defaults in the payment of principal, interest, sinking fund, etc. for any bonds of the registrant, irrespective of whether such bonds are exchange-listed or not.

If, as described above, a wholly-owned subsidiary ceases to provide Exchange Act reports itself, much of the information that had been provided by the wholly-owned subsidiary will be provided instead by the wholly-owned subsidiary’s listed parent company in its own Exchange Act reports. The listed parent company, however, will not be required to list and describe the debt securities issued by the wholly-owned subsidiary on the cover page of its own annual report on Form 10-K or to include as an exhibit to its own Forms 10-K or 10-Q the exhibits that would have been required to be filed by the wholly-owned subsidiary pursuant to Item 601(b)(4) of Regulation S-K (relating to creation of a new class of securities or indebtedness or the modification of existing rights of security holders).

There are also a variety of databases providing bond information, including information regarding the listing and/or trading location of a bond. A few examples of these database services include Standard & Poor’s Market Intelligence, the Mergent Bond Record, APEX, Bloomberg and the Commission’s EDGAR internet service, among other services. In addition, the Exchange’s own bond issue directory is available on the Exchange’s website and carries the description of each listed bond issue, including bonds currently exempt from Exchange Act registration requirements, such as Tennessee Valley Authority bonds.

Most notably, of course, OTC bond trading functions without the information obtained as a result of Exchange Act registration. OTC bond trading relies on the information disclosed in the 1933 Act registration statement and the indentures filed under the Trust Indenture Act, including amendments to the indenture affecting the rights of bondholders.

In addition to helping ensure that investors have access to current information about debt securities traded on the Exchange, the NYSE’s present request will have additional benefits. First, the request will increase competition by allowing more exchanges to provide a trading venue for debt securities which will, in turn, likely increase trading volume and liquidity of debt securities. This will provide investors and market participants with greater pricing transparency for bonds traded on the Exchange. In granting an exemption pursuant to Section 36 of the Exchange Act, the Commission must consider whether the

requested exemption is “necessary or appropriate in the public interest, and is consistent with the protection of investors.”²³ For the reasons discussed herein, the Exchange believes its requested relief meets this standard. If granted, investors will have corporate information about the issuer of debt securities, there will be increased numbers of trading venues for debt securities, and the resulting growth in trading will provide market participants with greater pricing transparency.

Conclusion

The Exchange believes that its request to amend a single term of the 2006 Exemption to permit unregistered debt securities to be traded on NYSE Bonds if their issuer (or their issuer’s parent) had a class of common or preferred equity listed on *any* registered national securities exchange will further the Commission’s goals of improving transparency in the bond market while also providing sufficient safeguards for the investing public. In remarks at City Week, Chair Gensler outlined targeted initiatives to improve transparency, resiliency, integrity, and access in fixed-income markets.²⁴ “Together, through driving greater transparency, modernizing rule sets for electrified platforms, and enhancing financial resiliency, we can help investors and issuers in the bond markets get the same benefits as many other parts of our capital markets,” said Gensler.²⁵ Pre-trade transparency in particular has been identified as a key area for improvement in the fixed income markets.

As noted above, the Commission has already shown its willingness to lessen the opaqueness in the bond market by providing exemptive relief to the Exchange pursuant to which the Exchange currently trades debt securities of issuers that are listed on NYSE and such issuers’ wholly-owned subsidiaries. By extending this exemption to allow Exchange members and member organizations to trade debt securities of issuers that are listed on any national securities exchange and such issuers’ wholly-owned subsidiaries would further remove unnecessary and anti-competitive barriers to exchange trading of debt securities. In addition, trading of such debt securities on NYSE Bonds would provide market participants trading such securities, as well as the owners of such securities, much greater levels of price transparency than is currently available. Accordingly, we urge the Commission to use its exemptive power to remove the requirement that debt securities of non-NYSE-listed equity issuers and their wholly-owned subsidiaries be registered under the Exchange Act in order to be traded on the Exchange.

Sincerely,
Hope M. Jarkowski

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²³ 15 U.S.C. 78a.

²⁴ See Gary Gensler, “‘The Name’s Bond:’ Remarks at City Week” (April 26, 2022), available at <https://www.sec.gov/news/speech/gensler-names-bond-042622>.

²⁵ *Id.*

²⁰ 15 U.S.C. 78o(d) (2000).

²¹ 17 CFR 240.12g5-1.

²² 17 CFR 240.12b-3. Rule 12b-3 requires that wherever the title of securities is required to be stated one shall also indicate “the type and general character of the securities. . . .” For funded debt, issuers are required to state the following: the rate of interest, the maturity date (or dates for serial issues), an indication if the payment of principal or interest is contingent, a brief indication of the priority of the issue, and, if the issue is convertible, a statement to that effect.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101471; File No. SR-NYSE-2024-67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 7.31(f)(1)

October 29, 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 October 24, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(f)(1) regarding Directed Orders. 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

Rule 7.31(f)(1) currently defines a Directed Order as a Limit Order with instructions to route on arrival at its limit price to a specified alternative trading system (“ATS”) with which the Exchange maintains an electronic linkage. Directed Orders are available for all securities eligible to trade on the Exchange. Directed Orders are not assigned a working time and do not interact with interest on the Exchange Book. Rule 7.31(f)(1) further provides that the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled.

Rule 7.31(f)(1)(A) provides that a Directed Order must be designated for the Exchange’s Core Trading Session. A Directed Order must be designated with a Time in Force modifier of IOC or Day and is routed to the specified ATS with such modifier. Rule 7.31(f)(1)(A) also provides that a Directed Order may not be designated with any other modifiers defined in Rule 7.31.

Rule 7.31(f)(1)(B) provides that a Directed Order in a security to be opened in an initial public offering (“IPO”) or a Direct Listing will be rejected if received before the IPO Auction or Direct Listing Auction concludes.

Rule 7.31(f)(1)(C) provides that an incoming Directed Order will be rejected if received during a trading halt or pause.

Rule 7.31(f)(1)(D) provides that a request to cancel a Directed Order designated Day is routed to the ATS to which the order was routed.

Proposed Rule Change

The Exchange proposes to amend Rule 7.31(f)(1) to provide for Directed Orders routed to an algorithm. Specifically, the Exchange proposes to permit Directed Orders to be designated to route to a broker-dealer algorithm with which the Exchange has established connectivity. The Exchange proposes to route Directed Orders only to a range of broker-dealer algorithms that have completed its onboarding process and established routing connectivity with the Exchange.⁵ Any

FINRA-registered broker-dealer⁶ is eligible to complete this process, which is intended, among other things, to ensure that algorithm providers attest to compliance with applicable Exchange rules, FINRA rules, and federal securities laws and regulations and to confirm that they can meet the applicable technical specifications to connect to the Exchange. Algorithm providers will also be required to enter into routing agreements with the Exchange’s routing broker, Archipelago Securities LLC (“ArcaSec”), to facilitate ArcaSec’s routing of Directed Orders on behalf of member organizations to designated algorithms.⁷

As proposed, the member organization entering the Directed Order would select the algorithm to which the Directed Order would be routed and provide instructions for the handling of such order by the routing destination. Member organizations would select from the available algorithm providers without any input or control from the Exchange. As with the existing Directed Order routed to an ATS, the Exchange’s only role would be to route the order to the designated algorithm as instructed. Neither the Exchange nor ArcaSec will make any routing decisions and will only route Directed Orders to valid destinations as instructed by the member organization. The Exchange will not have any visibility into where or how a Directed Order is executed by an algorithm, including whether that

such arrangement with any algorithm provider with respect to the proposed Directed Orders. The member organization initiating a Directed Order to an algorithm has ultimate responsibility for any transaction fees associated with the execution of such order. The Exchange may facilitate the process by which such fees are passed through from the algorithm providers to the member organizations utilizing Directed Orders, as proposed, but will not determine, subsidize, or benefit from any such fees. Subject to approval and implementation of this proposed rule change, the Exchange intends to adopt a routing fee for Directed Orders to an algorithm, similar to the existing routing fee for Directed Orders to an ATS. See New York Stock Exchange Price List 2024, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf (providing for Routing Fee for Directed Order to OneChronos LLC).

⁶ The ability to become a NYSE algorithm provider is open to all FINRA-registered broker-dealers, regardless of whether they are also Exchange members, on an equal and non-discriminatory basis.

⁷ The Consolidated Audit Trail (“CAT”) for a Directed Order would reflect entry of the order at the Exchange; ArcaSec’s receipt of the order from the Exchange; ArcaSec’s routing of the order to the designated algorithm; and the algorithm’s routing of the order to the execution venue(s) selected to effectuate its strategy. The Exchange will not be involved in the clearing or settlement of Directed Orders, except to the extent that it may submit certain trades to clearing on behalf of member organizations (similar to the capacity in which it participates in the clearing process for orders that it routes for Regulation NMS purposes).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed a proposed rule change to amend NYSE Rule 7.31(f)(1) on July 16, 2024 (SR-NYSE-2024-40). SR-NYSE-2024-40 was withdrawn on October 24, 2024, and replaced by this filing.

⁵ All broker-dealer algorithms will operate on their respective systems, not on Exchange systems. The Exchange does not currently have and will not enter into any financial or other arrangements with any algorithm provider and will not enter into any

order may be routed back to the Exchange or one of its affiliated exchanges, at the time of execution.⁸ Consistent with current rules governing the Directed Order to an ATS, a Directed Order designated for an algorithm would not interact with the Exchange Book, and the Exchange would not exercise any discretion in determining where the order is routed. Similarly, the algorithm selected by the member organization entering the Directed Order would be responsible for validating whether the order is eligible to be accepted, and if the algorithm determines to reject the order, the Directed Order would be cancelled.

To effect this change, the Exchange first proposes to amend the definition of a Directed Order in Rule 7.31(f)(1) to provide that a Directed Order is a Limit Order with instructions to route on arrival to an ATS or algorithm with which the Exchange maintains an electronic linkage. Directed Orders will continue to be available for all securities eligible to trade on the Exchange and will not be assigned a working time or interact with interest on the Exchange Book. The Exchange further proposes to amend Rule 7.31(f)(1) to specify that the ATS or algorithm to which the Directed Order is routed, as applicable, will validate whether the order is eligible to be accepted, and if it rejects the order, the order will be cancelled.

In amending Rule 7.31(f)(1) to allow for the routing of Directed Orders to an algorithm, the Exchange also proposes to permit Directed Orders designated to route to an algorithm to be Market Orders. The Exchange believes that permitting Directed Orders routed to algorithms to be entered as Market Orders would facilitate market participants' existing functional workflows when routing to algorithms. A member organization routing a Directed Order to an algorithm may, for example, wish to send a parent order with Market Order instructions for execution via smaller limited child orders over several hours of the trading day.

The Exchange next proposes to delete the first sentence of current Rule 7.31(f)(1)(A), which provides that Directed Orders must be designated for the Exchange's Core Trading Session. Consistent with this proposed change, the Exchange also proposes to delete current Rule 7.34(c)(1)(E), which provides that Directed Orders designated for the Early Trading Session

will be rejected, and to make a conforming change in Rule 7.34(c)(1) to reference "paragraphs (c)(1)(A) through (D)" to reflect the deletion of Rule 7.34(c)(1)(E). The Exchange's proposal to permit Directed Orders to be routed during any trading session is intended to allow the routing destinations receiving such orders to determine whether they are eligible to trade in a given trading session. The Exchange will pass on the instructions provided by the member organization entering the Directed Order, and the routing destination will be responsible for validating whether the order will be accepted or rejected, as contemplated by Rule 7.31(f)(1).

The Exchange further proposes to amend Rule 7.31(f)(1)(A) to provide that a Directed Order to an ATS must be designated as IOC or Day and will be routed as such, whereas a Directed Order to an algorithm may only be designated as Day and routed as such, consistent with market participants' existing functional workflows when routing to algorithms. The Exchange also proposes to clarify language currently in Rule 7.31(f)(1)(A) providing that Directed Orders may not be combined with any other modifiers set forth in this Rule, to instead provide that Directed Orders will not be processed with any other modifiers set forth in this Rule.

The Exchange next proposes to amend Rule 7.31(f)(1)(C) to specify that, during a trading halt or pause, Directed Orders routed to an ATS would continue to be rejected, whereas Directed Orders to an algorithm would be routed as specified. The Exchange proposes that Directed Orders routed to an algorithm would be routed during a trading halt or pause, consistent with market participants' existing functional workflows when routing to algorithms. The Exchange believes that the proposed elimination of certain restrictions on Directed Orders currently set forth in Rules 7.31(f)(1)(A) and (C) would provide member organizations with additional flexibility when entering Directed Orders, which would remain subject to the rules and specifications of the destinations to which such orders are routed. As provided in Rule 7.31(f)(1), as amended, the ATS or algorithm to which a Directed Order is routed would validate whether the order is eligible to be accepted.

Finally, the Exchange proposes to amend Rule 7.31(f)(1)(D) to provide that a request to cancel a Directed Order designated Day will be routed to the ATS or algorithm to which the order was routed.

The proposed change would provide member organizations with a technology solution to leverage their existing Exchange connectivity to route Directed Orders to either an ATS or algorithm, thereby affording them increased access to execution tools and enhanced operational efficiency.⁹ The Exchange believes the proposed change would offer member organizations greater choice and flexibility, and further believes that the proposed change could create efficiencies for member organizations by enabling them to send orders that they wish to route to an alternate destination through the Exchange, thereby leveraging order entry protocols and specifications already configured for their interactions with the Exchange. The Exchange notes that Directed Orders designated to route to an algorithm would generally operate in the same manner as Directed Orders that are currently eligible to be routed to an ATS selected by the member organization entering the order (except as proposed above). The Exchange further believes that the Directed Order would continue to provide functionality similar to order types with specific execution instructions (such as the Auction Only Order defined in NYSE Rule 7.31(c)) or routing instructions (such as Primary Only Orders that route to the primary market, as available on the Exchange's affiliated equities exchanges).¹⁰

⁹ The Exchange believes that this proposed rule change could be particularly beneficial for smaller member organizations that cannot, for various reasons including cost, connect to multiple algorithm providers on their own.

¹⁰ See NYSE American LLC ("NYSE American") Rule 7.31E(f)(1); NYSE Arca, Inc. ("NYSE Arca") Rule 7.31-E(f)(1); NYSE Chicago, Inc. ("NYSE Chicago") Rule 7.31(f)(1); NYSE National, Inc. ("NYSE National") Rule 7.31(f)(1). NYSE American, NYSE Arca, NYSE Chicago, and NYSE National also offer variations of the Primary Only Order, including the Primary Only Until 9:45 Order, which is a Limit or Inside Limit Order that, on arrival and until 9:45 a.m. Eastern Time, routes to the primary listing market, and the Primary Only Until 3:55 Order, which is a Limit or Inside Limit Order entered on the Exchange until 3:55 p.m. Eastern Time, after which time the order is cancelled on the Exchange and routed to the primary listing market. See NYSE American Rules 7.31E(f)(2) and (f)(3); NYSE Arca Rules 7.31-E(f)(2) and (f)(3); NYSE Chicago Rules 7.31(f)(2) and (f)(3); NYSE National Rules 7.31(f)(2) and (f)(3). The Exchange further notes similarities between the Directed Order and various order types and routing options offered by other equities exchanges. See, e.g., Nasdaq Stock Market LLC ("Nasdaq"), Equity 4, Equity Trading Rules, Rule 4758(a)(ix) (defining the Nasdaq Directed Order as an order designed to use a routing strategy under which the order is directed to an automated trading center other than Nasdaq, as directed by the entering party, without checking the Nasdaq Book); Cboe EDGX Exchange, Inc. ("EDGX") Rules 11.8(c)(7) (defining the Routing/Directed ISO order type as an ISO that bypasses the EDGX system and is immediately routed by EDGX to a specified away trading center for execution) and 11.11(g)(2).

⁸ Exchange systems would not be able to determine, upon receipt of a routed order, whether such order had originated in whole or in part from an algorithm or originated at the Exchange as a Directed Order to an algorithm.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update.¹¹ Subject to approval of this proposed rule change, the Exchange will implement the proposed change at the earliest in the fourth quarter of 2024 or at the latest in the second quarter of 2025.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and promote just and equitable

principles of trade because the Directed Order, as proposed, would offer member organizations access to additional execution tools and trading opportunities by permitting them to designate orders submitted to the Exchange to be routed directly to a specified algorithm for execution. In particular, the Exchange believes that amending the Directed Order to include routing to an algorithm would provide greater choice and flexibility for member organizations and their customers. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market by offering member organizations a technology solution that would provide them with the option to send orders that they wish to route to an alternate destination for execution through the Exchange, thereby promoting operational efficiencies through leveraging their existing protocols and specifications for Exchange connectivity. Finally, the Exchange notes that the proposed functionality is not novel as a Directed Order to an algorithm would otherwise generally function in the same way as the existing Directed Order to an ATS, and the proposed change would simply facilitate member organizations' existing ability to direct orders to be executed via an algorithm.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change to the rules governing Directed Orders would promote competition because it would enhance an order type on the Exchange that would provide access to additional execution tools and trading opportunities for market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-67 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-NYSE-2024-67. 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

(providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed); Cboe EDGA Exchange, Inc. ("EDGA") Rules 11.8(c)(7) (defining the Routing/Directed ISO order type as an ISO that bypasses the EDGA system and is immediately routed by EDGA to a specified away trading center for execution) and 11.11(g)(2) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed); Cboe BZX Exchange, Inc. ("BZX") Rules 11.13(b)(3)(D) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed) and 11.13(b)(3)(F) (defining the Directed ISO routing option, under which an ISO order would bypass the BZX system and be sent to a specified away trading center); Cboe BYX Exchange, Inc. ("BYX") Rules 11.13(b)(3)(D) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed) and 11.13(b)(3)(F) (defining the Directed ISO routing option, under which an ISO order would bypass the BYX system and be sent to a specified away trading center). The Exchange also believes that the Directed Order would provide functionality similar to the C-LNK routing strategy formerly offered by EDGA, in which C-LNK orders bypassed EDGA's local book and routed directly to a specified Single Dealer Platform destination. See Securities Exchange Act Release No. 82904 (March 20, 2018), 83 FR 12995 (March 26, 2018) (SR-CboeEDGA-2018-004) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand an Offering Known as Cboe Connect To Provide Connectivity to Single-Dealer Platforms Connected to the Exchange's Network and To Propose a Per Share Executed Fee for Such Service).

¹¹ The Exchange will provide information regarding the algorithm(s) to which a Directed Order may be designated to route in technical specifications and/or by Trader Update.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

submissions should refer to file number SR–NYSE–2024–67 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–25530 Filed 11–1–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101466; File No. SR–CboeEDGX–2024–069]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 29, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 18, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Members³ and non-Members that purchase \$20,000 or more of ad hoc purchases of EDGX Options Historical Depth Data (“Historical Depth Reports”), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange’s depth of book real-time feed, which provides depth-of-book quotations and execution information based on options orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.*, T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Historical Depth Report available for purchase to Users on the LiveVol DataShop website (data.cboe.com). The Historical Depth Data is available for purchase to Members and Non-Members; the Exchange charges a fee per month of historical data of \$500. The Historical Depth Report provided on a historical basis is only provided to data recipients for internal use only, and thus, no redistribution will be permitted. The Exchange notes that the Historical Depth Report is subject to direct competition from other

exchanges, as other exchanges offer similar products for a fee.⁴

The Exchange’s equities platform (“EDGX Equities”) and affiliated equities and options exchanges (*i.e.*, Cboe Exchange, Inc. (“Cboe Options”), Cboe C2 Exchange, Inc. (“C2 Options”), Cboe BYX Exchange, Inc. (“BYX”), Cboe BZX Exchange, Inc. (“BZX”), and Cboe EDGA Exchange, Inc. (“EDGA”) (collectively, “Affiliates”) also offer similar data products. Particularly, each of the Exchange’s Affiliates offer a daily and historical archive of their depth of book real-time feed with execution information based on their trading activity that is substantially similar to the information provided by the Exchange through its Depth Data products.

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase Historical Depth Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of Historical Depth Data of \$20,000 or more.⁵ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 18, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted similar discount programs for other historical data products offered by the Exchange.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule

⁴ See, *e.g.*, <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#nom>; and https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

⁵ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.* receive a 20% discount of \$5,000).

⁶ See Securities Exchange Act Release No. 99026 (November 28, 2023), 88 FR 84023 (December 1, 2023) (SR–CboeEDGX–2023–070) and Securities Exchange Act Release No. 100352 (June 17, 2024), 89 FR 52521 (June 24, 2024) (SR–CboeEDGX–2024–033).

⁷ 15 U.S.C. 78f(b).

¹⁴ 17 CFR 200.30–3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ which requires that Exchange rules provide for the Members Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical depth of book data via Historical Depth Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the options industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.¹¹

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more

than 17% of the market share.¹² 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.”¹³ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Historical Depth Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases Historical Depth Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of Historical Depth Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the Historical Depth Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the Historical Depth Reports. Further, the proposed discount is intended to promote increased use of the Exchange’s Historical Depth Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase Historical Depth Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the Historical Depth Reports, and the Exchange is not required to make the Historical Depth Reports available to all

investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted similar discount programs for other historical data products offered by the Exchange.¹⁴

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange’s Historical Depth Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of Historical Depth Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of Historical Depth Reports.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

¹² See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (October 1, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ See Securities Exchange Act Release No. 99026 (November 28, 2023), 88 FR 84023 (December 1, 2023) (SR-CboeEDGX–2023–070) and Securities Exchange Act Release No. 100352 (June 17, 2024), 89 FR 52521 (June 24, 2024) (SR-CboeEDGX–2024–033).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See *supra* note 4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeEDGX-2024-069. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-069 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-25528 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-401, OMB Control No. 3235-0459]

Proposed Collection; Comment Request; Extension: Rule 3a-4

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 3a-4 (17 CFR 270.3a-4) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by

the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Act.

In 1997, the Commission adopted rule 3a-4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or comply with the Act's requirements.¹ These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor² (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.³ In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the

¹ Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] ("Adopting Release"); in addition, there are no registration requirements under section 5 of the Securities Act of 1933 for programs that meet the requirements of rule 3a-4. See 17 CFR 270.3a-4, introductory note.

² For purposes of rule 3a-4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

³ Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account; the rule does not require that a client be able to require particular securities be purchased for the account.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

¹⁷ 17 CFR 200.30-3(a)(12).

management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.

Additionally, the sponsor (or its designee) must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The Commission staff estimates that 27,979,460 clients participate each year in investment advisory programs relying on rule 3a-4.⁴ Of that number, the staff estimates that 2,127,147 are new clients and 25,852,313 are continuing clients.⁵ The staff estimates that each year the investment advisory program sponsors' staff engage in 1.5 hours per new client and 1 hour per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule.⁶ Furthermore, the staff estimates that each year the investment advisory program sponsors' staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information.⁷ Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 57,022,493 hours.⁸

⁴ These estimates are based on an analysis of the number of individual clients from Form ADV Item 5D(a)(1) and (b)(1) of advisers that report they provide portfolio management to wrap programs as indicated in Form ADV Item 5I(2)(b) and (c), and the number of individual clients of advisers that identify as internet advisers in Form ADV Item 2A(11); from analysis comparing reported individual client assets in Form ADV Item 5D(a)(3) and 5D(b)(3) to reported wrap portfolio manager assets in Form ADV Item 5I(2)(b) and (c), we discount the estimated number of individual clients of non-internet advisers providing portfolio management to wrap programs by 10%.

⁵ These estimates are based on the number of new clients expected due to average year-over-year growth in individual clients from Form ADV Item 5D(a)(1) and (b)(1) (about 9%) and an assumed rate of yearly client turnover of 10%.

⁶ These estimates are based upon consultation with investment advisers that operate investment advisory programs that rely on rule 3a-4.

⁷ The staff bases this estimate in part on the fact that, by business necessity, computer records already will be available that contain the information in the quarterly reports.

⁸ This estimate is based on the following calculation: (25,852,313 continuing clients × 1

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 3, 2025.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: October 29, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-25546 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

hour) + (2,127,147 new clients × 1.5 hours) + (27,979,460 total clients × (0.25 hours × 4 statements)) = 57,022,493 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101470; File No. SR-NYSEARCA-2024-87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NYSE Arca Rule 8.800-E To Provide for the Listing and Trading of Commodity- and Digital Asset-Based Investment Interests and To List and Trade Shares of the Grayscale Digital Large Cap Fund LLC

October 29, 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 October 15, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new NYSE Arca Rule 8.800-E to provide for the listing and trading of Commodity- and Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, Derivative Securities Products, and/or cash. The Exchange also proposes to list and trade shares of the Grayscale Digital Large Cap Fund LLC (the "Fund") under proposed NYSE Arca Rule 8.800-E. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 adopt new NYSE Arca Rule 8.800–E to provide for the listing and trading of Commodity- and Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, Derivative Securities Products, and/or cash. The Exchange also proposes to list and trade shares of the Fund under proposed NYSE Arca Rule 8.800–E.

Proposed Listing Rules

Proposed Rule 8.800–E(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests that meet the criteria of this rule. The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5–E(m).

Proposed Rule 8.800–E(b) provides that this rule is applicable only to Commodity- and/or Digital Asset-Based Investment Interests. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Commodity- and/or Digital Asset-Based Investment Interests are included within the definition of

“security” or “securities” as such terms are used in the Bylaws and Rules of the Exchange.

Proposed Rule 8.800–E(c)(1) defines a Commodity- and/or Digital Asset-Based Investment Interest as a security (a) that is issued by a trust, limited liability company, or other similar entity (the “Fund”) that holds (1) specified commodities and/or digital assets deposited with the Fund, or (2) specified commodities and/or digital assets and, in addition to such specified commodities and/or digital assets, Derivative Securities Products (as defined in NYSE Arca Rule 1.1) deposited with the Fund and/or cash; (b) that is issued by such Fund in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity(ies), digital asset(s), Derivative Securities Products, and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Fund which will deliver to the redeeming holder the quantity of the underlying commodity(ies), digital asset(s), Derivative Securities Products, and/or cash.

Proposed Rule 8.800–E(c)(2) provides that the term “commodity,” as used in this rule, includes commodities as defined in Section 1a(9) of the Commodity Exchange Act.

Proposed Rule 8.800–E(c)(3) defines the term “digital asset,” for purposes of this rule, as any digital representation of value recorded on a cryptographically secured, distributed ledger (*i.e.*, blockchain) or similar technology.

Proposed Rule 8.800–E(d) provides that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests based on an underlying commodity(ies), digital asset(s), and/or Derivative Securities Products. Each issue of a Commodity- and/or Digital Asset-Based Investment Interest shall be designated as a separate series and shall be identified by a unique symbol.

Proposed Rule 8.800–E(e)(1) sets forth initial listing criteria for Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 8.800–E(e)(1)(i) provides that the Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 8.800–E(1)(ii) provides that there shall be no limitation on the percentage of a Fund's portfolio that may be invested in commodity and/or digital asset

holdings, except that, in the aggregate, at least 90% of the weight of such holdings shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the Intermarket Surveillance Group (“ISG”) from other members of the ISG or via a comprehensive surveillance sharing agreement (“CSSA”).

Proposed Rule 8.800–E(e)(2) and subparagraphs (i) through (viii) thereunder set forth continued listing criteria for Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 8.800–E(e)(2) provides that the Exchange will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under NYSE Arca Rule 5.5–E(m) of, such series under any of the following circumstances:

- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity- and/or Digital Asset-Based Investment Interests (proposed Rule 8.800–E(e)(2)(i));
- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has fewer than 50,000 securities issued and outstanding (proposed Rule 8.800–E(e)(2)(ii));
- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the market value of all securities issued and outstanding is less than \$1,000,000 (proposed Rule 8.800–E(e)(2)(iii));
- if the value of the underlying commodity(ies) and/or digital asset(s) is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Fund, custodian or the Exchange (proposed Rule 8.800–E(e)(2)(iv));
- if the Intra-Day Fund Value is no longer made available on at least a 15-second delayed basis (proposed Rule 8.800–E(e)(2)(v));
- if any of the continued listing requirements set forth in this Rule 8.800–E are not continuously maintained (proposed Rule 8.800–E(e)(2)(vi));

- if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Commodity- and/or Digital Asset-Based Investment Interests and any of the statements or representations regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained (proposed Rule 8.800–E(e)(2)(vii)); or

- if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable (proposed Rule 8.800–E(e)(2)(viii)).

Proposed Rule 8.800–E(e)(3) and the subparagraphs thereunder set forth certain requirements specific to Commodity- and/or Digital Asset-Based Investment Interests issued by a trust. Proposed Rule 8.800–E(e)(3)(i) provides that the stated term of a trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus. In addition, a trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount. Proposed Rule 8.800–E(e)(3)(ii) provides for the following requirements on an initial and continued listing basis: (1) that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business, and that, in cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee; and (2) that no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 8.800–E(f) provides that, upon termination of a Fund issuing securities pursuant to Rule 8.800–E, the Exchange requires that Commodity- and/or Digital Asset-Based Investment Interests issued in connection with the Fund be removed from Exchange listing.

Proposed Rule 8.800–E(g) provides that voting rights shall be as set forth in the applicable prospectus of the Fund issuing Commodity- and/or Digital Asset-Based Investment Interests.

Proposed Rule 8.800–E(h) provides that neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or

delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Fund in connection with issuance of Commodity- and/or Digital Asset-Based Investment Interests; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity.

Proposed Rule 8.800–E(i) provides that an ETP Holder acting as a registered Market Maker in Commodity- and/or Digital Asset-Based Investment Units with no exposure to a non-U.S. currency or currencies must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading that a Market Maker may have or over which it may exercise investment discretion in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives; an underlying digital asset, related digital asset futures or options on digital assets, or any other related digital asset derivatives; or an underlying series of Derivative Securities Products, related future or options on such Derivative Securities Products, or any other related derivatives of such Derivative Securities Products. An ETP Holder acting as a registered Market Maker in Commodity- and/or Digital Asset-Based Investment Interests with exposure to one or more non-U.S. currencies (“Underlying FX”) also must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in Underlying FX and derivatives overlying Underlying FX which the Market Maker may have or over which it may exercise investment discretion, as well as a list of all commodity and commodity-related accounts referenced above. No Market Maker in Commodity- and/or Digital-Asset Based Investment Interests shall trade in a commodity, Underlying FX, or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange,

and (3) has not reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Commodity- and/or Digital Asset Based Investment Interests shall make available to the Exchange such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, applicable Underlying FX, or any other related commodity or applicable Underlying FX derivatives, as may be requested by the Exchange.

Finally, the Exchange proposes to include the following commentary to Rule 8.800–E. Proposed Commentary .01 provides that ETP Holders shall provide to all purchasers of newly issued Commodity- and/or Digital Asset-Based Investment Interests a prospectus for the series of Commodity- and/or Digital Asset-Based Investment Interests. Proposed Commentary .02 provides that transactions in Commodity- and/or Digital-Asset Based Investment Interests will occur during the trading hours specified in NYSE Arca Rule 7.34–E.

The Exchange also proposes to amend Rule 5.3–E to include Commodity- and/or Digital Asset-Based Investment Interests listed pursuant to proposed Rule 8.800–E among the derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies and to amend Rule 5.3–E(e) to include Commodity- and/or Digital Asset-Based Investment Interests listed pursuant to proposed Rule 8.800–E among the derivative or special purpose securities to which the requirements concerning shareholder/annual meetings do not apply.

Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 8.800–E would be substantially similar to Commodity-Based Trust Shares listed and traded pursuant to current Rule 8.201–E, with two main differences. First, whereas Commodity-Based Trust Shares are issued by a trust, Commodity- and/or Digital Asset-Based Investment Interests could be issued, as a proposed, by a trust, limited liability company, or other similar entity. Second, whereas Commodity-Based Trust Shares are based on an underlying commodity only, the Exchange proposes that Commodity- and/or Digital Asset-Based Investment Interests could be

based on an underlying commodity or commodities, as well as digital assets and Derivative Securities Products.⁴ The Exchange believes this flexibility with respect to the structure of the entity issuing Commodity- and/or Digital Asset-Based Investment Interests and the holdings underlying such securities would benefit both issuers and the investing public and would facilitate the availability of a new type of exchange-traded product (“ETP”).

Grayscale Digital Large Cap Fund

The Exchange proposes to list and trade shares (“Shares”) ⁵ of the Fund pursuant to proposed NYSE Arca Rule 8.800–E.⁶

⁴ The Exchange notes that the requirement set forth in proposed Rule 8.800–E(c)(1) regarding digital asset holdings is based on a similar provision set forth in current Rule 8.600–E regarding Managed Fund Shares. See Rule 8.600–E, Commentary .01(d)(1).

⁵ The Shares are expected to be listed under the ticker symbol “GDLC.”

⁶ On May 13, 2021, the Fund filed its registration statement on Form 10 under the Securities Act (File No. 000–56284) (the “Registration Statement on Form 10”). On June 28, 2021, the Fund filed Amendment No. 1 to the Registration Statement on Form 10. On August 13, 2021, the Fund filed Amendment No. 2 to the Registration Statement on Form 10. On November 29, 2021, the Fund filed Amendment No. 3 to the Registration Statement on Form 10. On January 20, 2022, the Fund filed Amendment No. 4 to the Registration Statement on Form 10. On February 4, 2022, the Fund filed Amendment No. 5 to the Registration Statement on Form 10. On July 12, 2021, the Registration Statement on Form 10 was automatically deemed effective. On September 27, 2021, September 1, 2022, September 1, 2023, and September 6, 2024, the Fund filed its annual report on Form 10–K under the Securities Act (File No. 000–56284) (the “Annual Reports”). On November 5, 2021, February 10, 2022, May 6, 2022, November 4, 2022, February 8, 2023, May 5, 2023, November 3, 2023, February 7, 2024, and May 3, 2024, the Fund filed its quarterly reports on Form 10–Q under the Securities Act (File No. 000–56284) (the “Quarterly Reports”). The descriptions of the Fund, the Shares, and the digital assets contained herein are based, in part, on the Annual Reports and Quarterly Reports. On February 7, 2018, the Fund submitted to the Commission a Form D as a limited liability company. Shares of the Fund have been quoted on OTC Market’s OTCQX Best Marketplace under the symbol “GDLC” since October 14, 2019. On October 15, 2019 and September 23, 2020, the Fund published annual reports for GDLC for the periods ended June 30, 2019 and June 30, 2020, respectively. On November 11, 2019, February 13, 2020, May 8, 2020, November 6, 2020, February 12, 2021, and May 13, 2021, the Fund published quarterly reports for GDLC for the periods ended September 30, 2019, December 31, 2019, March 31, 2020, September 30, 2020, December 31, 2020, and March 31, 2021, respectively. Reports published before October 5, 2020, the date on which the Fund’s Shares became registered pursuant to Section 12(g) of the Act, can be found on OTC Market’s website (<https://www.otcmkt.com/stock/GDLC/disclosure>), and reports published on or after October 5, 2020 can be found on OTC Market’s website and the Commission’s website (<https://www.sec.gov/edgar/browse/?CIK=1729997&owner=exclude>). The Shares will be of the same class and will have the same rights as shares of GDLC. According to Grayscale Investments, LLC,

The manager of the Fund is Grayscale Investments, LLC (“Manager”), a Delaware limited liability company. The Manager is a wholly owned indirect subsidiary of Digital Currency Group, Inc. (“Digital Currency Group”). The custodian for the Fund is Coinbase Custody Trust Company, LLC (“Custodian”).⁷ The administrator and transfer agent of the Fund will be BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (the “Transfer Agent”). The distribution and marketing agent for the Fund will be Foreside Fund Services, LLC (the “Marketing Agent”). The index provider and digital asset reference rate provider for the Fund is CoinDesk Indices, Inc. (the “Index Provider” and the “Reference Rate Provider”).

The Fund is a Cayman Islands limited liability company, formed on January 25, 2018, that operates pursuant to a limited liability company agreement between the Manager and the Shareholders (“LLC Agreement”). The Fund has no fixed termination date.

The Fund is one of the world’s largest diversified crypto investment funds by assets under management as of the date of this filing. The Fund has approximately \$490.8 million in assets under management,⁸ and its Shares have historically traded in the millions of dollars in daily volume and are held by more than a quarter of a million American investor accounts seeking exposure to the Fund’s large cap digital assets (the “Fund Components”) without the cost and complexity of purchasing any of the individual assets directly.⁹ As of the date of this filing, the Fund Component weightings are Bitcoin (75.46%), Ether (17.90%), Solana (SOL) (4.13%), XRP (1.86%) and Avalanche (AVAX) (0.65%).¹⁰ However, because the Fund is not currently listed as an ETP, the value of the Shares has not been able to closely track the value of the Fund’s underlying Fund Components. The Manager thus believes that allowing Shares of the Fund to list and trade on the Exchange as an ETP (i.e., converting the Fund to a spot ETP)

freely tradeable shares of GDLC will remain freely tradeable Shares on the date of the listing of the Shares that are unregistered under the Securities Act. Restricted shares of GDLC will remain subject to private placement restrictions on such date, and the holders of such restricted shares will continue to hold those Shares subject to those restrictions until they become freely tradeable Shares.

⁷ According to the Annual Report, Digital Currency Group owns a minority interest in Coinbase, Inc., which is the parent company of the Custodian, representing less than 1.0% of its equity.

⁸ As of October 4, 2024.

⁹ As of the date of this filing.

¹⁰ The Manager will ensure that the Fund’s holdings are consistent with the requirements of Rule 8.800–E(c)(1).

would unlock over \$167 million of value¹¹ for the Fund’s shareholders and provide other investors with a safe and secure way to invest in the Fund Components on a regulated national securities exchange.

Operation of the Fund

According to the Annual Report, the Fund’s assets consist solely of the Fund Components.¹²

Each Share represents a proportional interest, based on the total number of Shares outstanding, in each of the digital assets held by the Fund, as determined by reference to the respective Digital Asset Reference Rates and weightings of each the Fund’s digital asset holdings,¹³ less the Fund’s expenses and other liabilities (which include accrued but unpaid fees and expenses). The Manager expects that the market price of the Shares will fluctuate over time in response to the market prices of the Fund Components. In addition, because the Shares reflect the estimated accrued but unpaid expenses of the Fund, except as otherwise affected by a rebalancing of the Fund’s portfolio, the number of Fund Components represented by a Share is generally expected to gradually decrease

¹¹ As of October 4, 2024.

¹² The Fund will not obtain exposure to any Fund Component via futures, options on futures, or any other derivative. The Fund may from time to time come into possession of Forked Assets (as defined below) by virtue of its ownership of the Fund Components, generally through a fork in the respective Fund Component’s blockchain, an airdrop offered to holders of the respective Fund Component or other similar event. “Rights to Forked Assets” are rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Fund’s ownership of the Fund Components and arise without any action of the Fund, or of the Manager on behalf of the Fund. A “Forked Asset” is any virtual currency token, or other asset or right, acquired by the Fund through the exercise (subject to the applicable provisions of the LLC Agreement) of any Rights to Forked Assets. Although the Fund is permitted to take certain actions with respect to Forked Assets in accordance with its LLC Agreement, at this time the Fund will prospectively irrevocably abandon any Forked Assets. In the event the Fund seeks to change this position, the Exchange would file a subsequent proposed rule change with the Commission.

¹³ The “Digital Asset Reference Rates” are determined by reference to the Index Price or an Indicative Price. The “Indicative Price” is a volume-weighted average price in U.S. dollars for a Fund Component as of 4:00 p.m., New York time, for the immediately preceding 60-minute period derived from data collected from Digital Asset Trading Platforms trading such Fund Component selected by the Reference Rate Provider. The “Index Price” for a Fund Component would be determined by the Reference Rate Provider by further cleansing and compiling the trade data used to determine the Indicative Price in such a manner as to algorithmically reduce the impact of anomalous or manipulative trading.

over time as the Fund Components are used to pay the Fund's expenses.

The activities of the Fund are limited to (i) issuing "Baskets" (as defined below) in exchange for Fund Components and cash transferred to the Fund as consideration in connection with creations, (ii) transferring or selling Fund Components as necessary to cover the "Manager's Fee" ¹⁴ and/or any Additional Fund expenses, (iii) transferring Fund Components and cash in exchange for Baskets surrendered for redemption (subject to obtaining regulatory approval from the Commission and approval of the Manager), (iv) causing the Manager to sell Fund Components on the termination of the Fund, and (v) engaging in all administrative and security procedures necessary to accomplish such activities in accordance with the provisions of the LLC Agreement, the Custodian Agreement, the Index License Agreement, and the Participant Agreements (each as defined below).¹⁵

The Fund will not be actively managed.¹⁶ The Fund will not take any actions to take advantage, or mitigate, the impacts of volatility in the prices of the Fund Components.

Investment Objective

According to the Annual Report, and as further described below, the Fund's investment objective is for the value of the Shares (based on net asset value ("NAV") per Share) to reflect the value of the Fund Components held by the Fund, as determined by reference to their Digital Asset Reference Rates and

weightings within the Fund, less the Fund's expenses and other liabilities.

While an investment in the Shares is not a direct investment in the Fund Components, the Shares are designed to provide investors with a cost-effective and convenient way to gain investment exposure to the digital assets held by the Fund. Generally speaking, a substantial direct investment in the Fund Components may require expensive and sometimes complicated arrangements in connection with the acquisition, security and safekeeping of the Fund Components and may involve the payment of substantial fees to acquire such Fund Components from third-party facilitators through cash payments of U.S. dollars. Because the value of the Shares is correlated with the value of Fund Components held by the Fund, it is important to understand the investment attributes of, and the market for, the Fund Components.

The Fund uses the Digital Asset Reference Rate of each Fund Component to calculate its NAV, which is the aggregate value, expressed in U.S. dollars, of the Fund's assets, less the U.S. dollar value of the Fund's expenses and other liabilities calculated in the manner set forth under "Valuation of Fund Components and Determination of NAV." "NAV per Share" is calculated by dividing NAV by the number of Shares then outstanding.

Valuation of the Digital Assets and Determination of NAV

The following is a description of the material terms of the LLC Agreement as it relates to valuation of the Fund digital assets and the NAV calculations.¹⁷

At 4:00 p.m., New York time, on each business day or as soon thereafter as practicable, the Manager will evaluate the digital assets held by the Fund and calculate and publish the NAV of the Fund. To calculate the NAV, the Manager will:

1. For each Fund Component then held by the Fund:
 - a. Determine the Digital Asset Reference Rate for the Fund Component as of such business day;
 - b. Multiply the Digital Asset Reference Rate by the aggregate number of tokens of the Fund Component held by the Fund as of 4:00 p.m., New York time, on the immediately preceding business day;
 - c. Add the U.S. dollar value of the number of tokens of the Fund Component receivable under pending creation orders, if any, as calculated by

multiplying the applicable Fund Component Basket Amount ¹⁸ by the applicable Digital Asset Reference Rate, and multiplying the result by the number of Baskets pending under such pending creation orders; and

d. Subtract the U.S. dollar value of the number of tokens of the Fund Component to be distributed under pending redemption orders, if any, as calculated by multiplying the applicable Fund Component Basket Amount by the applicable Digital Asset Reference Rate, and multiplying the result by the number of Baskets pending under such pending redemption orders;¹⁹

2. Calculate the sum of the resulting U.S. dollar values for all Fund Components then held by the Fund, as determined pursuant to paragraph 1 above;

3. Add (i) the amount of U.S. dollars then held by the Fund plus (ii) the amount of any U.S. dollars to be received by the Fund in connection with any pending creations;

4. Subtract the amount of any U.S. dollars to be distributed under pending redemption orders;

5. Subtract the U.S. dollar amount of accrued and unpaid Additional Fund Expenses, if any;²⁰

¹⁸ "Fund Component Basket Amount" means, as of any trade date, the amount of tokens of such Fund Component required to be delivered in connection with each Creation Basket, as determined by dividing the amount of tokens of such Fund Component held by the Fund at 4:00 p.m., New York time, on such trade date, after deducting the applicable Fund Component Aggregate Liability Amount (defined below), by the number of Shares outstanding at such time (the quotient so obtained calculated to one one-hundred-millionth (*i.e.*, carried to the eighth decimal place)) and multiplying the quotient so obtained for the Fund Component by 100. "Fund Component Aggregate Liability Amount" means for any Fund Component and any trade date, an amount of tokens of such Fund Component equal to the sum of (x) all accrued but unpaid Fund Component Fee Amounts for such Fund Component as of 4:00 p.m., New York time, on such trade date and (y) the Fund Component Expense Amount as of 4:00 p.m., New York time, on such trade date.

¹⁹ "Baskets" and "Basket Amount" have the meanings set forth in "Creation and Redemption of Shares" below.

²⁰ "Additional Fund Expenses" are any expenses incurred by the Fund in addition to the Manager's Fee that are not Manager-paid expenses, including, but not limited to, (i) taxes and governmental charges, (ii) expenses and costs of any extraordinary services performed by the Manager (or any other service provider) on behalf of the Fund to protect the Fund or the interests of shareholders, (iii) any indemnification of the Custodian or other agents, service providers or counterparties of the Fund, (iv) the fees and expenses related to the listing, quotation or trading of the Shares on any marketplace or other alternative trading system, as determined by the Manager, on which the Shares may then be listed, quoted or traded, including but not limited to, NYSE Arca, Inc. (including legal, marketing and audit fees and expenses) to the

Continued

¹⁴ The Manager's Fee means a fee, payable in the Fund Components then held by the Fund in proportion to such Fund Components' respective weightings, which accrues daily in U.S. dollars at an annual rate of currently 2.5%, but which will be lowered in connection with the Fund becoming an ETP, of the NAV Fee Basis Amount of the Fund as of 4:00 p.m., New York time, on each day, provided that for a day that is not a business day, the calculation of the Manager's Fee will be based on the NAV Fee Basis Amount from the most recent business day, reduced by the accrued and unpaid Manager's Fee for such most recent business day and for each day after such most recent business day and prior to the relevant calculation date. The "NAV Fee Basis Amount" is calculated in the manner set forth under "Valuation of Fund Components and Determination of NAV" below.

¹⁵ Neither the Fund, nor the Manager, nor the Custodian, nor any other person associated with the Fund will, directly or indirectly, engage in action where any portion of the Fund Components becomes subject to proof-of-stake validation or is used to earn additional Fund Components or generate income or other earnings.

¹⁶ The Fund is a passive entity that is managed and administered by the Manager and does not have any officers, directors or employees. The Manager will retain limited discretion to exclude digital assets from the Fund Components only in certain rules-based circumstances, as further discussed below.

¹⁷ While the Manager uses the terminology "NAV" in this filing, the term used in the LLC Agreement is "Digital Asset Holdings."

6. Subtract the U.S. dollar value of the accrued and unpaid Manager's Fee as of 4:00 p.m., New York time on the immediately preceding business day (the amount derived from steps 1 through 7, the "NAV Fee Basis Amount"); and

7. Subtract the U.S. dollar value of the accrued and unpaid Manager's Fee that accrues for such business day, as calculated based on the NAV Fee Basis Amount for such business day.

Notwithstanding the foregoing, in the event that the Manager determines that the primary methodology used to determine any of the Digital Asset Reference Rates is not an appropriate basis for valuation of the Fund's digital assets, the Manager will utilize the cascading set of rules as described in "Fund Valuation of Fund Components" below.

Background on Fund Components ²¹

Bitcoin and the Bitcoin Network

Bitcoin is a digital asset that is created and transmitted through the operations of the peer-to-peer Bitcoin network, a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin network allows people to exchange tokens of value, called Bitcoin, which are recorded on a public transaction ledger known as a blockchain. Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on Digital Asset Markets that trade Bitcoin or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin network was initially contemplated in a white paper that also described Bitcoin and the operating software to govern the Bitcoin network. The white paper was purportedly authored by Satoshi Nakamoto. However, no individual with that name has been reliably identified as Bitcoin's creator, and the general consensus is that the name is a pseudonym for the actual inventor or inventors. The first Bitcoins were created in 2009 after Nakamoto released the Bitcoin network source code (the software and protocol that created and launched the Bitcoin

network). The Bitcoin network has been under active development since that time by a group of engineers known as core developers. The core developers are able to access, and can alter, the Bitcoin network source code and, as a result, they are responsible for quasi-official releases of updates and other changes to the Bitcoin network's source code. The release of updates to the Bitcoin network's source code does not guarantee that the updates will be automatically adopted. Users and miners must accept any changes made to the Bitcoin source code by downloading the proposed modification of the Bitcoin network's source code. A modification of the Bitcoin network's source code is effective only with respect to the Bitcoin users and miners that download it. If a modification is accepted by only a percentage of users and miners, a division in the Bitcoin network will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a "fork."

Core development of the Bitcoin network source code has increasingly focused on modifications of the Bitcoin network protocol to increase speed and scalability and also allow for non-financial, next generation uses. For example, following the recent activation of Segregated Witness on the Bitcoin network, an alpha version of the Lightning network was released. The Lightning network is an open-source decentralized network that enables instant off-blockchain transfers of the ownership of Bitcoin without the need of a trusted third party. The system utilizes bidirectional payment channels that consist of multi-signature addresses. One on-blockchain transaction is needed to open a channel and another on-blockchain transaction can close the channel. Once a channel is open, value can be transferred instantly between counterparties who are engaging in real Bitcoin transactions without broadcasting them to the Bitcoin network. New transactions will replace previous transactions and the counterparties will store everything locally as long as the channel stays open to increase transaction throughput and reduce computational burden on the Bitcoin network. Other efforts include increased use of smart contracts and distributed registers built into, built atop or pegged alongside the Bitcoin blockchain. For example, the white paper for Blockstream, an organization that includes core developer Pieter Wuille, calls for the use of "pegged sidechains" to develop programming

environments that are built within Bitcoin blockchain ledgers that can interact with and rely on the security of the Bitcoin network and the Bitcoin blockchain, while remaining independent from them. Open-source projects such as RSK are a manifestation of this concept and seek to create the first open-source, smart contract platform built on the Bitcoin blockchain to enable automated, condition-based payments with increased speed and scalability. The Fund's activities will not directly relate to such projects, though such projects may utilize Bitcoin as tokens for the facilitation of their non-financial uses, thereby potentially increasing demand for Bitcoin and the utility of the Bitcoin network as a whole. Conversely, projects that operate and are built within the blockchain may increase the data flow on the Bitcoin network and could either "bloat" the size of the Bitcoin blockchain or slow confirmation times. At this time, such projects remain in early stages and have not been materially integrated into the Bitcoin blockchain or the Bitcoin network.

The supply of new Bitcoin is mathematically controlled so that the number of Bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of Bitcoin awarded for solving a new block is automatically halved after every 210,000 blocks are added to the blockchain. Currently, the fixed reward for solving a new block is 3.125 Bitcoin per block and this is expected to decrease by half to become 1.5625 Bitcoin after the next 210,000 blocks have entered the Bitcoin Network, which is expected to be mid-2028. This deliberately controlled rate of Bitcoin creation means that the number of Bitcoin in existence will increase at a controlled rate until the number of Bitcoin in existence reaches the pre-determined 21 million Bitcoin. As of June 30, 2024, approximately 19.7 million Bitcoins were outstanding and the date when the 21 million Bitcoin limitation will be reached is estimated to be the year 2140.

Ether and the Ethereum Network

Ether is a digital asset that is created and transmitted through the operations of the peer-to-peer "Ethereum Network," a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Ethereum Network, the infrastructure of which is collectively maintained by a decentralized user base. The Ethereum Network allows people to exchange tokens of value, called Ether, which are recorded on a public transaction ledger

extent exceeding \$600,000 in any given fiscal year and (v) extraordinary legal fees and expenses, including any legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters.

²¹ The description of the Fund Components in this section, which reflects the Fund Components as of the date of this filing, was provided by the Manager and is based on the Annual Report.

known as a blockchain. Ether can be used to pay for goods and services, including computational power on the Ethereum Network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on “Digital Asset Markets”²² or in individual end-user-to-end-user transactions under a barter system.

Furthermore, the Ethereum Network also allows users to write and implement smart contracts—that is, general-purpose code that executes on every computer in the network and can instruct the transmission of information and value based on a sophisticated set of logical conditions. Using smart contracts, users can create markets, store registries of debts or promises, represent the ownership of property, move funds in accordance with conditional instructions and create digital assets other than Ether on the Ethereum Network. Smart contract operations are executed on the Ethereum blockchain in exchange for payment of Ether. The Ethereum Network is one of a number of projects intended to expand blockchain use beyond just a peer-to-peer money system.

The Ethereum Network went live on July 30, 2015.

Smart Contracts and Development on the Ethereum Network

Smart contracts are programs that run on a blockchain that can execute automatically when certain conditions are met. Smart contracts facilitate the exchange of anything representative of value, such as money, information, property, or voting rights. Using smart contracts, users can send or receive digital assets, create markets, store registries of debts or promises, represent ownership of property or a company, move funds in accordance with conditional instructions and create new digital assets.

Development on the Ethereum Network involves building more complex tools on top of smart contracts, such as decentralized apps (“DApps”); organizations that are autonomous,

known as decentralized autonomous organizations (“DAOs”); and entirely new decentralized networks. For example, a company that distributes charitable donations on behalf of users could hold donated funds in smart contracts that are paid to charities only if the charity satisfies certain pre-defined conditions.

Moreover, the Ethereum Network has also been used as a platform for creating new digital assets and conducting their associated initial coin offerings. As of March 31, 2024, a majority of digital assets were built on the Ethereum Network, with such assets representing a significant amount of the total market value of all digital assets.

More recently, the Ethereum Network has been used for decentralized finance (“DeFi”) or open finance platforms, which seek to democratize access to financial services, such as borrowing, lending, custody, trading, derivatives and insurance, by removing third-party intermediaries. DeFi can allow users to lend and earn interest on their digital assets, exchange one digital asset for another and create derivative digital assets such as stablecoins, which are digital assets pegged to a reserve asset such as fiat currency. Over the course of 2023, between \$20 billion and \$30 billion worth of digital assets were locked up as collateral on DeFi platforms on the Ethereum Network.²³

SOL and the Solana Network

The Solana protocol introduced the Proof-of-History (“PoH”) consensus mechanism as an alternative to Proof-of-Stake (“PoS”) blockchains like Ethereum and Proof-of-Work (“PoW”) blockchains like Bitcoin.²⁴ PoH is a consensus mechanism that automatically orders on-chain transactions by creating a historical record that proves an event has occurred at a specific moment in time. PoH is intended to provide a transaction processing speed and capacity advantage over traditional PoW and PoS networks, which rely on sequential production of blocks and can lead to delays caused by validator confirmations.

The Solana protocol was first conceived by Anatoly Yakovenko in a 2017 whitepaper. Development of the Solana network is overseen by the

Solana Foundation, a Swiss non-profit organization, and Solana Labs, Inc., a Delaware corporation, which administered the original network launch and token distribution. Smart contract operations are executed on the Solana blockchain in exchange for payment of SOL.

XRP and the XRP Network

XRP is a digital asset that was created by Chris Larsen, Jed McCaleb, Arthur Britto and David Schwartz (the “XRP Creators”) in 2012. Built out of the frustrations of Bitcoin’s utility for payments, the XRP ledger (the ledger to which XRP is native) is designed to be a global real-time payment and settlement system. The XRP Creators developed this unique digital asset to solve the scalability concerns that they believed were inherent in the structure of Bitcoin. In particular, XRP was created to improve the efficiency of payments. To this end, the open source code (available at <https://github.com/ripple/rippled/>) was designed to maximize speed, scalability, and stability.

For example, the XRP ledger can accommodate 4,400 transactions per second. This is, in part, because XRP is not mined like Bitcoin, but is designed for the ledgers to close in seconds based on a system of consensus. Further, because of the consensus methodology underlying the XRP design, network transaction fees are substantially lower than Bitcoin, typically less than \$0.01.

Given the unique qualities of XRP and the natural suitability of this digital asset to solve the friction experience with payments, the XRP Creators started a company, calling it Ripple, to further develop the ecosystem around XRP and build software solutions to address the friction in sending, processing, and sourcing liquidity for global payments. Thus, the company, Ripple, began as, and continues to be, a payments software company. Today, Ripple is focused on designing and deploying state-of-the-art and industry-leading software to enable banks and financial institutions to more easily effect cross-border payments. For maximum efficiency, Ripple’s software can integrate XRP to solve liquidity and value transfer challenges.

AVAX and the Avalanche Network

AVAX is a digital asset that is created and transmitted through the operations of the peer-to-peer Avalanche network, a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Avalanche network, the infrastructure of which is collectively

²² A “Digital Asset Market” is a “Brokered Market,” “Dealer Market,” “Principal-to-Principal Market” or “Exchange Market” (referred to as “Trading Platform Markets” in this proposal), as each such term is defined in the Financial Accounting Standards Board Accounting Standards Codification Master Glossary. The “Digital Asset Trading Platform Market” is the global trading platform market for the trading of digital assets, which consists of transactions on electronic Digital Asset Trading Platforms. A “Digital Asset Trading Platform” is an electronic marketplace where trading platform participants may trade, buy and sell digital assets based on bid-ask trading. The largest Digital Asset Trading Platforms are online and typically trade on a 24-hour basis, publishing transaction price and volume data.

²³ DeFiLlama, “Ethereum Total Value Locked,” <https://defillama.com/chain/Ethereum>.

²⁴ Neither the Fund, nor the Manager, nor the Custodian, nor any other person associated with the Fund will, directly or indirectly, engage in action where any portion of the Fund’s Fund Components becomes subject to proof-of-stake validation or is used to earn additional Fund Components or generate income or other earnings.

maintained by a decentralized user base. The Avalanche network allows people to exchange tokens of value, called AVAX, which are recorded on a public transaction ledger known as a blockchain. AVAX can be used to pay for goods and services, including computational power on the Avalanche network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset exchanges or in individual end-user-to-end-user transactions under a barter system. Furthermore, the Avalanche network was designed to allow users to write and implement smart contracts—that is, general-purpose code that executes on every computer in the network and can instruct the transmission of information and value based on a sophisticated set of logical conditions. Using smart contracts, users can create markets, store registries of debts or promises, represent the ownership of property, move funds in accordance with conditional instructions and create digital assets other than AVAX on the Avalanche network. Smart contract operations are executed on the Avalanche blockchain in exchange for payment of AVAX. Like the Ethereum Network, the Avalanche network is one of a number of projects intended to expand blockchain use beyond just a peer-to-peer money system.

The Avalanche network uses a variation of a proof-of-stake consensus protocol. Unlike with other blockchains, whereby every validator node validates every transaction, each Avalanche validator is only required to validate what is known as the “Primary Network.” The Primary Network in turn secures the following three blockchains, which are each dedicated to a specific use and, together with the Primary Network, comprise the core Avalanche infrastructure: the Exchange (X) Chain, on which AVAX and other assets exist and are traded; the Platform (P) Chain, which coordinates validators and creates subnets (as defined below); and the Contract (C) Chain, which executes smart contracts.

Whereas all validators are required to validate the Primary Network and the three blockchains described above, active validators of the Primary Network may additionally elect to validate certain non-core blockchains (*i.e.*, blockchains that are not fundamental to or necessary for the Avalanche Network to operate) of the Avalanche Platform. Avalanche uses a dynamic set of

validators to validate the non-core blockchains (each such set of validators, a “subnet”). This integration functionality is intended to allow Avalanche users to tokenize and transact in any digital asset. Avalanche is reportedly one of the fastest networks when measured by transaction time-to-finality at relatively low transaction costs. The Avalanche Network was founded by Professor Emin Gün Sirer, a professor at Cornell University, and launched in September 2020.

Custody of the Fund Components

Digital assets and digital asset transactions are recorded and validated on blockchains, the public transaction ledgers of a digital asset network. Each digital asset blockchain serves as a record of ownership for all of the units of such digital asset, even in the case of certain privacy-preserving digital assets, where the transactions themselves are not publicly viewable. All digital assets recorded on a blockchain are associated with a public blockchain address, also referred to as a digital wallet. Digital assets held at a particular public blockchain address may be accessed and transferred using a corresponding private key.

Key Generation

Public addresses and their corresponding private keys are generated by the Custodian in secret key generation ceremonies at secure locations inside faraday cages, which are enclosures used to block electromagnetic fields and thus mitigate against attacks. The Custodian uses quantum random number generators to generate the public and private key pairs.

Once generated, private keys are encrypted, separated into “shards,” and then further encrypted. After the key generation ceremony, all materials used to generate private keys, including computers, are destroyed. All key generation ceremonies are performed offline. No party other than the Custodian has access to the private key shards of the Fund, including the Fund itself.

Key Storage

Private key shards are distributed geographically in secure vaults around the world, including in the United States. The locations of the secure vaults may change regularly and are kept confidential by the Custodian for security purposes.

The “Digital Asset Account” is a segregated custody account controlled and secured by the Custodian to store private keys, which allows for the transfer of ownership or control of the Fund’s Fund Components on the Fund’s behalf. The Digital Asset Account uses offline storage, or “cold storage,” mechanisms to secure the Fund’s private keys. The term cold storage refers to a safeguarding method by which the private keys corresponding to digital assets are disconnected and/or deleted entirely from the internet. Cold storage of private keys may involve keeping such keys on a non-networked (or “air-gapped”) computer or electronic device or storing the private keys on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus, paper, or a metallic object). A digital wallet may receive deposits of digital assets but may not send digital assets without use of the digital assets’ corresponding private keys. In order to send digital assets from a digital wallet in which the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into an online, or “hot,” digital asset software program to sign the transaction, or the unsigned transaction must be transferred to the cold server in which the private keys are held for signature by the private keys and then transferred back to the online digital asset software program. At that point, the user of the digital wallet can transfer its digital assets.

Security Procedures

The Custodian is the custodian of the Fund’s private keys (which, as noted above, facilitate the transfer of ownership or control of the Fund Components) in accordance with the terms and provisions of the custodian agreement by and between the Custodian, the Manager and the Fund (the “Custodian Agreement”). Transfers from the Digital Asset Account require certain security procedures, including, but not limited to, multiple encrypted private key shards, usernames, passwords and 2-step verification. Multiple private key shards held by the Custodian must be combined to reconstitute the private key to sign any transaction in order to transfer the Fund’s assets. Private key shards are distributed geographically in secure vaults around the world, including in the United States.

As a result, if any one secure vault is ever compromised, this event will have no impact on the ability of the Fund to access its assets, other than a possible delay in operations, while one or more of the other secure vaults is used instead. These security procedures are intended to remove single points of failure in the protection of the Fund's assets.

Transfers of Fund Components to the Digital Asset Account will be available to the Fund once processed on the relevant blockchain.

Subject to obtaining regulatory approval to operate a redemption program and authorization of the Manager, the process of accessing and withdrawing Fund Components from the Fund to redeem a Basket by an Authorized Participant²⁵ will follow the same general procedure as transferring Fund Components to the Fund to create a Basket by an Authorized Participant, only in reverse.

The Manager will maintain ownership and control of the Fund Components in a manner consistent with good delivery requirements for spot commodity transactions.

Fund Component Value

Digital Asset Trading Platform Valuation

According to the Annual Report, the value of digital assets is determined by the value that various market participants place on digital assets through their transactions. The most common means of determining the value of a digital asset is by surveying one or more Digital Asset Trading Platforms where the digital asset is

traded publicly and transparently (*e.g.*, Coinbase, Kraken, LMAX Digital, *Crypto.com*, and Bitstamp). Additionally, there are over-the-counter dealers or market makers that transact in digital assets.

Digital Asset Trading Platform Public Market Data

On each online Digital Asset Trading Platform, digital assets are traded with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or Euro, or by the digital asset Bitcoin. Over-the-counter dealers or market makers do not typically disclose their trade data.

As of June 30, 2024, the Digital Asset Trading Platforms included in the Digital Asset Reference Rates were Coinbase, Kraken, LMAX Digital, *Crypto.com*, and Bitstamp. As further described below, the Manager and the Fund reasonably believe each of these Digital Asset Trading Platforms are in material compliance with applicable U.S. federal and state licensing requirements and maintain practices and policies designed to comply with know-your-customer ("KYC") and anti-money-laundering ("AML") regulations.

Bitstamp: A U.K.-based trading platform registered as a money services business ("MSB") with the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") and licensed as a virtual currency business under the New York State Department of Financial Services ("NYDFS") BitLicense, as well as a money transmitter in various U.S. states.

Coinbase: A U.S.-based trading platform registered as an MSB with

FinCEN and licensed as a virtual currency business under the NYDFS BitLicense, as well as a money transmitter in various U.S. states.

Crypto.com: A Singapore-based trading platform registered as an MSB with FinCEN and licensed as a money transmitter in various U.S. states. *Crypto.com* does not hold a BitLicense.

Kraken: A U.S.-based trading platform registered as an MSB with FinCEN and licensed as a money transmitter in various U.S. states. Kraken does not hold a BitLicense.

LMAX Digital: A U.K.-based trading platform registered as a broker with the Financial Conduct Authority. LMAX Digital does not hold a BitLicense.

Currently, there are several Digital Asset Trading Platforms operating worldwide, and online Digital Asset Trading Platforms represent a substantial percentage of buying and selling activity and provide the most data with respect to prevailing valuations of the Fund Components. These trading platforms include established trading platforms such as those included in the Digital Asset Reference Rates, which provide a number of options for buying and selling the Fund Components. The below tables reflect the trading volume in each Fund Component and market share²⁶ of the Fund Component-U.S. dollar trading pairs of each of the Digital Asset Trading Platforms included in the Digital Asset Reference Rates as of June 30, 2024 (collectively, "Constituent Trading Platforms"), using data reported by the Reference Rate Provider from February 1, 2018 (the inception of the Fund's operations) to June 30, 2024:

BITCOIN TRADING PLATFORMS INCLUDED IN THE DIGITAL ASSET

Reference rate as of June 30, 2024	Volume (Bitcoin)	Market share (%)
Coinbase	37,581,691	30.39

²⁵ "Authorized Participant" has the meaning set forth in "Creation and Redemption of Shares" below.

²⁶ Bitcoin market share is calculated using trading volume (in Bitcoins) for certain Digital Asset Trading Platforms, including Coinbase, LMAX Digital and *Crypto.com*, as well as certain other large U.S.-dollar denominated Digital Asset Trading Platforms that were not included in the Digital Asset Reference Rate as of June 30, 2024, including Binance.US (data included from April 1, 2020 through July 14, 2023), Bitfinex, Bitflyer (data included from December 24, 2018), Bitstamp, Bittrex (data included from July 31, 2018 through December 3, 2023), Bullish (data included from March 31, 2024), Cboe Digital (data included from October 1, 2020 through December 31, 2024), FTX.US (data included from April 1, 2022 through November 12, 2022), Gemini, iBit, Kraken, LakeBTC (data included from January 27, 2019

through May 6, 2021), HitBTC (data included from April 1, 2019 through March 31, 2020) and OKCoin (data included since inception through December 31, 2022). Ether market share is calculated using trading volume (in Ether) for certain Digital Asset Trading Platforms, including Coinbase, LMAX Digital and *Crypto.com*, as well as certain other large U.S.-dollar denominated Digital Asset Trading Platforms that were not included in the Digital Asset Reference Rate as of June 30, 2024, including Bitstamp, Binance.US (data included from April 1, 2020 through October 14, 2023), Bittrex (data included from July 31, 2018 through December 3, 2023), Bitfinex, Bitflyer (data included from November 13, 2022), Cboe Digital (data included from October 1, 2020 through December 31, 2023), Gemini, HitBTC (data included from June 13, 2019 through March 31, 2020), iBit (data included from December 27, 2018), Kraken, OKCoin (data included from December 25, 2018 through December 31, 2022) and FTX.US (data included

from July 1, 2021 through November 12, 2022). SOL market share is calculated using trading volume (in SOL) provided by the Reference Rate Provider for certain Digital Asset Exchanges, including Coinbase, Kraken and LMAX Digital, as well as certain other large U.S. dollar-denominated Digital Asset Trading Platforms that were not included in the Digital Asset Reference Rate as of June 30, 2023, including Binance.US (data included from October 1, 2021 through June 13, 2023), Bitfinex, Bitstamp (data included from January 1, 2023), Bittrex (data included from January 1, 2023 through December 3, 2023), *Crypto.com* (data included from October 31, 2022), Gate.io (data included from January 1, 2023 through July 2, 2023), Gemini (data included from March 1, 2022), iBit (data included from November 6, 2022), OKCoin (data included from March 22, 2022 through December 8, 2022), and FTX.US (data included from October 1, 2021 through November 10, 2022).

BITCOIN TRADING PLATFORMS INCLUDED IN THE DIGITAL ASSET—Continued

Reference rate as of June 30, 2024	Volume (Bitcoin)	Market share (%)
LMAX Digital	9,763,031	7.90
Crypto.com	1,403,569	1.14
Total Bitcoin-U.S. Dollar trading pair	48,748,291	39.43

ETHER TRADING PLATFORMS INCLUDED IN THE DIGITAL ASSET

Reference rate as of June 30, 2024	Volume (Ether)	Market share (%)
Coinbase	422,567,767	34.84
LMAX Digital	73,620,833	6.07
Crypto.com	34,980,599	2.88
Total Ether-U.S. Dollar trading pair	531,169,199	43.79

SOL TRADING PLATFORMS INCLUDED IN THE DIGITAL ASSET

Reference rate as of June 30, 2024	Volume (SOL)	Market share (%)
Coinbase	1,696,262,917	66.32
Kraken	405,019,540	15.83
LMAX Digital	25,673,612	1.00
Total SOL-U.S. Dollar trading pair	2,126,956,069	83.15

AVAX TRADING PLATFORMS INCLUDED IN THE DIGITAL ASSET

Reference rate as of June 30, 2024	Volume (AVAX)	Market share (%)
Coinbase	769,187,967	80.19
Kraken	79,459,277	8.28
Crypto.com	15,247,633	1.59
Total AVAX-U.S. Dollar trading pair	863,894,877	90.06

XRP TRADING PLATFORMS INCLUDED IN THE DIGITAL ASSET

Reference rate as of June 30, 2024	Volume (XRP)	Market share (%)
Bitstamp	106,620,277,322	35.85
Coinbase	72,598,818,507	24.41
Kraken	37,254,406,142	12.53
Total XRP-U.S. Dollar trading pair	216,473,501,971	72.79

The domicile, regulation, and legal compliance of the Digital Asset Trading Platforms included in the Digital Asset Reference Rates vary. Information regarding each Digital Asset Trading Platform may be found, where available, on the websites for such Digital Asset Trading Platforms, among other places.

The Index and the Digital Asset Reference Rates

Since July 1, 2022, the digital assets held by the Fund have consisted of the digital assets that make up the CoinDesk Large Cap Select Index (the “DLCS” or the “Index”), as rebalanced from time to time, subject to the Manager’s discretion to exclude individual digital assets in certain rules-based circumstances as further described in the “Index

Components Compared to Fund Components—Exclusion Criteria”

below. The DLCS is designed and managed by the Index Provider.

The digital assets that make up the DLCS (the “Index Components”) are drawn from the universe (the “Index Universe”) of investable digital assets meeting the following criteria: (i) the digital asset must be ranked in the top 250 in the Index Provider’s Digital Asset

Classification Standard (“DACs”) report; (ii) custodian services for the digital asset must be available from Coinbase Custody, a division of Coinbase Global Inc., and must be accessible to U.S. investors; (iii) the digital asset must not be a stablecoin or categorized as a meme coin as determined by the Index Provider; and (iv) the digital asset must have been listed on a Constituent Trading Platform for a minimum of 30 days leading up to the Index Rebalancing Period (as defined below).

The Index Provider applies market capitalization, liquidity and data availability criteria to the digital assets in the Index Universe in order to arrive at between five and ten digital assets that, in the Index Provider’s judgment, represent a diversified benchmark for the largest and most liquid digital assets in the digital asset market (the “Large Cap sector”), rather than exposure to all digital assets in the Index Universe. The respective weightings of the Index Components within the DLCS are determined by the Index Provider based on market capitalization criteria and are referred to as the “Index Weightings.” The process followed by the Index Provider to determine the Index Universe, the Index Components and their respective Index Weightings is referred to as the “DLCS Methodology.”

The Fund seeks to (i) provide large cap coverage of the digital asset market; (ii) minimize transaction costs through low turnover of the Fund’s portfolio; and (iii) create a portfolio that could be replicated through direct purchases in the Digital Asset Market. Because Index Components target the Large Cap sector and are included in the DLCS in accordance with market capitalization and liquidity criteria, as of June 30, 2024, the DLCS covered approximately 83% of the market capitalization of the entire digital asset market, excluding stablecoins and meme coins, based on data provided by the Index Provider calculated using data from CoinMarketCap.com. Additionally, as of June 30, 2024, the DLCS covered approximately 92% of the market capitalization of the Index Universe.

The Fund Components consist of the Index Components except that the Manager may determine to exclude a particular Index Component in its discretion under certain rules-based circumstances (including to comply with the requirements of Rule 8.800–E). The weightings of each Fund Component (the “Weightings”) are generally expected to be the same as the Index Weightings except when the Manager determines to exclude one or more digital assets from the Fund

Components, in which case the Weightings are generally expected to be calculated proportionally to the respective Index Weightings for the remaining Index Components. The Fund uses the DLCS Methodology, described further below, to construct its portfolio.

The Manager will ensure that the Fund’s holdings are consistent with the requirements of Rule 8.800–E(c)(1), including by working with the Reference Rate Provider to modify the DLCS such that at least 90% of the Weightings will consist of commodities and/or digital assets concerning which the Exchange may obtain information via the ISG from other members of the ISG or via CSSA.²⁷

Eligibility and Weighting

Under the DLCS Methodology and subject to the below, a digital asset included in the Index Universe will generally be eligible for inclusion in the DLCS as an Index Component, and thus the Fund’s portfolio as a Fund Component, if it satisfies market capitalization, liquidity and data availability metrics determined by the Index Provider. Digital assets will be included in the DLCS on a market capitalization-weighted basis. For example, a digital asset with a larger market capitalization will have a higher representation in the DLCS, and thus the Fund’s portfolio (unless the Manager excludes the digital asset from the Fund). Market capitalization refers to a digital asset’s market value, as determined by multiplying the number of tokens of such digital asset in circulation by the market price of a token of such digital asset. The market price per token of a Fund Component will be determined by reference to the applicable Digital Asset Reference Rate. The market capitalization of any digital assets not in the DLCS, and therefore not held by the Fund, will be determined based on data that the Index Provider obtains directly from trading platforms and other service providers. Because the Fund creates Shares in exchange for Fund Components on a daily basis, the market capitalization of each Fund Component is calculated, and its Weighting therefore fluctuates, daily in accordance with changes in the market price of such Fund Components.

The DLCS, and therefore the Fund, is rebalanced on a quarterly basis according to the DLCS Methodology during a period beginning 14 days before the second business day of each

January, April, July, and October (each such period, an “Index Rebalancing Period”).

Inclusion of New Fund Components

In order for a new digital asset to qualify for inclusion in the DLCS, and thus the Fund’s portfolio during a period during which the Manager reviews for rebalancing the Fund’s portfolio in accordance with the policies and procedures set forth in the Annual Report (the “Fund Rebalancing Period”), it must be included in the Index Universe and be among the 20 highest ranked digital assets in the Index Universe by market capitalization. Such 20 digital assets are referred to as the “Selection Universe.” In order for a digital asset in the Selection Universe to be included in the Fund’s portfolio during a Fund Rebalancing Period, such digital asset must (i) have a current market capitalization that is at least 1.2 times the median current market capitalization of the Selection Universe; (ii) have a median daily value traded (“MDVT”) for the Index Rebalancing Period that is at least 1.2 times the MDVT of the Selection Universe for the Index Rebalancing Period; (iii) trade on at least three Constituent Trading Platforms as of the first day of the Index Rebalancing Period; (iv) have been included in the Selection Universe during the Index Rebalancing Period (as defined below) for the prior quarter; (v) the inclusion of such new digital asset will not result in the Fund holding more than ten Fund Components; and (vi) such digital asset must have a minimum weight of 1.0% (collectively, the “Index Inclusion Criteria”). In the event that more than ten digital assets meet the Index Inclusion Criteria, the qualifying digital assets will be ranked by current market capitalizations. Those ranked below the top ten will be excluded.

The Index Provider may include a digital asset that does not meet the Index Inclusion Criteria in the DLCS if the Index Components no longer collectively meet the five constituent minimum, at which point the Index Provider would first relax the market capitalization and liquidity requirements included in the Index Inclusion Criteria to those included in the “Removal Criteria” described below and include the next largest digital assets by current market capitalization that met such requirements, until there were five Index Components. If after relaxing such requirements, there were still fewer than five Index Components, the Index Provider would further relax the requirements and include the next largest digital assets by current market

²⁷ The Manager notes that, as of the date of this filing, the Fund Components that meet this standard are Bitcoin and Ether, which make up approximately 76% and 18% of the Index, respectively.

capitalization until there were five Index Components.²⁸

Removal of Existing Fund Components

During each Index Rebalancing Period, a digital asset will be removed as an Index Component from the DLCS, and therefore removed from the Fund if it is also a Fund Component, if (i) it is not included in the Selection Universe; (ii) it fails to be listed on at least three Constituent Trading Platforms; (iii) it has a current market capitalization that is less than 1.0 times the median current market capitalization of the Selection Universe; (iv) it has an MDVT for the Index Rebalancing Period that is less than 1.0 times the MDVT of the Selection Universe for the Index Rebalancing Period; or (v) such digital asset has a weight of less than 0.8%, and if its removal would not result in the DLCS holding less than five Index Components (collectively, the “Removal Criteria”).²⁹

Outside of the quarterly Index Rebalancing Period, the Index Provider may remove a digital asset as an Index Component from the DLCS under extraordinary circumstances. For example, if an Index Component is determined to be a “security” under the federal securities laws by the Commission, a federal court or other U.S. government agency, or under such consideration by any U.S. government oversight agency, it would be removed from the DLCS at a date determined and announced by the Index Provider. In the event the Index Provider removes an Index Component outside of the quarterly rebalancing period, the Manager expects the Fund would rebalance and the relevant digital asset would be removed as a Fund Component as soon as practical.

Index Components Compared to Fund Components

The Fund Components consist of the Index Components except when the Manager determines to exclude a particular Index Component in view of one or more of the following criteria (the “Exclusion Criteria”), as determined in the sole discretion of the Manager:

- none or few of the Authorized Participants or service providers has the

ability to trade or otherwise support the digital asset;

- the Manager believes, based on current guidance, that use or trading of the digital asset raises or potentially raises significant governmental, policy or regulatory concerns or is subject or likely subject to a specialized regulatory regime, such as the U.S. federal securities or commodities laws or similar laws in other significant jurisdictions;³⁰

- the digital asset’s underlying code contains, or may contain, significant flaws or vulnerabilities; or
- there is limited or no reliable information regarding, or concerns over the intentions of, the core developers of the digital asset.

The Weightings are generally expected to be the same as the Index Weightings except when one or more digital assets have been excluded from the Fund Components based on the Exclusion Criteria, in which case the Weightings are generally expected to be calculated proportionally to the respective Index Weightings for the remaining Index Components.

The Manager may exclude a digital asset or rebalance the Weighting of an existing Fund Component to the extent its inclusion as a Fund Component or projected Weighting would exceed a threshold that could, in the Manager’s sole discretion, require the Fund to register as an investment company under the Investment Company Act or require the Manager to register as an investment adviser under the Investment Advisers Act.

The Manager will retain discretion to include or exclude individual digital assets from the Fund Components only in certain rules-based circumstances, as described above. Accordingly, the Manager believes that the Fund will be in compliance with Rule 10A–3³¹ under

the Act, as provided by NYSE Arca Rule 5.3–E.

Constituent Trading Platform Selection

According to the Annual Report, the Constituent Trading Platforms used to derive Digital Asset Reference Rates are selected by the Reference Rate Provider utilizing a methodology that is guided by the International Organization of Securities Commissions (“IOSCO”) principles for financial benchmarks. For a trading platform to become a Constituent Trading Platform, it must satisfy the criteria listed below (the “Inclusion Criteria”):

- Sufficient USD or USDC liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform’s eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;³²
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC, AML and other policies designed to comply with relevant regulations that might apply to it;
- Be an exchange that is licensed and able to service investors in one or more of the following jurisdictions: United States, United Kingdom; European Union; Hong Kong; or Singapore
- Offer programmatic spot trading of the trading pair and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.³³

A Digital Asset Trading Platform is removed from the Constituent Trading Platform when it no longer satisfies the criteria for inclusion. The Reference Rate Provider does not currently include data from over-the-counter markets or derivatives platforms among the Constituent Trading Platforms. According to the Annual Report, over-the-counter data is not currently included because of the potential for trades to include a significant premium or discount paid for larger liquidity, which creates an uneven comparison

²⁸ The Manager has not previously sought to include a new Fund Component that does not meet the Index Inclusion Criteria.

²⁹ For example, if a digital asset was not included in the Selection Universe, failed to meet the thresholds in market capitalization and liquidity described above, or had a weight in the Index of less than 0.8%, such digital asset would be removed from the DLCS. However, if its removal would result in the DLCS holding less than five Index Components, it would not be removed.

³⁰ The Manager will determine whether a particular digital asset that is included or eligible for inclusion in the Fund is a security for purposes of the federal securities laws by considering a number of factors, including the various definitions of “security” under the federal securities laws and federal court decisions interpreting elements of these definitions, such as the U.S. Supreme Court’s decisions in the *Howey* and *Reves* cases, as well as reports, orders, press releases, public statements and speeches by the Commission and its staff providing guidance on when a digital asset may be a security for purposes of the federal securities laws. The Manager does not intend to permit the Fund to hold any digital asset that the Manager determines is a security under the federal securities laws, whether that determination is initially made by the Manager itself, or because a federal court upholds an allegation that a digital asset is a security.

³¹ With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Fund relies on the exemption contained in Rule 10A–3(c)(7).

³² “Capital controls” in this context means governmental sanctions that would limit the movement of capital into, or out of, the jurisdiction in which such Digital Asset Trading Platforms operate.

³³ Trading platforms with programmatic trading offer traders an application programming interface that permits trading by sending programmed commands to the trading platform.

relative to more active markets. There is also a higher potential for over-the-counter transactions to not be arms-length, and thus not be representative of a true market price. Digital asset derivative markets are also not currently included, as the markets remain relatively thin. While the Reference Rate Provider has no plans to include data from over-the-counter markets or derivative platforms at this time, the Reference Rate Provider will consider IOSCO principles for financial benchmarks, the management of trading venues of digital asset derivatives and the aforementioned Inclusion Criteria when considering whether to include over-the-counter or derivative platform data in the future.

The Reference Rate Provider and the Manager have entered into the index license agreement, dated as of February 1, 2022 (as amended, the “Index License Agreement”), governing the Manager’s use of the Digital Asset Reference Rates that are Index Prices.³⁴ Pursuant to the terms of the Index License Agreement, the Reference Rate Provider may adjust the calculation methodology for a Digital Asset Reference Rate without notice to, or consent of, the Fund or its shareholders. The Reference Rate Provider may decide to change the calculation methodology to maintain the integrity of the Index Price calculation should it identify or become aware of previously unknown variables or issues with the existing methodology that it believes could materially impact its performance and/or reliability. The Reference Rate Provider has sole discretion over the determination of Digital Asset Reference Rates and may change the methodologies for determining the Digital Asset Reference Rates from time to time. Shareholders

will be notified of any material changes to the calculation methodology or the Digital Asset Reference Rates in the Fund’s current reports and will be notified of all other changes that the Manager considers significant in the Fund’s periodic or current reports. The Manager will determine the materiality of any changes to the Digital Asset Reference Rates on a case-by-case basis, in consultation with external counsel.

Reference Rate Provider may change the trading venues that are used to calculate a Digital Asset Reference Rate or otherwise change the way in which a Digital Asset Reference Rate is calculated at any time. For example, the Reference Rate Provider has scheduled quarterly reviews in which it may add or remove Constituent Trading Platforms that satisfy or fail the criteria described above. While the Reference Rate Provider is not required to publicize or explain the changes or to alert the Manager to such changes, it has historically notified the Fund (and other subscribers to the Index) of any material changes to the Constituent Trading Platforms, including any additions or removals of the Constituent Trading Platforms, in addition to issuing press releases in connection with the same in accordance with its index review and index change communication policies. The Manager will notify investors of any such material event by filing a current report on Form 8-K. Although the Digital Asset Reference Rate methodology is designed to operate without any manual intervention, rare events would justify manual intervention. Intervention of this kind would be in response to non-market-related events, such as the halting of deposits or withdrawals of funds on a Digital Asset Trading Platform, the

unannounced closure of operations on a Digital Asset Trading Platform, insolvency or the compromise of user funds. In the event that such an intervention is necessary, the Reference Rate Provider would issue a public announcement through its website, API and other established communication channels with its clients.

Determination of Digital Asset Reference Rates

Since July 1, 2022, all of the Digital Asset Reference Rates have been Indicative Prices. The Indicative Price is calculated by multiplying the average price on each Constituent Trading Platform by the trading volume on such Constituent Trading Platform for the prior 60 minutes as of 4:00 p.m., New York time, multiplied by the Constituent Trading Platform’s weighting based on trading volume relative to the other Constituent Trading Platforms included in the Reference Rate. Each Constituent Trading Platform is weighted relative to its share of trading volume to the trading volume of all Constituent Trading Platform, meaning that price inputs from Constituent Trading Platforms with higher trading volumes will be weighted more heavily in calculating the Indicative Price than price inputs from Constituent Trading Platforms with lower trading volumes. Price and volume inputs are weighted as received with no further adjustments made to the weighting of each trading platform based on market anomalies observed on a Constituent Trading Platform or otherwise.

For purposes of illustration, outlined below is an example using a limited number of trades.

Venue	Average price	Volume	Notional	Weight (%)	Indicative price contribution
Trading Platform 1	999.12	800	799,296	53.33	532.60
Trading Platform 2	997.23	500	498,615	33.33	332.25
Trading Platform 3	996.65	200	199,330	13.33	132.82
Indicative Price .....	.....	1,500	1,497,241	.....	997.67

The Index Provider may also use Index Prices as the reference rate for an Index Component in the future, and if it does so, then the Manager will use an Index Price for the relevant Fund Component. When a Digital Asset Reference Rate is an Index Price, the Reference Rate Provider applies an algorithm to the trade data used to

determine the Indicative Price. Each Digital Asset Reference Rate’s algorithm is expected to reflect a four-pronged methodology to calculate the Index Price from the Constituent Trading Platforms:

- **Volume Weighting:** Constituent Trading Platforms with greater liquidity receive a higher weighting in each

Digital Asset Reference Rate, increasing the ability to execute against (*i.e.*, replicate) such Digital Asset Reference Rate in the underlying spot markets.

- **Price-Variance Weighting:** Each Digital Asset Reference Rate reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading

³⁴ Upon entering into the Index License Agreement, the Manager and the Reference Rate

Provider terminated the license agreement between the parties dated as of February 28, 2019.

Platforms. As the price at a Constituent Trading Platform diverges from the prices at the rest of the Constituent Trading Platforms, its weight in the Digital Asset Reference Rate consequently decreases.

- *Inactivity Adjustment:* Each Digital Asset Reference Rate algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Reference Rate is gradually reduced until it is de-weighted entirely. Similarly, once trading activity at a Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.

- *Manipulation Resistance:* In order to mitigate the effects of wash trading and order book spoofing, the Digital Asset Reference Rate only includes executed trades in its calculation. Additionally, each Digital Asset Reference Rate only includes Constituent Trading Platforms that charge trading fees in order to attach a real, quantifiable cost to any manipulation attempts.

The Reference Rate Provider re-evaluates the weighting algorithm on a periodic basis, but maintains discretion to change the way in which an Index Price is calculated based on its periodic review or in extreme circumstances. The exact methodology to calculate each Index Price is not publicly available. Still, each Index is designed to limit exposure to trading or price distortion of any individual Digital Asset Trading Platform that experiences periods of unusual activity or limited liquidity by discounting, in real-time, anomalous price movements at individual Digital Asset Trading Platforms.

For the purposes of illustration, outlined below are examples of how the attributes that impact weighting and adjustments in the aforementioned methodology may be utilized to generate an Index Price for a digital asset. The Index Price algorithm, as described above, accounts for manipulation at the outset by only including data from executed trades on Constituent Trading Platforms that charge trading fees. Then, the below-listed elements may impact the weighting of the Constituent Trading Platforms on the Index Price as follows:

- *Volume Weighting:* Each Constituent Trading Platform will be weighted to appropriately reflect the trading volume share of the Constituent Trading Platform relative to all the Constituent Trading Platforms during this same period. For example, assume the Constituent Trading Platforms used

to calculate the Index Price of the digital asset are Coinbase, Kraken, LMAX Digital, and Bitstamp. An average hourly weighting of 67.06%, 14.57%, 11.88%, and 6.49% for Coinbase, Kraken, LMAX Digital, and Bitstamp, respectively, would represent each Constituent Trading Platform's share of trading volume during the same period.

- *Inactivity Adjustment:* Assume that a Constituent Trading Platform represented a 14% weighting on the Index Price of the digital asset, which is based on the per-second calculations of its trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in such Index, and then went offline for approximately two hours. The index algorithm would automatically recognize inactivity and start de-weighting the Constituent Trading Platform at the 3-minute mark and continue to do so over a 7-minute period until its influence was effectively zero, 10 minutes after becoming inactive. As soon as trading activity resumed at the Constituent Trading Platform, the index algorithm would re-weight it to the appropriate weighting based on trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in the Index. Due to the period of inactivity, it would re-weight the Constituent Trading Platform activity to a weight lower than its original weighting—for example, to 12%.

- *Price-Variance Weighting:* The price-variance weighting adjustment is a relative measure of each Constituent Trading Platform versus the cohort of trading platform. The further the price at a trading platform is from the mean price of the cohort, the less influence that trading platform's price will have on the algorithm that produces the Index Price, as the trading platform data is discretely weighted in proportion to their variance from the rest of the trading platforms on a per-second basis and there is no minimum threshold the variance must meet for this adjustment to take place. For example, assume that for a one-hour period, the digital asset's execution prices on one Constituent Trading Platform were trading more than 7% higher than the average execution prices on another Constituent Trading Platform. The algorithm will automatically detect the anomaly (price variance) and reduce that specific Constituent Trading Platform's weighting during that one-hour period, ensuring a reliable spot reference price that is unaffected by the localized event and that is reflective of broader market activity.

Determination of Digital Asset Reference Rates When Indicative Prices and Index Prices Are Unavailable

If the Digital Asset Reference Rate for a Fund Component becomes unavailable, or if the Manager determines in good faith that such Digital Asset Reference Rate does not reflect an accurate price for such Fund Component, then the Manager will, on a best efforts basis, contact the Reference Rate Provider to obtain the Digital Asset Reference Rate directly from the Digital Asset Reference Rate Provider.

If after such contact such Digital Asset Reference Rate remains unavailable or the Manager continues to believe in good faith that such Digital Asset Reference Rate does not reflect an accurate price for the relevant digital asset, the Manager uses the following cascading set of rules to calculate the Digital Asset Reference Rates for that Fund Component.³⁵ For the avoidance of doubt, the Manager will employ the below rules sequentially and in the order as presented below, should one or more specific rule(s) fail:

1. Digital Asset Reference Rate = The price set by the relevant Indicative Price or Index Price as of 4:00 p.m., New York time, on the valuation date.³⁶ If the relevant Indicative Price or Index Price becomes unavailable, or if the Manager determines in good faith that such Indicative Price or Index Price does not reflect an accurate digital asset price, then the Manager will, on a best efforts basis, contact the Reference Rate Provider to obtain the Digital Asset Reference Rate directly from the Reference Rate Provider. If after such contact such Indicative Price or Index Price remains unavailable or the Manager continues to believe in good faith that such Indicative Price or Index Price does not reflect an accurate price for the relevant digital asset, then the Manager will employ the next rule to determine the Digital Asset Reference Rate. There are no predefined criteria to make a good faith assessment and it will be made by the Manager in its sole discretion.

2. Digital Asset Reference Rate = The price set by Coin Metrics Real-Time Rate as of 4:00 p.m., New York time, on the valuation date (the "Secondary Digital Asset Reference Rate"). The Secondary Reference Rate is a real-time reference rate price, calculated using

³⁵ The Manager updated these rules on January 11, 2022.

³⁶ The valuation date is any day for which the value of the Fund Components in the Fund may be calculated utilizing the Digital Asset Reference Rates.

trade data from constituent markets selected by Coin Metrics, Inc. (the “Secondary Reference Rate Provider”). The Secondary Digital Asset Reference Rate is calculated by applying weighted-median techniques to such trade data where half the weight is derived from the trading volume on each constituent market and half is derived from inverse price variance, where a constituent market with high price variance as a result of outliers or market anomalies compared to other constituent markets is assigned a smaller weight. If the Secondary Digital Asset Reference Rate for the relevant Fund Component becomes unavailable, or if the Manager determines in good faith that the Secondary Digital Asset Reference Rate does not reflect an accurate price for such Fund Component, then the Manager will, on a best efforts basis, contact the Secondary Reference Rate Provider to obtain the Secondary Digital Asset Reference Rate directly from the Secondary Reference Rate Provider. If after such contact the Secondary Digital Asset Reference Rate remains unavailable or the Manager continues to believe in good faith that the Secondary Digital Asset Reference Rate does not reflect an accurate price for such Fund Component, then the Manager will employ the next rule to determine the Digital Asset Reference Rate. There are no predefined criteria to make a good faith assessment and it will be made by the Manager in its sole discretion.

3. Digital Asset Reference Rate = The price set by the Fund’s principal market (as defined in the Annual Report) (the “Tertiary Pricing Option”) as of 4:00 p.m., New York time, on the valuation date. The Tertiary Pricing Option is a spot price derived from the relevant principal market’s public data feed that is believed to be consistently publishing pricing information as of 4:00 p.m., New York time, and is provided to the Manager via an application programming interface. If the Tertiary Pricing Option becomes unavailable, or if the Manager determines in good faith that the Tertiary Pricing Option does not reflect an accurate price for such Fund Component, then the Manager will, on a best efforts basis, contact the Tertiary Pricing Provider to obtain the Tertiary Pricing Option directly from the Tertiary Pricing Provider. If after such contact the Tertiary Pricing Option remains unavailable after such contact or the Manager continues to believe in good faith that the Tertiary Pricing Option does not reflect an accurate price for such Fund Component, then the Manager will employ the next rule to determine the Digital Asset Reference

Rate. There are no predefined criteria to make a good faith assessment and it will be made by the Manager in its sole discretion.

4. Digital Asset Reference Rate = The Manager will use its best judgment to determine a good faith estimate of the Digital Asset Reference Rate. There are no predefined criteria to make a good faith assessment and it will be made by the Manager in its sole discretion.

In the event of a fork, the Reference Rate Provider may calculate the Digital Asset Reference Rate based on a digital asset that the Manager does not believe to be the appropriate asset that is held by the Fund.³⁷ In this event, the Manager has full discretion to use a different reference rate provider or calculate the Digital Asset Reference Rate itself using its best judgment.

The Manager may, in its sole discretion, select a different reference rate provider, select a different indicative or index price provided by the Reference Rate Provider, or calculate the Indicative Price or Index Price by using the cascading set of rules set forth above.³⁸

The Structure and Operation of the Fund Protects Investors and Satisfies Commission Requirements for Digital Asset-Based Exchange Traded Products

On January 10, 2024, the Commission approved the listing and trading of shares of the Grayscale Bitcoin Trust (BTC) and Bitwise Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); the Hashdex Bitcoin ETF under NYSE Arca Rule 8.500-E (Trust Units); the iShares Bitcoin Trust and Valkyrie Bitcoin Fund under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and the ARK 21Shares Bitcoin ETF, Invesco Galaxy Bitcoin ETF, VanEck Bitcoin Trust, the WisdomTree Bitcoin Fund, Fidelity Wise Origin Bitcoin Fund, and

³⁷ According to the Annual Report, when a modification is introduced and a substantial majority of users and validators consent to the modification, the change is implemented and the network remains uninterrupted. However, if less than a substantial majority of users and validators consent to the proposed modification, and the modification is not compatible with the software prior to its modification, the consequence would be what is known as a “hard fork”, with one group running the pre-modified software and the other running the modified software. The effect of such a fork would be the existence of two versions of a digital asset running in parallel, yet lacking interchangeability, such as in July 2016 when Ether “forked” into Ether and a new digital asset, Ether Classic.

³⁸ The Manager will provide notice of any such changes in the Fund’s periodic or current reports and, if the Manager makes such a change other than on an ad hoc or temporary basis, the Exchange will file a proposed rule change under Section 19(b) with the Commission.

Franklin Bitcoin ETF under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) (collectively, the “Bitcoin ETPs”).³⁹ In the Bitcoin ETP Approval Order, the Commission found that the proposed rule changes to list the Bitcoin ETPs demonstrated that there were “sufficient ‘other means’ of preventing fraud and manipulation,” including that:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record, including the Commission’s own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].⁴⁰

Similarly, on May 23, 2024, the Commission approved the listing and trading of shares of the Grayscale Ethereum Trust and the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); the iShares Ethereum Trust under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and the VanEck Ethereum Trust, ARK 21Shares Ethereum ETF, Invesco Galaxy Ethereum ETF, Fidelity Ethereum Fund, and the Franklin Ethereum ETF under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) (collectively, the “Ether ETPs”).⁴¹ In the Ether ETP Approval Order, the Commission found that the proposed rule changes to list the Ether ETPs demonstrated that there were

³⁹ Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Bitcoin ETP Approval Order”).

⁴⁰ Bitcoin ETP Approval Order, 89 FR 3009-11.

⁴¹ Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Ether ETP Approval Order”).

“sufficient ‘other means’ of preventing fraud and manipulation,” including that:

[B]ased on the record before the Commission and the correlation analyses in the record, including the Commission’s own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of “significant size” related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ether ETPs].⁴²

The Fund is structured and will operate in a manner materially the same as the Bitcoin ETPs and Ether ETPs and the Fund Components primarily consist of Bitcoin and Ether. Accordingly, the Manager believes that, for the reasons set forth in the Bitcoin ETP Approval Order and Ether ETP Approval Order, listing and trading Shares of the Fund would be consistent with the requirements of the Act.⁴³

The Manager acknowledges that the Fund Components currently include minority positions in digital assets that are not Bitcoin or Ether (*i.e.*, SOL, XRP, and AVAX). The Manager also represents that, consistent with proposed Rule 8.800–E(c)(1), no more than 10% of the weight of its digital asset holdings will consist of digital assets concerning which the Exchange may not be able to obtain information via the ISG or via a CSSA. In the context of prior spot digital asset ETP proposal disapproval orders for Bitcoin and Ether, the Commission expressed concerns about the underlying Digital Asset Market due to the potential for fraud and manipulation and has outlined the reasons why such ETP proposals have been unable to satisfy these concerns.⁴⁴ For purposes of the

Fund’s proposal, the Manager anticipates that the Commission may have the same concerns about the non-Bitcoin and Ether assets and addresses each of these in turn below.

In the Prior Spot Digital Asset ETP Disapproval Orders, the Commission outlined that a proposal relating to a digital asset-based ETP could satisfy its concerns regarding potential for fraud and manipulation by demonstrating:

(1) *Inherent Resistance to Fraud and Manipulation*: that the underlying commodity market is inherently resistant to fraud and manipulation;

(2) *Other Means to Prevent Fraud and Manipulation*: that there are other means to prevent fraudulent and manipulative acts and practices that are sufficient; or

(3) *Surveillance Sharing*: that the listing exchange has entered into a surveillance sharing agreement with a regulated market of significant size relating to the underlying or reference assets.

As described below, the Manager believes the structure and operation of the Fund are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to concerns that the Commission may have with respect to potential fraud and manipulation in the context of a Digital Asset-based ETP.

by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Fund Under NYSE Arca Rule 8.201–E (the “Bitwise Order”); 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E (the “Wilshire Phoenix Order”); 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR–NYSEArca–2017–139) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF) (the “ProShares Order”); 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR–NYSEArca–2018–02) (Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E (the “Direxion Order”); 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–01) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF) (the “GraniteShares Order”) (together, the “Prior Spot Digital Asset ETP Disapproval Orders”).

How the Fund Meets Standards in the Prior Spot Digital Asset ETP Disapproval Orders

1. Resistance to or Prevention of Fraud and Manipulation

In the Prior Spot Digital Asset ETP Disapproval Orders, the Commission disagreed with the proposition that a digital asset’s fungibility, transportability and exchange tradability combine to provide unique protections against, and allow such digital asset to be uniquely resistant to, attempts at price manipulation. The Commission reached its conclusion based on concessions by one issuer that 95% of the reported trading in the digital asset, Bitcoin, is “fake” or non-economic, effectively admitting that the properties of Bitcoin do not make it inherently resistant to manipulation. Such issuer’s concessions were further compounded by evidence of potential and actual fraud and manipulation in the historical trading of Bitcoin on certain marketplaces such as (1) “wash” trading, (2) trading based on material, non-public information, including the dissemination of false and misleading information, (3) manipulative activity involving Tether, and (4) fraud and manipulation.⁴⁵

The Manager acknowledges the possibility that fraud and manipulation may exist in commodity markets and that digital asset trading, such as certain of the Fund Components, *on any given trading platform* may be no more uniquely resistant to fraud and manipulation than other commodity markets.⁴⁶ However, the Manager believes that the fundamental features of digital assets, including fungibility, transportability and exchange tradability offer novel protections beyond those that exist in traditional commodity markets or equity markets when combined with other means, as discussed further below.

⁴⁵ See Bitwise Order, 84 FR 55383 (discussing analysis of the Bitcoin spot market that asserts that 95% of the spot market is dominated by fake and non-economic activity, such as wash trades), 55391 (discussing possible sources of fraud and manipulation in the bitcoin spot market). See also Winklevoss Order, 83 FR 37585–86 (discussing pending litigation against a Bitcoin trading platform for fraudulent conduct relating to Tether); Bitwise Order, 84 FR 55391 n.140, 55402 & n.331 (same); Winklevoss Order, 83 FR 37584–86 (discussing potential types of manipulation in the Bitcoin spot market). The Commission has also noted that fraud and manipulation in the Bitcoin spot market could persist for a significant duration. See, *e.g.*, Bitwise Order, 84 FR 55405 & n.379.

⁴⁶ See generally Bitwise Order.

⁴² Ether ETP Approval Order, 89 FR 46941.

⁴³ In particular, Grayscale Bitcoin Trust (BTC) (“GBTC”) and Grayscale Ethereum Trust (ETH) (“ETHE”), affiliates of the Fund that are structured substantially similarly to the Fund, currently list their shares on the Exchange under NYSE Arca Rule 8.201–E. The Fund will have the same service providers as GBTC and ETHE.

⁴⁴ See Securities Exchange Act Release Nos. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Fund) (the “Winklevoss Order”); 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR–NYSEArca–2019–01) (Order Disapproving a Proposed Rule Change, as Modified

2. Other Means To Prevent Fraud and Manipulation

The Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement.⁴⁷ In evaluating the effectiveness of this type of resistance, the Commission does not apply a “cannot be manipulated” standard. Instead, the Commission requires that such resistance to fraud and manipulation be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.⁴⁸

The Manager believes the Fund’s use of the Index and Digital Asset Reference Rates represents a novel means to prevent fraud and manipulation from impacting a reference price for the Fund Components and that it offers protections beyond those that exist in traditional commodity markets or equity markets. Specifically, digital assets, such as the Fund Components, are novel and exist outside traditional commodity markets. It therefore stands to reason that the methods by which they trade will be novel and that the market for digital assets like the Fund Components will have different attributes than traditional commodity markets. Digital assets like the Fund Components were only introduced within the past decade, twenty years after the first U.S. exchange-traded funds (“ETFs”) were offered⁴⁹ and 150 years after the first futures were offered.⁵⁰ In contrast to older commodities such as gold, silver, platinum, palladium or copper, which the Commission has noted all had at least one significant, regulated market for trading futures on the underlying commodity at the time commodity trust ETPs were approved for listing and trading, the first trading in digital assets like the Fund Components took place entirely in an open, transparent and online setting where other commodities cannot trade.

The Fund has priced its Shares consistently for approximately two years based on the Index and its use of the Digital Asset Reference Rates. The Manager believes the Fund’s use of the Index and Digital Asset Reference Rates specifically addresses the Commission’s concerns in that they serve as an alternative means to prevent fraud and manipulation. Specifically, the Index and its use of the Digital Asset Reference Rates can (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Fund Components’ reference rates, (ii) provide a real-time, volume-weighted fair value of the Fund Components and (iii) appropriately handle and adjust for non-market related events.

As described in more detail below, the Manager believes that the Index and its use of Digital Asset Reference Rates accomplishes those objectives in the following ways:

1. The Digital Asset Reference Rates track the Digital Asset Trading Platform Market prices through trading activity at “U.S.-Compliant Trading Platforms”;⁵¹
2. The Digital Asset Reference Rates are constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and
3. The Digital Asset Reference Rates mitigate the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite reference rate over a 60-minute period.

1. The Digital Asset Reference Rates Track the Digital Asset Trading Platform Market Price Through Trading Activity at “U.S.-Compliant Trading Platforms”

To reduce the risk of fraud, manipulation, and other anomalous trading activity from impacting the Digital Asset Reference Rates, only U.S.-Compliant Trading Platforms are eligible to be included in the Digital Asset Reference Rates.

⁵¹ “U.S.-Compliant Trading Platforms” are trading platforms in the Digital Asset Trading Platform Market that are compliant with applicable U.S. federal and state licensing requirements and practices regarding AML and KYC regulations. All Constituent Trading Platforms are U.S.-Compliant Trading Platforms. “Non-U.S.-Compliant Trading Platforms” are all other trading platforms in the Digital Asset Trading Platform Market. From these U.S.-Compliant Trading Platforms, the Reference Rate Provider then applies additional Inclusion Criteria to determine the Constituent Trading Platforms. As of June 30, 2024, the U.S.-Compliant Trading Platforms that the Reference Rate Provider considered for inclusion in the Digital Asset Reference Rates were Coinbase, Kraken, LMAX Digital and Crypto.com.

The Digital Asset Reference Rates maintain a minimum of two and a maximum of three trading platforms to track the Digital Asset Trading Platform Market while offering replicability for traders and market makers.⁵²

U.S.-Compliant Trading Platforms possess safeguards that protect against fraud and manipulation. For example, U.S.-Compliant Trading Platforms regulated by the NYDFS under the BitLicense program have regulatory requirements to implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, market manipulation, and similar wrongdoing, and to monitor, control, investigate and report back to the NYDFS regarding any wrongdoing.⁵³ These trading platforms also have the following obligations:⁵⁴

- Submission of audited financial statements including income statements, statements of assets/liabilities, insurance, and banking;
- Compliance with capitalization requirements set at NYDFS’s discretion;
- Prohibitions against the sale or encumbrance to protect full reserves of custodian assets;
- Fingerprints and photographs of employees with access to customer funds;
- Retention of a qualified Chief Information Security Officer and annual penetration testing/audits;
- Documented business continuity and disaster recovery plan, independently tested annually; and
- Participation in an independent exam by NYDFS.

Other U.S.-Compliant Trading Platforms have voluntarily implemented measures to protect against common forms of market manipulation.⁵⁵

Furthermore, all U.S.-Compliant Trading Platforms are considered MSBs

⁵² According to the Manager, the more trading platforms included in the Digital Asset Reference Rate, the more ability there is for traders and market makers to trade against the Digital Asset Reference Rate by arbitraging price differences. For example, in the event of variances between Fund Component prices on Constituent Trading Platforms and non-Constituent Trading Platforms, arbitrage trading opportunities would exist. These discrepancies generally consolidate over time, as price differences across trading platforms are realized and capitalized upon by traders and market makers.

⁵³ See, e.g., “DFS Takes Action to Deter Fraud and Manipulation in Virtual Currency Markets,” available at: <https://www.dfs.ny.gov/about/press/pr1802071.htm>.

⁵⁴ See “New York’s Final “BitLicense” Rule: Overview and Changes from July 2014 Proposal,” June 5, 2015, Davis Polk, available at: https://www.davispolk.com/files/new_yorks_final_bitlicense_rule_overview_changes_july_2014_proposal.pdf.

⁵⁵ As of the date of this filing, two of the five Constituent Trading Platforms, Coinbase, is regulated by NYDFS.

⁴⁷ See Winklevoss Order, 84 FR 37580, 37582–91; Bitwise Order, 84 FR 55383, 55385–406; Wilshire Phoenix Order, 85 FR 12597.

⁴⁸ See Winklevoss Order, 84 FR 37582; Wilshire Phoenix Order, 85 FR 12597.

⁴⁹ SEC, “Investor Bulletin: Exchange-Traded Funds (ETFs),” August 2012, <https://www.sec.gov/investor/alerts/etfs.pdf>.

⁵⁰ Commodity Futures Trading Commission (“CFTC”), “History of the CFTC,” https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html.

that are subject to FinCEN's federal and state reporting requirements that provide additional safeguards. For example, unscrupulous traders may be less likely to engage in fraudulent or manipulative acts and practices on trading platforms that (1) report suspicious activity to FinCEN as money services businesses, (2) report to state regulators as money transmitters, and/or (3) require customer identification through KYC procedures. U.S.-Compliant Trading Platforms are required to:⁵⁶

- Identify people with ownership stakes or controlling roles in the MSB;
- Establish a formal Anti-Money Laundering (AML) policy in place with documentation, training, independent review, and a named compliance officer;
- Implement strict customer identification and verification policies and procedures;
- File Suspicious Activity Reports (SARs) for suspicious customer transactions;
- File Currency Transaction Reports (CTRs) for cash-in or cash-out transactions greater than \$10,000; and
- Maintain a five-year record of currency exchanges greater than \$1,000 and money transfers greater than \$3,000.

Lastly, because of Bitcoin's and Ether's classifications as commodities, the CFTC has authority to police fraud and manipulation on U.S.-Compliant Trading Platforms that trade those digital assets.⁵⁷

The Manager acknowledges that there are substantial differences between FinCEN and New York state regulations and the Commission's regulation of the national securities exchanges.⁵⁸ The Manager does not believe the inclusion of U.S.-Compliant Trading Platforms is in and of itself sufficient to prove that the Digital Asset Reference Rates are an alternative means to prevent fraud and manipulation such that surveillance sharing agreements are not required, but does believe that the inclusion of only U.S.-Compliant Trading Platforms in the Digital Asset Reference Rates is one significant way in which the Digital Asset Reference Rates are protected

from the potential impacts of fraud and manipulation.

2. The Digital Asset Reference Rates Are Constructed and Maintained by an Expert Third-Party Index Provider, Allowing for Prudent Handling of Non-Market-Related Events

The Reference Rate Provider reviews and periodically updates which trading platforms are included in the Digital Asset Reference Rates by utilizing a methodology that is guided by the IOSCO principles for financial benchmarks.

According to the Reference Rate Provider's methodology, for a trading platform to become a Constituent Trading Platform, it must satisfy the following Inclusion Criteria:

- Sufficient USD or USDC liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform's eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC, AML and other policies designed to comply with relevant regulations that might apply to it;
- Be an exchange that is licensed and able to service investors in one or more of the following jurisdictions: United States, United Kingdom; European Union; Hong Kong; or Singapore
- Offer programmatic spot trading of the trading pair and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

Although the Reference Rate Provider's methodology is designed to operate without any human interference, rare events would justify manual intervention. Manual intervention would only be in response to "non-market-related events" (e.g., halting of deposits or withdrawals of funds, unannounced closure of trading platform operations, insolvency, compromise of user funds, etc.). In the event that such an intervention is necessary, the Reference Rate Provider would issue a public announcement through its website, API and other established communication channels with its clients.⁵⁹

⁵⁹ To the extent any such intervention has a material impact on the Fund, the Manager will also issue a public announcement.

3. The Digital Asset Reference Rates Mitigate the Impact of Instances of Fraud, Manipulation and Other Anomalous Trading Activity Concentrated on Any One Specific Trading Platform Through a Cross-Trading Platform Composite Reference Rate Over a 60-Minute Period

The Digital Asset Reference Rates are based on the price and volume data of multiple U.S.-Compliant Trading Platforms over a 60-minute period that satisfy the Reference Rate Provider's Inclusion Criteria. By referencing multiple trading venues and weighting them based on trade activity, the impact of any potential fraud, manipulation, or anomalous trading activity occurring on any single venue is reduced. Specifically, the effects of fraud, manipulation, or anomalous trading activity occurring on any single venue are de-weighted and consequently diluted by non-anomalous trading activity from other Constituent Trading Platforms.

Although each Digital Asset Reference Rate is designed to accurately capture the market price of the digital asset it tracks, third parties may be able to purchase and sell such digital assets on public or private markets not included among the constituent Digital Asset Trading Platforms of such Digital Asset Reference Rate, and such transactions may take place at prices materially higher or lower than the Digital Asset Reference Rate. Moreover, there may be variances in the prices of digital assets on the various Digital Asset Trading Platforms, including as a result of differences in fee structures or administrative procedures on different Digital Asset Trading Platforms.

For example, based on data provided by the Reference Rate Provider, on any given day during the twelve months ended June 30, 2024, the maximum differential between the 4:00 p.m., New York time spot price of Bitcoin on any single Digital Asset Trading Platform included in the Digital Asset Reference Rate was 1.47% and the average of the maximum differentials of the 4:00 p.m., New York time spot price of each Digital Asset Trading Platform included in the Digital Asset Reference Rate was 1.33%. During this same period, the average differential between the 4:00 p.m., New York time spot prices of all the Digital Asset Trading Platforms included in the Digital Asset Reference Rate was 0.01%. Further, on any given day during the twelve months ended June 30, 2024, the maximum differential between the 4:00 p.m., New York time spot price of Ether on any single Digital Asset Trading Platform included in the Digital Asset

⁵⁶ See BSA Requirements for MSBs, FinCEN website: <https://www.fincen.gov/bsarequirements-msbs>.

⁵⁷ "U.S. CFTC Chief Behnam Reinforces View of Ether as Commodity," CoinDesk (Mar. 28, 2023), <https://www.coindesk.com/policy/2023/03/28/us-cftc-chief-behnam-reinforces-view-of-ether-as-commodity/>; CME Group, https://www.cmegroup.com/markets/cryptocurrencies/ether/ether.html?gad=1&gclid=EAlaQobChMI44KBmu7ygAMVavjBx2P4g5yEAYASAAEgISZfD_BwE&gclid=aw.ds.

⁵⁸ See Bitwise Order, 84 FR 55392; Wilshire Phoenix Order, 85 FR 12603.

Reference Rate was 2.80% and the average of the maximum differentials of the 4:00 p.m., New York time spot price of each Digital Asset Trading Platform included in the Digital Asset Reference Rate was 2.46%. During this same period, the average differential between the 4:00 p.m., New York time spot prices of all the Digital Asset Trading Platforms included in the Digital Asset Reference Rate was 0.02%. All Digital Asset Trading Platforms that were included in the relevant Digital Asset Reference Rate throughout the period were considered in this analysis.⁶⁰

For approximately two years, the Fund has consistently priced its Shares at 4:00 p.m., New York time based on the Index and its use of the Digital Asset Reference Rates. While that pricing would be known to the market, the Manager believes that, even if efforts to manipulate the price of the Fund Components at 4:00 p.m., E.T. were successful on any trading platform, such activity would have had a limited effect on the pricing of the Fund, due to the controls embedded in the structure of the Index and its use of the Digital Asset Reference Rates.

Accordingly, the Manager believes that the Index and its use of the Digital Asset Reference Rates have proven their ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Fund Components reference rates, (ii) provide a real-time, volume-weighted fair value of the Fund Components and (iii) appropriately handle and adjust for non-market related events. For these reasons, the Manager believes that the Index represents an effective alternative means to prevent fraud and manipulation and the Fund's reliance on the Index and its use of the Digital Asset Reference Rates addresses the Commission's concerns with respect to potential fraud and manipulation.

Creation and Redemption of Shares

Authorized Participants may submit orders to create or redeem Shares under procedures for "Cash Orders."

The Authorized Participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive the Fund Components as part of the creation or redemption process or otherwise direct the Fund or a third party with respect to purchasing, holding, delivering, or

receiving the Fund Components as part of the creation or redemption process.

The Fund will create Shares by receiving the Fund Components from a third party that is not the Authorized Participant and the Fund, or an affiliate of the Fund (and in any event not the Authorized Participant), is responsible for selecting the third party to deliver the Fund Components. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the Fund Components to the Fund or acting at the direction of the Authorized Participant with respect to the delivery of the Fund Components to the Fund. The Fund will redeem Shares by delivering the Fund Components to a third party that is not the Authorized Participant and the Fund, or an affiliate of the Fund (and in any event not the Authorized Participant), is responsible for selecting the third party to receive the Fund Components. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the Fund Components from the Fund or acting at the direction of the Authorized Participant with respect to the receipt of the Fund Components from the Fund.

Cash Orders are made through the participation of a Liquidity Provider⁶¹ who obtains or receives the Fund Components in exchange for cash, and are facilitated by the Transfer Agent and Grayscale Investments, LLC, acting in its capacity as the Liquidity Engager. Liquidity Providers are not party to the Participant Agreements (as defined below) and are engaged separately by the Liquidity Engager.

According to the Registration Statement, the Fund creates Baskets (as described below) of Shares only upon receipt of the Fund Components and

redeems Shares only by distributing the Fund Components. "Authorized Participants" are the only persons that may place orders to create and redeem Baskets. Each Authorized Participant must (i) be a registered broker-dealer and (ii) enter into an agreement with the Manager and Transfer Agent that provides the procedures for the creation and redemption of Baskets and for the delivery of the Fund Components required for the creation and redemption of Baskets via a Liquidity Provider (each, a "Participant Agreement"). An Authorized Participant may act for its own account or as agent for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. Shareholders who are not Authorized Participants will only be able to create or redeem their Shares through an Authorized Participant.

The Fund issues Shares to and redeems Shares from Authorized Participants on an ongoing basis, but only in one or more "Baskets" (with a Basket being a block of 10,000 Shares). The Fund will not issue fractions of a Basket.

The creation and redemption of Baskets will be made only in exchange for the delivery to the Fund, or the distribution by the Fund, of the number of whole and fractional Fund Components represented by each Basket being created or redeemed, which is determined by dividing (x) the number of the Fund Components owned by the Fund at 4:00 p.m., New York time, on the trade date of a creation or redemption order, after deducting the number of Fund Components representing the U.S. dollar value of accrued but unpaid fees and expenses of the Fund (converted using the Digital Asset Reference Rates at such time, and carried to the eighth decimal place), by (y) the number of Shares outstanding at such time (with the quotient so obtained calculated to one one-hundred-millionth of the Fund Components (*i.e.*, carried to the eighth decimal place)), and multiplying such quotient by 10,000 (the "Basket Amount"). The U.S. dollar value of a Basket is calculated by multiplying the Basket Amount by the Digital Asset Reference Rates as of the trade date (the "Basket NAV"). The Basket NAV multiplied by the number of Baskets being created or redeemed is referred to as the "Total Basket NAV." All questions as to the calculation of the Basket Amount will be conclusively determined by the Manager and will be final and binding on all persons interested in the Fund. The number the Fund Components represented by a Share will gradually decrease over time

⁶⁰ All Digital Asset Trading Platforms that were included in the Digital Asset Reference Rates throughout the period were considered in this analysis.

⁶¹ A "Liquidity Provider" means one or more eligible companies that facilitate the purchase and sale of the Fund Components in connection with creations or redemptions pursuant to Cash Orders. The Liquidity Providers with which Grayscale Investments, LLC, acting other than in its capacity as the Manager (in such other capacity, the "Liquidity Engager") will engage in Fund Component transactions are third parties that are not affiliated with the Manager or the Fund and are not acting as agents of the Fund, the Manager, or any Authorized Participant, and all transactions will be done on an arms-length basis. Except for the contractual relationships between each Liquidity Provider and Grayscale Investments, LLC in its capacity as the Liquidity Engager, there is no contractual relationship between each Liquidity Provider and the Fund, the Manager, or any Authorized Participant. When seeking to buy Fund Components in connection with creations or sell Fund Components in connection with redemptions, the Liquidity Engager will seek to obtain commercially reasonable prices and terms from the approved Liquidity Providers. Once agreed upon, the transaction will generally occur on an "over-the-counter" basis.

as the Fund Components are used to pay the Fund's expenses. Each Share represented approximately 0.0004 of one Bitcoin, 0.0023 of one Ether, 0.0085 of one SOL, 0.0072 of one AVAX, and 1.0537 of one XRP as of June 30, 2024.

The creation of Baskets requires the delivery to the Fund of the Total Basket Amount and the redemption of Baskets requires the distribution by the Fund of the Total Basket Amount.

Although the Fund creates Baskets only upon the receipt of the Fund Components, and redeems Baskets only by distributing the Fund Components, an Authorized Participant will submit Cash Orders, pursuant to which the Authorized Participant will deposit cash with, or accept cash from, the Transfer Agent in connection with the creation and redemption of Baskets.

Cash Orders will be facilitated by the Transfer Agent and Liquidity Engager, acting other than in its capacity as Manager. On an order-by-order basis, the Liquidity Engager will engage one or more Liquidity Providers to obtain or receive the Fund Components in exchange for cash in connection with such order, as described in more detail below.

Unless the Manager requires that a Cash Order be effected at actual execution prices (an "Actual Execution Cash Order"),⁶² each Authorized Participant that submits a Cash Order to create or redeem Baskets (a "Variable Fee Cash Order")⁶³ will pay a fee (the "Variable Fee") based on the Total Basket NAV, and any price differential of the Fund Components between the trade date and the settlement date will be borne solely by the Liquidity Provider until such Fund Components have been received or liquidated by the Fund. The Variable Fee is intended to cover all of a Liquidity Provider's expenses in connection with the creation or redemption order, including any trading platform fees that the Liquidity Provider incurs in connection with buying or selling the Fund Components. The amount may be changed by the Manager in its sole discretion at any time, and Liquidity

Providers will communicate to the Manager in advance the Variable Fee they would be willing to accept in connection with a Variable Fee Cash Order, based on market conditions and other factors existing at the time of such Variable Fee Cash Order.

Alternatively, the Manager may require that a Cash Order be effected as an Actual Execution Cash Order, in its sole discretion based on market conditions and other factors existing at the time of such Cash Order, and under such circumstances, any price differential of the Fund Components between the trade date and the settlement date will be borne solely by the Authorized Participant until such Fund Components have been received or liquidated by the Fund.

In the case of creations, to transfer the Total Basket Amount to the Fund's Digital Asset Account, the Liquidity Provider will transfer the Fund Components to one of the public key addresses associated with the Digital Asset Account and as provided by the Manager. In the case of redemptions, the same procedure is conducted, but in reverse, using the public key addresses associated with the wallet of the Liquidity Provider and as provided by such party. All such transactions will be conducted on the blockchain and parties acknowledge and agree that such transfers may be irreversible if done incorrectly.

Authorized Participants do not pay a transaction fee to the Fund in connection with the creation or redemption of Baskets, but there may be transaction fees associated with the validation of the transfer of the Fund Components by the online, end-user-to-end-user network hosting a public transaction ledger, known as a Blockchain, and the source code comprising the basis for the cryptographic and algorithmic protocols governing such network, which will be paid by the Custodian in the case of redemptions and the Authorized Participant or the Liquidity Provider in the case of creations. Service providers may charge Authorized Participants

administrative fees for order placement and other services related to creation of Baskets. As discussed above, Authorized Participants will also pay the Variable Fee in connection with Variable Fee Cash Orders. Under certain circumstances Authorized Participants may also be required to deposit additional cash in the Cash Account, or be entitled to receive excess cash from the Cash Account, in connection with creations and redemptions pursuant to Actual Execution Cash Orders. Authorized Participants will receive no fees, commissions or other form of compensation or inducement of any kind from either the Manager or the Fund and no such person has any obligation or responsibility to the Manager or the Fund to effect any sale or resale of Shares.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets.

Cash Orders for creation must be placed with the Transfer Agent no later than 1:59:59 p.m., New York time.

The Manager may in its sole discretion limit the number of Shares created pursuant to Cash Orders on any specified day without notice to the Authorized Participants and may direct the Marketing Agent to reject any Cash Orders in excess of such capped amount. In exercising its discretion to limit the number of Shares created pursuant to Cash Orders, the Manager expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders.

Creations under Cash Orders will take place as follows, where "T" is the trade date and each day in the sequence must be a business day. Before a creation order is placed, the Manager determines if such creation order will be a Variable Fee Cash Order or an Actual Execution Cash Order, which determination is communicated to the Authorized Participant.

⁶² With respect to a creation or redemption pursuant to an Actual Execution Cash Order, as between the Fund and an Authorized Participant, the Authorized Participant is responsible for the dollar cost of the difference between the Fund Components' price utilized in calculating Total Basket NAV on the trade date and the price at which the Fund acquires or disposes of the Fund Components on the settlement date. If the price realized in acquiring or disposing of the corresponding Total Basket Amount is higher than the Total Basket NAV, the Authorized Participant

will bear the dollar cost of such difference, in the case of a creation, by delivering cash in the amount of such shortfall (the "Additional Creation Cash") to the Cash Account or, in the case of a redemption, with the amount of cash to be delivered to the Authorized Participant being reduced by the amount of such difference (the "Redemption Cash Shortfall"). If the price realized in acquiring the corresponding Total Basket Amount is lower than the Total Basket NAV, the Authorized Participant will benefit from such difference, with the Fund promptly returning cash in the amount of such

excess (the "Excess Creation Cash") to the Authorized Participant.

⁶³ Unless the Manager determines otherwise in its sole discretion based on market conditions and other factors existing at the time of such Cash Order, all creations and redemptions pursuant to Cash Orders are expected to be executed as Variable Fee Cash Orders, and any price differential of Fund Components between the trade date and the settlement date will be borne solely by the Liquidity Provider until such Fund Components have been received by the Fund.

Trade date (T)	Settlement date (T+1, or T+2, as established at the time of order placement)
- The Authorized Participant places a creation order with the Transfer Agent. - The Marketing Agent accepts (or rejects) the creation order, which is communicated to the Authorized Participant by the Transfer Agent. - The Manager notifies the Liquidity Provider of the creation order - The Manager determines the Total Basket NAV and any Variable Fee and Additional Creation Cash as soon as practicable after 4:00 p.m., New York time.	- The Authorized Participant delivers to the Cash Account: * (x) in the case of a Variable Fee Cash Order, the Total Basket NAV, plus any Variable Fee; or (y) in the case of an Actual Execution Cash Order, the Total Basket NAV, plus any Additional Creation Cash, less any Excess Creation Cash, if applicable (such amount, as applicable, the "Required Creation Cash"). - The Liquidity Provider transfers the Total Basket Amount to the Fund's Vault Balance. - Once the Fund is in simultaneous possession of (x) the Total Basket Amount and (y) the Required Creation Cash, the Fund issues the aggregate number of Shares corresponding to the Baskets ordered by the Authorized Participant, which the Transfer Agent holds for the benefit of the Authorized Participant. - Cash equal to the Required Creation Cash is delivered to the Liquidity Provider from the Cash Account. - The Transfer Agent delivers Shares to the Authorized Participant by crediting the number of Baskets created to the Authorized Participant's DTC account.

* The "Cash Account" means the account maintained by the Transfer Agent for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. For the avoidance of doubt, the Fund shall have no interest (beneficial, equitable or otherwise) in the Cash Account or any cash held therein.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place a redemption order specifying the number of Baskets to be redeemed.

The redemption of Shares pursuant to Cash Orders will only take place if approved by the Manager in writing, in

its sole discretion and on a case-by-case basis. In exercising its discretion to approve the redemption of Shares pursuant to Cash Orders, the Manager expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders.

Cash Orders for redemption must be placed no later than 1:59:59 p.m., New York time on each business day. The Authorized Participants may only

redeem Baskets and cannot redeem any Shares in an amount less than a Basket.

Redemptions under Cash Orders will take place as follows, where "T" is the trade date and each day in the sequence must be a business day. Before a redemption order is placed, the Manager determines if such redemption order will be a Variable Fee Cash Order or an Actual Execution Cash Order, which determination is communicated to the Authorized Participant.

Trade date (T)	Settlement date (T+1 (or T+2 on case-by-case basis, as approved by Manager))
- The Authorized Participant places a redemption order with the Transfer Agent. - The Marketing Agent accepts (or rejects) the redemption order, which is communicated to the Authorized Participant by the Transfer Agent. - The Manager notifies the Liquidity Provider of the redemption order .. - The Manager determines the Total Basket NAV and, in the case of a Variable Fee Cash Order, any Variable Fee, as soon as practicable after 4:00 p.m., New York time.	- The Authorized Participant delivers Baskets to be redeemed from its DTC account to the Transfer Agent. - The Liquidity Provider delivers to the Cash Account: (x) in the case of a Variable Fee Cash Order, the Total Basket NAV less any Variable Fee; or (y) in the case of an Actual Execution Cash Order, the actual proceeds to the Fund from the liquidation of the Total Basket Amount (such amount, as applicable, the "Required Redemption Cash"). - Once the Fund is in simultaneous possession of (x) the Total Basket Amount and (y) the Required Redemption Cash, the Transfer Agent cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant. - The Custodian sends the Liquidity Provider the Total Basket Amount, and cash equal to the Required Redemption Cash is delivered to the Authorized Participant from the Cash Account.

Suspension or Rejection of Orders and Total Basket Amount

The creation or redemption of Shares may be suspended generally,⁶⁴ or refused with respect to particular

requested creations or redemptions, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Manager or its delegates make it for all practicable purposes not feasible to process creation orders or redemption orders or for any other reason at any

time or from time to time.⁶⁵ The

⁶⁴ The Manager will notify the Exchange in the event that the creation or redemption of Shares will be suspended generally and will follow the Exchange's "Immediate Release Policy."

⁶⁵ Extenuating circumstances outside of the control of the Manager and its delegates or that could cause the transfer books of the Transfer Agent to be closed are outlined in the Participant Agreement and include, for example, public service or utility problems, power outages resulting in telephone, telecopy and computer failures, acts of God such as fires, floods or extreme weather conditions, market conditions or activities causing

Transfer Agent may reject an order or, after accepting an order, may cancel such order if: (i) such order is not presented in proper form as described in the Participant Agreement, (ii) the transfer of the Total Basket Amount comes from an account other than a wallet address that is known to the Custodian as belonging to a Liquidity Provider or (iii) the fulfillment of the order, in the opinion of counsel, might be unlawful, among other reasons. None of the Manager or its delegates will be liable for the suspension, rejection or acceptance of any creation order or redemption order.

Availability of Information

The Fund's website (<https://grayscale.com/crypto-products/grayscale-digital-large-cap-fund/>) will include quantitative information on a per Share basis updated on a daily basis, including, (i) the current NAV per Share daily and the prior business day's NAV per Share and the reported closing price of the Shares; (ii) the mid-point of the bid-ask price⁶⁶ as of the time the NAV per Share is calculated ("Bid-Ask Price") and a calculation of the premium or discount of such price against such NAV per Share; and (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV per Share, within appropriate ranges, for each of the four previous calendar quarters (or for as long as the Fund has been trading as an ETP if shorter). In addition, on each business day the Fund's website will provide pricing information for the Shares and disclosed the Fund's holdings, including: (i) the name of each Fund Component; (ii) the quantify of each Fund Component; and (iii) the weighting of each Fund Component.

One or more major market data vendors will provide the Intra-Day Fund Value ("IFV") per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.).⁶⁷ The IFV will be calculated using the same methodology as the NAV per

Share of the Fund (as described above), specifically by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session to reflect changes in the value of the Fund's NAV during the trading day.

The IFV disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real-time update of the NAV per Share, which will be calculated only once at the end of each trading day. The IFV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IFV will be available through on-line information services.

The NAV for the Fund will be calculated by the Manager once a day and will be disseminated daily to all market participants at the same time. To the extent that the Manager has utilized the cascading set of rules described in "Index Price" above, the Fund's website will note the valuation methodology used and the price per Fund Components resulting from such calculation. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

Quotation and last sale information for the Fund Components will be widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. In addition, real-time price (and volume) data for the Fund Components is available by subscription from Reuters and Bloomberg. The spot price of the Fund Components is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, will be available from major market data vendors and from the trading platforms on which the Fund Components are traded. The normal trading hours for Digital Asset Trading Platforms are 24-hours per day, 365-days per year.

On each business day, the Manager will publish the Digital Asset Reference Rates, the Fund's NAV, and the NAV per Share on the Fund's website as soon as practicable after its determination. If the NAV and NAV per Share have been calculated using a price per Fund Components other than the Digital Asset Reference Rates for such Evaluation Time, the publication on the Fund's website will note the valuation methodology used and the price per Fund Components resulting from such calculation.

The Fund will provide website disclosure of its NAV daily. The website disclosure of the Fund's NAV will occur at the same time as the disclosure by the Manager of the NAV to Authorized Participants so that all market participants are provided such portfolio information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current NAV of the Fund through the Fund's website, as well as from one or more major market data vendors.

The value of the Index, as well as additional information regarding the Index such as the DLCS Methodology, is publicly available on a continuous basis.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.800-E. The trading of the Shares will be subject to NYSE Arca Rule 8.800-E(i), which sets forth certain restrictions on Equity Trading Permit Holders ("ETP Holders") acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3⁶⁸ under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of

trading halts, systems failures involving computer or other information systems, including any failures or outages of the Ethereum Network, affecting the Authorized Participant, the Manager, the Fund, the Transfer Agent, the Marketing Agent and the Custodian and similar extraordinary events.

⁶⁶ The bid-ask price of the Fund is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

⁶⁷ The IFV on a per Share basis disseminated during the NYSE Arca Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

⁶⁸ 17 CFR 240.10A-3.

the Fund.⁶⁹ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the NYSE Arca Core Trading Session on the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV per Share is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁷⁰ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets

and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.⁷¹ The Exchange is also able to obtain information regarding trading in the Shares in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Under proposed Rule 8.800–E(i), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts and that subsidiary or affiliate is a member of another regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through a surveillance sharing agreement with that regulatory organization.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the

Fund, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Manager has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an "Information Bulletin" of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Baskets; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the Digital Asset Reference Rates and the IFV are disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated IFV will not be calculated or publicly disseminated; and (5) trading information. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses as described in the Annual Report. The Information Bulletin will disclose that information about the Shares of the Fund is publicly available on the Fund's website.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷² in general, and furthers the objectives of Section 6(b)(5)

⁶⁹ See NYSE Arca Rule 7.12–E.

⁷⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

⁷¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all Fund Components may trade on markets that are members of ISG or with which the Exchange has in place a CSSA, but that, consistent with proposed Rule 8.800–E(c)(1), at least 90% of the Fund's commodity and/or digital asset holdings will consist of commodities and/or digital assets for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA.

⁷² 15 U.S.C. 78f(b).

of the Act,⁷³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 believes that proposed Rule 8.800–E is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Commodity- and/or Digital Asset-Based Investment Interests provide specific initial and continued listing criteria required to be met by such securities.

Proposed Rule 8.800–E(a) provides that the Exchange will file separate proposals under Rule 19(b) of the Act before the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5–E(m).

Proposed Rule 8.800–E(e) sets forth initial and continued listing criteria applicable to Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 8.800–E(e)(1)(i) provides that, for each series of Commodity- and/or Digital Asset-Based Investment Interests, the Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 8.800–E(e)(1)(ii) provides that in the aggregate, at least 90% of the weight of the commodity and/or digital asset holdings of a series of Commodity- and/or Digital Asset-Based Investment Interests shall, on both an initial and continuing basis, consist of commodities and/or digital assets for which the Exchange may obtain information pursuant to its ISG membership or for which the principal market is a market with which the Exchange has a CSSA. In addition,

proposed Rule 8.800–E(e)(2) provides that the Exchange will maintain surveillance procedures for securities listed under proposed Rule 8.800–E and sets forth the circumstances under which the Exchange would consider the suspension of trading in and delisting under Rule 5.5–E(m) of a series of Commodity- and/or Digital Asset-Based Investment Interests.

With respect to proposed Rule 8.800–E, the Exchange believes that the proposed rule change is designed 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 because Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 8.800–E would be substantially similar to Commodity-Based Trust Shares listed and traded pursuant to current Rule 8.201–E. Commodity- and/or Digital Asset-Based Investment Interests differ from Commodity-Based Trust Shares only in that Commodity- and/or Digital Asset-Based Investment Interests could be issued, as a proposed, by a trust, limited liability company, or other similar entity (rather than only by a trust), and in that Commodity- and/or Digital Asset-Based Investment Interests could be based, as proposed, on underlying commodities, digital assets (provided that at least 90% of commodity and/or digital asset holdings are those concerning which the Exchange may obtain information via the ISG from other members of the ISG or via CSSA), and/or Derivative Securities Products. The Exchange believes this additional flexibility with respect to the structure of the entity issuing Commodity- and/or Digital Asset-Based Investment Interests and the holdings underlying such securities would remove impediments to and perfect the mechanism of a free and open market, as well as promote competition, by promoting the listing and trading of a new type of ETP, to the benefit of all market participants. The Exchange further believes that the proposed requirement that at least 90% of any commodity and/or digital asset holdings are those concerning which the Exchange may obtain information via the ISG from other members of the ISG or via a CSSA would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, because it would offer flexibility to issuers of series of Commodity- and/or Digital Asset-Based Investment Interests, to the benefit of investors, while facilitating information

sharing among market participants regarding the vast majority of any commodities and/or digital assets underlying series of Commodity- and/or Digital Asset-Based Investment Interests. As noted above, this requirement is based on a similar provision approved by the Commission in Commentary .01(d)(1) to Rule 8.600–E regarding Managed Fund Shares.

The Exchange also believes that the proposed addition of Commodity- and/or Digital Asset-Based Investment Interests to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3–E (Corporate Governance and Disclosure Policies) and Rule 5.3–E(e) (Shareholder/Annual Meetings) would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by holding Commodity- and/or Digital Asset-Based Investment Interests to the same requirements currently applicable to other similar derivative and special purpose securities such as those listed pursuant to Rule 8.201–E.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.800–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Fund Component derivatives from such markets. In addition, the Exchange may obtain information regarding trading in the Shares and Fund Component derivatives from markets that are members of ISG or with which the Exchange has in place a CSSA. Also, pursuant to NYSE Arca Rule 8.800–E(i), the Exchange is able to obtain information regarding Market Maker accounts for trading in the Shares and the underlying Fund Components or any Fund Component derivatives through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or

⁷³ 15 U.S.C. 78f(b)(5).

customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because, although the Digital Asset Trading Platform Market is not inherently resistant to fraud and manipulation, the Index and its use of the Digital Asset Reference Rates serves as a means sufficient to mitigate the impact of instances of fraud and manipulation on a reference price for the Fund Components. Specifically, the Index and its use of the Digital Asset Reference Rates provides a better benchmark for the price of the Fund Components than the Digital Asset Trading Platform Market price because (1) the Digital Asset Reference Rates track the Digital Asset Trading Platform Market price through trading activity at U.S.-Compliant Trading Platforms; (2) is the Digital Asset Reference Rates are constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and (3) the Digital Asset Reference Rates mitigate the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite reference rate over a 60-minute period. The Fund has relied on the Index and its use of the Digital Asset Reference Rates to price the Shares for approximately two years, and the Index and its use of the Digital Asset Reference Rates has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the Fund Components' reference rates, (ii) provide a real-time, volume-weighted fair value of the Fund Components and (iii) appropriately handle and adjust for non-market related events, such that efforts to manipulate the price of the Fund Components would have had a negligible effect on the pricing of the Fund, due to the controls embedded in the structure of the Index. In addition, certain of the Digital Asset Reference Rates' Constituent Trading Platforms also have or have begun to implement market surveillance infrastructure to further detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing, including market manipulation. The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because, as noted above, fraud or manipulation that impacts prices in spot Bitcoin markets or spot Ether

markets would likely similarly impact CME Bitcoin futures and CME Ether futures prices, and the Exchange could obtain information from the CME to assist in detecting and deterring potential fraud or manipulation with respect to certain Fund Components.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of price and market information available on public websites and through professional and subscription services for the Fund Components. Investors may obtain, on a 24-hour basis, Fund Component pricing information based on the spot price for the Fund Components from various financial information service providers. The closing price and settlement prices of the Fund Components are readily available from the Digital Asset Trading Platforms and other publicly available websites. In addition, such prices are published in public sources, or on-line information services such as Bloomberg and Reuters. The NAV per Share will be calculated daily and made available to all market participants at the same time. The Fund will provide website disclosure of its NAV daily. One or more major market data vendors will disseminate for the Fund on a daily basis information with respect to the most recent NAV per Share and Shares outstanding. In addition, if the Exchange becomes aware that the NAV per Share is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session (normally 9:30 a.m., E.T., to 4:00 p.m., E.T.) by one or more major market data vendors. The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the NYSE Arca Core Trading Session on the trading day following the interruption.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded

product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA for at least 90% of the Fund's commodity and/or digital asset holdings. In addition, as noted above, investors will have ready access to information regarding the Fund's NAV, IFV, and quotation and last sale information for the Shares.

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 notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product which will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-87 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-2024-87. 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-2024-87 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-25529 Filed 11-1-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101465; File No. SR-CBOE-2024-048]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 29, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2024, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Trading Permit Holders and non-Trading Permit Holders that purchase \$20,000 or more of ad hoc purchases of CBOE Options Historical Depth Data ("Historical Depth Reports"), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange's depth of book real-time feed, which provides depth-of-book quotations and execution information based on options orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.*, T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Historical Depth Report available for purchase to Users on the LiveVol DataShop website (datashop.cboe.com). The Historical Depth Data is available for purchase to Trading Permit Holders and non-Trading Permit Holders; the Exchange charges a fee per month of historical data of \$1,500. The Historical Depth Report provided on a historical basis is only provided to data recipients for internal use only, and thus, no redistribution will be permitted. The Exchange notes that the Historical Depth Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.³

The Exchange and affiliated equities and options exchanges (*i.e.*, Cboe C2 Exchange, Inc. ("C2 Options"), Cboe EDGX Exchange, Inc. ("EDGX"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), and Cboe EDGA Exchange, Inc. ("EDGA") (collectively, "Affiliates") also offer similar data products.⁴ Particularly,

³ See, e.g., <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#nom>; and https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

⁴ See, for example, EDGX Fee Schedule, BZX Fee Schedule, BYX Fee Schedule.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷⁴ 17 CFR 200.30-3(a)(12).

each of the Exchange's Affiliates offer a daily and historical archive of their depth of book real-time feed with execution information based on their trading activity that is substantially similar to the information provided by the Exchange through its Depth Data products.

The Exchange proposes to provide a temporary pricing incentive program in which Trading Permit Holders or non-Trading Permit Holders that purchase Historical Depth Reports will receive a percentage fee discount where specific purchase thresholds are met.

Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of Historical Depth Data of \$20,000 or more.⁵ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 18, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted similar discount programs for other historical data products offered by the Exchange.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical depth of book data via Historical Depth Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the options industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.¹⁰

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹¹ 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."¹² Making similar data products available to market participants fosters competition in the marketplace, and

constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Historical Depth Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases Historical Depth Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of Historical Depth Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the Historical Depth Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the Historical Depth Reports. Further, the proposed discount is intended to promote increased use of the Exchange's Historical Depth Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Trading Permit Holders and non-Trading Permit Holders who purchase Historical Depth Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the Historical Depth Reports, and the Exchange is not required to make Historical Depth Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted this discount program at other times.¹³

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own

⁵ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

⁶ See Securities Exchange Act Release No. 99028 (November 28, 2023), 88 FR 84002 (December 1, 2023) (SR-CBOE-2023-061) and Securities Exchange Act Release No. 100370 (June 18, 2024), 89 FR 53148 (June 25, 2024) (SR-CBOE-2024-025).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ See *supra* note 4.

¹¹ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (October 1, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

¹³ See Securities Exchange Act Release No. 99028 (November 28, 2023), 88 FR 84002 (December 1, 2023) (SR-CBOE-2023-061) and Securities Exchange Act Release No. 100370 (June 18, 2024), 89 FR 53148 (June 25, 2024) (SR-CBOE-2024-025).

fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's Historical Depth Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of Historical Depth Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of Historical Depth Reports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-048 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-CBOE-2024-048. 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-CBOE-2024-048 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101460; File No. SR-SAPPHIRE-2024-34]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Purge Ports

October 29, 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 October 17, 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 is filing a proposal to amend the MIAX Sapphire Fee Schedule (the "Fee Schedule") to adopt certain non-transaction fees for Purge Ports as described below.

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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 and the Exchange began operations on August 12, 2024. The Exchange initially filed this proposal on August 9, 2024 (SR-SAPPHIRE-2024-15) to establish fees for Purge Ports, which is functionality that enables Market Makers⁴ to cancel all open orders or a subset of open orders through a single cancel message. The Exchange withdrew SR-SAPPHIRE-2024-15 on August 21, 2024, and submitted SR-SAPPHIRE-2024-26. On October 17, 2024, the Exchange withdrew SR-SAPPHIRE-2024-26 and submitted this proposal.

Despite proposing to adopt fees herein, the Exchange also proposes to waive the proposed Purge Port fees for an Initial Waiver Period,⁵ which began on the date the Exchange began operations and which is the same date that the Fee Schedule became effective. However, even though the Exchange proposes to fully waive Purge Port fees for the Initial Waiver Period, the Exchange believes that it is appropriate to provide market participants with the overall structure of Purge Port 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 the expiration of the defined period of the Initial Waiver Period. Additionally, the Exchange notes that the proposed fees for Purge Ports on MIAX Sapphire are identical to Purge Port fees assessed by

the Exchange's affiliated options exchange, MIAX PEARL, LLC ("MIAX Pearl Options").⁶

Purge Ports

The Exchange proposes to amend Section 5)d)iii), which was reserved for use by an earlier proposal,⁷ to adopt Purge Port Fees to provide that a MIAX Sapphire Market Maker may request and be allocated two (2) Purge Ports per Matching Engine⁸ to which it connects and will be charged a monthly fee of \$600 per Matching Engine. The Exchange believes that the proposed fee provides Market Makers with flexibility to control their Purge Port costs based on the number of Matching Engines each Market Maker elects to connect to based on each Market Maker's business needs.⁹

A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port grants a Member¹⁰ the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Market Makers in the management of, and risk control over, their orders, particularly if the firm is dealing with a large number of securities. For example, if a Market Maker detects market indications that may influence the execution potential of their orders, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all orders in a number of securities. This allows Market Makers to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Market Makers that conduct business

activity that exposes them to a large amount of risk across a number of securities. Purge Ports enable Market Makers to cancel all open orders, or a subset of open orders through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of orders.

The Exchange operates a highly performant system with significant throughput and determinism which should allow participants to enter, update and cancel orders at high rates. Market Makers have the ability to cancel individual orders through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.¹¹ Other than Purge Ports being a dedicated line for cancelling quotations, Purge Ports operate in the same manner as a mass cancel message being sent over a different type of port. For example, like Purge Ports, mass cancellations sent over a logical port may be done at either the firm or MPID level. As a result, Market Makers can currently cancel orders in rapid succession across their existing logical ports¹² or through a single cancel message, all open orders or a subset of open orders.

Similarly, Members may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all orders, as configured or instructed by the Member or Market Maker.¹³ In addition, the Exchange already provides similar ability to mass cancel orders through the Exchange's risk controls, which are offered at no charge and enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open orders.¹⁴ Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to available services and enhance a Market Maker's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Members and to the market as a whole. Market Makers will have the benefit of efficient risk management and purge tools. The market will benefit from potential

³ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order approving application of MIAX Sapphire, LLC for registration as a national securities exchange).

⁴ 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 Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ 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.

⁶ See MIAX Pearl Options Fee Schedule, Section 5)d) Port Fees available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>. See also Securities Exchange Act Release No. 100037 (April 26, 2024), 89 FR 35899 (May 2, 2024) (SR-PEARL-2024-20).

⁷ See (SR-SAPPHIRE-2024-21); Replaced by (SR-SAPPHIRE-2024-22); Replaced by (SR-SAPPHIRE-2024-32).

⁸ "Matching Engine" is a part of the MIAX Sapphire electronic system that processes options orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

⁹ For example, MIAX Sapphire maintains 8 matching engines, MIAX Options maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

¹⁰ "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAX Sapphire Exchange Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." See the Definitions Section of the Fee Schedule.

¹¹ See Exchange Rule 519C(a) and (b).

¹² Current Exchange port functionality supports cancellation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancellation rates.

¹³ See Exchange Rule 519C(c).

¹⁴ See Exchange Rule 517.

increased quoting and liquidity as Market Makers may use Purge Ports to manage their risk more robustly. Only Market Makers that request Purge Ports would be subject to the proposed fees, and other Market Makers can operate without dedicated Purge Ports, but with the additional purging capabilities described above. Further, the Exchange notes that this functionality is similar to functionality on the Exchange's affiliate, MIAx Pearl Options.¹⁵

Implementation

The proposed fee change is immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with Section 6(b)(4) of the Act¹⁸ because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.*, to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the

requirements of Section 19(b)(1) under the Act,¹⁹ and Rule 19b-4 thereunder,²⁰ with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,²¹ which requires, among other things, that exchange fees be reasonable and equitably allocated,²² not designed to permit unfair discrimination,²³ and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁴ The Exchange reiterates that the legacy exchanges with whom the Exchange will vigorously compete for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Staff Guidance.²⁵

As detailed below, the Exchange recently calculated its aggregate annual costs for providing Purge Ports to be \$426,238 (or approximately \$35,518 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). To recoup the costs of providing Purge Ports to its Market Makers going forward, as described below, the Exchange proposes to amend its Fee Schedule to charge a fee of \$600 per Matching Engine for Purge Ports. The Exchange notes that the projected revenue will not be greater than the costs to the Exchange to provide Purge Ports, however the Exchange believes that it is necessary to accept this condition in order to successfully launch MIAx Sapphire.

The Exchange's affiliates²⁶ previously completed a study of their aggregate costs to produce market data and provide connectivity and port services, defined above as its Cost Analysis.²⁷ Personnel began to plan for and develop

the Exchange beginning in early 2023, and costs included in this Cost Analysis are related to the development and buildout of the Exchange since that time. During the Exchange's development and buildout that occurred throughout 2023 and continues to today, the Exchange routinely studied its aggregate costs to develop and implement the Exchange. The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.*, personnel), and certain general and administrative expenses ("cost drivers").

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets for each cost driver as part of the Exchange's 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a "bottom up" budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.*, price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,²⁸ storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.*, the different percentages of the overall cost driver allocated to the

¹⁵ 15 U.S.C. 78s(b)(1).

²⁰ 17 CFR 240.19b-4.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(8).

²⁵ See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (the "Staff Guidance").

²⁶ The affiliated markets include Miami International Securities Exchange, LLC ("MIAx"); separately, the options and equities markets of MIAx PEARL, LLC ("MIAx Pearl"); and MIAx Emerald, LLC ("MIAx Emerald").

²⁷ See Securities Exchange Act Release Nos. 100036 (April 26, 2024), 89 FR 35909 (May 2, 2024) (SR-MIAx-2024-22); 100037 (April 26, 2024), 89 FR 35899 (May 2, 2024) (SR-PEARL-2024-20); 100039 (April 26, 2024), 89 FR 35891 (May 2, 2024) (SR-EMERALD-2024-14). The Exchange frequently updates its Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

²⁸ See *supra* note 9.

¹⁵ See *supra* note 6.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(4).

Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates five (including MIAX Sapphire) separate and distinct marketplaces,²⁹ the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all cost drivers are the same at each individual marketplace and dividing total cost by five (5) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across each exchange for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process. For the 2024 budget process for MIAX Sapphire, only costs and anticipated revenues associated with the electronic exchange were considered. While MIAX Sapphire plans on opening its trading floor in 2025 costs and anticipated revenues from the trading floor were not included as part of any analysis for MIAX Sapphire for 2024.³⁰

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.*, market data, connectivity, ports, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be

allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below.

This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, connectivity and port service fees, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; some Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or

revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of Purge Port services, and thus bears a relationship that is, "in nature and closeness," directly related to Purge Port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide Purge Port services is \$35,518, as further detailed below.

Costs Related to Offering Purge Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Purge Ports as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.*, as set forth below, the Exchange allocated approximately 3.5% of its overall Human Resources cost to offering Purge Ports).

Cost drivers	Allocated annual cost ^a	Allocated monthly cost ^b	% Of all
Human Resources	\$363,954	\$30,329	3.6
Connectivity (external fees, cabling, switches, etc.)	112	9	0.4
Internet Services and External Market Data	654	54	0.4

²⁹ MIAX Options Exchange, MIAX Pearl Options Exchange, MIAX Pearl Equities Exchange, MIAX Emerald Exchange, and the MIAX Sapphire Exchange.

³⁰ Additionally, while MIAX Sapphire received approval as a national securities exchange on July 15, 2024, start-up costs associated with the launch

of MIAX Sapphire were not included in the costs used for the 2024 electronic exchange projections.

Cost drivers	Allocated annual cost ^a	Allocated monthly cost ^b	% Of all
Data Center	6,764	564	1.1
Hardware and Software Maintenance and Licenses	2,185	182	0.4
Depreciation	19,518	1,626	1.6
Allocated Shared Expenses	33,051	2,754	1.2
Total	426,238	35,518	2.7

^a The Annual Cost includes figures rounded to the nearest dollar.
^b The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Purge Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange’s affiliated markets in their similar proposed fee changes for Purge Ports. This is because the Exchange’s cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange’s affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (“MIH”), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market’s individual Human Resources expense. Then, managers and department heads assign a percentage of each employee’s time allocated to the Exchange into buckets including network connectivity, ports,

market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining Purge Ports and performance thereof (primarily the Exchange’s network infrastructure team, which spends most of their time performing functions necessary to provide port and connectivity services). As described more fully above, the Exchange’s parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to port services. From that portion allocated to the Exchange that applied to ports, the Exchange then allocated a weighted average of 4.8% of each employee’s time from the above group to Purge Ports.

The Exchange also allocated Human Resources costs to provide Purge Ports to a limited subset of personnel with ancillary functions related to establishing and maintaining such ports (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.*, only including those personnel who support functions related to providing Purge Ports) and then applied a smaller allocation to such employees’ time to Purge Ports (2.2%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to Purge Ports, whether it is a sales person selling port services, finance personnel billing for port services or providing budget analysis, or information security ensuring that such ports are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing Purge Ports, and confirming

that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing Purge Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 4.8% of each of their employee’s time assigned to the Exchange for Purge Ports, as stated above. Employees from these departments perform numerous functions to support Purge Ports, such as the installation, re-location, configuration, and maintenance of Purge Ports and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting Purge Ports and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support Purge Ports, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives’ time was only allocated to the Purge Ports related Human Resources costs to the extent that they are involved in overseeing tasks related to providing Purge Ports. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity

and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets vendors is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority ("OPRA"). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks which includes Purge Ports. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks, including Purge Ports. In addition, the connectivity is necessary for the Exchange to notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Market Maker purging quotes via their Purge Port. Also, like other types of ports offered by the Exchange, Purge Ports leverage the Exchange's existing 10Gb ULL connectivity, which also relies on connectivity to other national securities exchanges and OPRA. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for Purge Ports.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Purge Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including OPRA, to receive and consume market data from other markets. The Exchange includes external market data costs towards Purge Ports because such market data is necessary to offer certain services related to such ports, such as checking for market conditions (*e.g.*, halted securities). External market data is also consumed at the Matching Engine level for, among other things, as validating quotes on entry against the national best bid or offer ("NBBO").³¹ Purge Ports are a component of the Matching Engine, and used by Market Makers to cancel multiple resting quotes within the Matching Engine. While resting, the Exchange uses external market data to manage those quotes, such as preventing trade-throughs, and those quotes are also reported to OPRA for inclusion in this consolidated data stream. The Exchange also must notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Market Maker purging quotes via their Purge Port. Thus, since market data from other exchanges is consumed by the Matching Engine to validate quotes and check market conditions, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports.

For the reasons set forth above, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports since market data from other exchanges is consumed at the Exchange's Purge Port level to validate purge messages and the necessity to cancel a resting quote via a purge message or via some other means.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Purge Ports in the third-party data centers where it

maintains its equipment as well as related costs for market data to then enter the Exchange's System. The Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a percentage of its Data Center cost (1.1%) to Purge Ports because the third-party data centers and the Exchange's physical equipment contained therein are necessary for providing Purge Ports. In other words, for the Exchange to operate in a dedicated physical space with direct connectivity by market participants to its trading platform, the data centers are a critical component to the provision of Purge Ports. If the Exchange did not maintain such a presence, then Purge Ports would be of little value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer Purge Ports for each Matching Engine of the Exchange. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Without hardware and software licenses, Purge Ports would not be able to be offered to market participants because hardware and software are necessary to operate the Exchange's Matching Engines, which are necessary to enable the purging of quotes. The Exchange also routinely works to improve the performance of the hardware and software used to operate the Exchange's network and System. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to allocate a certain percentage of its hardware and software expense to help offset those costs of providing Purge Port connectivity to its Matching Engines.

Depreciation

The vast majority of the software the Exchange uses to provide Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide Purge Ports includes equipment used for

³¹ 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.

testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 1.6% of all depreciation costs to providing Purge Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Purge Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Purge Ports.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Purge Port costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Purge Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.*, occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to 1.2% of the overall cost for directors was allocated to providing Purge Ports.

Approximate Cost for Purge Port per Month

Based on projected 2024 data, the total monthly cost allocated to Purge Ports is \$35,518. This total is divided by the total number of Matching Engines (8) in which Market Makers may use Purge Ports for each month, divided by the anticipated number of Market Makers results in an approximate cost of \$634 per Matching Engine per month for Purge Port usage (when rounding to the nearest dollar). The Exchange notes that the flat fee of \$600 per month per Matching Engine entitles each Market Maker to two Purge Ports per Matching

Engine. The Exchange anticipates that the majority of Market Makers will connect to all eight of the Exchange's Matching Engines and utilize Purge Ports on each Matching Engine. The Exchange recognizes that costs are greater than anticipated revenues but accepts this condition as a necessary cost to be incurred when launching a new exchange.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including Purge Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal. For instance, in calculating the Human Resources expenses to be allocated to Purge Ports based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a higher percentage of the cost of such personnel (21.7%) given their focus on functions necessary to provide Ports. The salaries of those same personnel were allocated only 4.8% to Purge Ports and the remaining 95.2% was allocated to connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing Purge Ports to any other employee group, outside of a smaller allocation of 2.2% for Purge Ports, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Purge Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 3.6% of its personnel costs to providing Purge Ports. In turn, the Exchange allocated the remaining 96.4% of its Human Resources expense to membership services, transaction services, connectivity services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including Purge Ports, but in different amounts. The Exchange

believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide Purge Port services to its Market Makers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing Purge Port services, but instead allocated approximately 1.6% of the Exchange's overall depreciation and amortization expense to Purge Ports. The Exchange allocated the remaining depreciation and amortization expense (approximately 98.4%) toward the cost of providing transaction services, membership services, connectivity services, other port services, and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from Purge Ports, the Exchange will have to be successful in retaining existing Market Makers that wish to maintain Purge Ports or in obtaining new Market Makers that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases. However, if use of port services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue

materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (e.g., to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue ³²

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for Purge Port services. Subscribers, particularly those of Purge Ports, expect the Exchange to provide

this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services (connections and ports), membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide Purge Port services will equal \$426,238. Based on projected Purge Port services usage, the Exchange would generate annual revenue of approximately \$403,200. The Exchange estimates it will incur a 5.7% loss when comparing revenues to the cost of providing Purge Port services.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing Purge Port services versus the total projected revenue of the Exchange associated with network Purge Port services.

The Proposed Fees Are Also Equitable, Reasonable, and Not Unfairly Discriminatory

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers optional Purge Port services with a flexible fee structure promotes choice, flexibility, and efficiency. The Exchange believes Purge Ports enhance Market Makers' ability to manage orders, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry orders and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. The Exchange believes that proper risk management, including the ability to efficiently cancel multiple orders

quickly when necessary is valuable to all firms, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.³³ Specifically, any interest that is executable against a Member's or Market Maker's orders that is received by the Exchange prior to the time of the removal of orders request will automatically execute. Market Makers that purge their orders will not be relieved of the obligation to provide continuous two-sided orders on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.³⁴

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality in their trading systems that permit the flexible cancellation of orders entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

The Exchange also believes that moving to a per Matching Engine fee for Purge Ports is reasonable due to the Exchange's architecture that provides the Exchange the ability to provide two (2) Purge Ports per Matching Engine.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its Fee Schedule are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select

³² For purposes of calculating projected 2024 revenue for Purge Ports, the Exchange is using estimated projections.

³³ See Exchange Rule 604. See also generally Chapter VI of the Exchange's Rules.

³⁴ *Id.*

this service option will be charged the same amount for the same services. Market Makers have the option to select any port or connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by 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 not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Market Makers on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Market Makers can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Market Maker is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality 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 proposal would apply uniformly to any market participant, in that it does not differentiate between Market Makers. The proposal would allow any interested Market Maker to purchase Purge Port functionality 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,³⁵ and Rule 19b-4(f)(2)³⁶ 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-2024-34 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-2024-34. 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-2024-34 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-25527 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20844; OREGON Disaster Number OR-20005 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon dated October 29, 2024.

Incident: Microwave Tower Fire.

DATES: Issued on October 29, 2024.

Incident Period: July 22, 2024 through August 11, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 29, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁶ 17 CFR 240.19b-4(f)(2).

³⁷ 17 CFR 200.30-3(a)(12).

Primary Counties: Wasco.

Contiguous Counties:

Oregon: Clackamas, Gilliam, Hood
River, Jefferson, Marion, Sherman,
Wheeler.

Washington: Klickitat.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations with- out Credit Available Else- where	3.250

The number assigned to this disaster
for economic injury is 208440.

The States which received an EIDL
Declaration are Oregon, Washington.

(Catalog of Federal Domestic Assistance
Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024-25601 Filed 11-1-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA-2024-1227]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Safety Team Website (FSTW)

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

ACTION: Notice and request for
comments.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, FAA
invites public comments about our
intention to request the Office of
Management and Budget (OMB)
approval for a new information
collection. The collection involves
creation of accounts, storage of training
and awards history, and management of
FAA Safety Team (FAASTeam)
volunteers. The information to be
collected will be used to and/or is
necessary because it allows for
individual users to complete and track
their individual training and awards
accomplishments and allows for contact
information to be available to users for
FAASTeam volunteers.

DATES: Written comments should be
submitted by January 3, 2025.

ADDRESSES: Written comments and
recommendations for the proposed

information collection should be sent
within 60 days of publication of this
notice to [www.reginfo.gov/public/do/](http://www.reginfo.gov/public/do/PRAMain)
PRAMain.

Find this particular information
collection by selecting “Currently under
60-day Review—Open for Public
Comments” or by using the search
function.

FOR FURTHER INFORMATION CONTACT:

Bradford Wood by email at:
Bradford.L.wood@faa.gov; phone: (304)
993-0819.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are
asked to comment on any aspect of this
information collection, including (a)
Whether the proposed collection of
information is necessary for FAA’s
performance; (b) the accuracy of the
estimated burden; (c) ways for FAA to
enhance the quality, utility and clarity
of the information collection; and (d)
ways that the burden could be
minimized without reducing the quality
of the collected information. The agency
will summarize and/or include your
comments in the request for OMB’s
clearance of this information collection.

OMB Control Number: 2120-XXXX.

Title: FAA Safety Team Website.

Form Numbers:

1. New Account Form—Team Member
Application
2. Directory Application—Organization
3. FAA Industry Member Application
4. Application—FAA Training Provider
5. Application—Employer Enrollment
6. Representative Report
7. Directory Application—Individual
8. Course Feedback Form (Survey)
9. New Event Form—Seminar
10. New Event Form—Webinar
11. New Course Form—Internal
12. New Course Form—External
13. New Activity Form
14. Claim Reward—Wings Pins
15. Claim Reward—WIN Individual
16. Claim Reward—WIN CFI
17. Topic Suggestion Form
18. Application Course Provider (New
Requirement)
19. Wright Brothers Master Pilot Award
Application
20. Charles Taylor Master Mechanic
Application.

Type of Review: This is a new
collection.

Background: The FAA Safety Team
website (FSTW) is provided by the FAA
to administer safety program objectives
that focus on reducing general aviation
accident rates through providing
information and training to the general
aviation community. FSTW is the
information highway and a core
resource for the FAA Safety Team

(FAASTeam), which uses the site’s
automation tools to administer The Pilot
Proficiency (WINGS) and Aviation
Maintenance Technician (AMT) Awards
Programs. The FAASTeam also uses the
site to send updates and notices to
specific or widespread audiences about
training opportunities such as courses,
seminars, and webinars. The site also
offers training courses for UAS
certification, renewal, and knowledge
training. Volunteers working with the
FAA provide most of the training
available on FSTW. The FAASTeam
collects information from users,
volunteers, and FAA personnel
necessary to manage the programs
outlined in FAA Order 8900.1, Volume
15, FAA Advisory Circular 61-91J and
FAA Advisory Circular 65-25F.

Respondents: Who (can also include
how many, where, etc.) (add all
respondents on each form together).

—The potential respondent universe is
certificated and non-certificated
airmen. We do not have a total/
estimated total because anyone can
respond.

Frequency: On occasion.

*Estimated Average Burden per
Response:* Minutes/Hours (add all hours
and divide by total number of
respondents).

—*Estimated Total Annual Burden:*
\$1,458184.2 (total of hours for all
form × \$60).

—The average person will spend 5
minutes.

Issued in Washington, DC.

Bradford L. Wood,

*FAASTeam Outreach Manager, ASI-AW,
Automation & Systems Management Group,
AFS-950, Safety Analysis and Promotion
Division, AFS-900.*

[FR Doc. 2024-25468 Filed 11-1-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2013-0259]

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2025, Through December 31, 2025

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that
the minimum random drug and alcohol
testing percentage rates for the period
January 1, 2025, through December 31,
2025, will remain at 25 percent of
safety-sensitive employees for random

drug testing and 10 percent of safety-sensitive employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Ms. Vicky Dunne, Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division, Program Policy Branch; Email drugabatement@faa.gov; Telephone (202) 267-8442.

SUPPLEMENTARY INFORMATION:

Discussion: Pursuant to 14 CFR 120.109(b), the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2023, the random drug test positive rate was 0.881%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2025.

Similarly, 14 CFR 120.217(c), requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2023, the random alcohol test violation rate was 0.141%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2025.

If you have questions about how the annual random testing percentage rates are determined, please refer to the Code of Federal Regulations Title 14, section 120.109(b) (for drug testing), and 120.217(c) (for alcohol testing).

Issued in Washington, DC.

Susan Northrup,
Federal Air Surgeon.

[FR Doc. 2024-25569 Filed 11-1-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2024-0015]

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, FRA seeks approval of the Information Collection Request (ICR) summarized below.

Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before December 31, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on [regulations.gov](https://www.regulations.gov) to the docket, Docket No. FRA-2024-0015. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130-0005) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice, made available to the public, and include them in its information collection submission to OMB for approval.

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: (571) 897-9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities 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 for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative

and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a "user-friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Hours of Service Regulations.

OMB Control Number: 2130-0005.

Abstract: FRA's hours of service recordkeeping regulations (49 CFR part 228), amended as mandated by the Rail Safety Improvement Act of 2008, include substantive hours of service requirements for train employees (*i.e.*, locomotive engineers and conductors) providing commuter and intercity rail passenger transportation (*e.g.*, maximum on-duty periods, minimum off-duty periods, and other limitations). The regulations also require railroads to evaluate passenger train employee work schedules for risk of employee fatigue and implement measures to mitigate the risk, and to submit to FRA for approval certain schedules and mitigation plans. Finally, the regulations include recordkeeping and reporting provisions requiring railroads to keep hours of service records, and report excess service, for train employees, signal employees, and dispatching service employees on both freight and passenger railroads. FRA uses the information collected to verify that railroads do not require or allow their employees to exceed maximum on-duty periods and ensure that they abide by minimum off-duty periods, and adhere to other limitations, to enhance rail safety and reduce the risk of accidents/incidents caused, or contributed to, by train employee fatigue.

In this 60-day notice, FRA is updating existing form FRA F 6180.3 Hours of Service Report to make the following edits:

- The term "Division" has been changed to "Place of Excess Service (City/State)".
- Changing "Train or Engine Number (*if train or engine crew*)" to "Train ID/Job ID".
- "Type of Service" has been updated by adding the following check boxes: "TEY"; "Signal"; "Dispatch" (*respondent will check one box to reflect the type of service being performed at the time of excess service*).

• The column, “Conservative Time Off Duty in Preceding 23-Hour Period” has been updated to “Previous Time Off”.

• Changing the term “Cause” to “Brief Description of Excess Service”. Additionally, FRA made multiple adjustments that increased the previously approved burden hours from 1,283,507 to 1,284,832 hours. This increase, after a thorough review, is the result of the changes described in the following sections summarized below:

• Under § 228.19, Monthly reports of excess service, FRA determined that the annual submissions of form FRA F 6180.3, Exception Report, would increase the burden hours by 567 hours and 567 responses.

• Under §§ 228.103 and 228.107, Construction of employees’ sleeping quarters—Petition request, FRA anticipates receiving zero petitions over the next three-year collection period. Accordingly, the burden hours were reduced by 48 hours.

• Under § 228.207, Refresher training, and § 228.411, Training programs on fatigue and related topics, FRA made burden estimate adjustments that more accurately reflect the number of responses and estimated average time required by each section, increasing the burden by 6 hours.

• Under § 228.407(f), Consultation with directly affected employees, FRA has determined that this requirement is

not covered under the System Safety Program (SSP). Therefore, an estimated 800 burden hours has been added to this section.

Overall, the adjustments increased the total burden by 1,325 hours.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (railroads and signal contractors).

Form(s): FRA F 6180.3.

Respondent Universe: 797 railroads, signal contractors and subcontractors.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR Part 228 section	Respondent universe	Total annual responses (A)	Average time per response (hours) (B)	Total annual burden hours (A * B = C)	Total cost equivalent U.S.D (D = C * wage rate) ¹
SUBPART B—Records and Reporting					
228.9—Railroad records; general	The burden for this requirement is accounted for under § 228.11.				
228.11—Hours of duty records (electronic and paper).	797 Railroads signal contractors & sub-contractors.	17,448,669 electronic ..	3 minutes	872,433.45	\$77,759,993.40
228.17—Dispatchers record of train movements	63 dispatch offices	918,351 paper 285,000 cumulative train-movement tracking (records).	8 minutes 1	122,446.80 285,000	10,913,683.28 25,402,050.00
228.19(g) through (h)—Monthly reports of excess service—Exception (FRA F 6180.3).	797 Railroads signal contractors & sub-contractors.	2,317 reports	1	2,317	206,514.21
SUBPART C—Construction of Railroad-Provided Sleeping Quarters					
228.103 and 228.107—Construction of employees' sleeping quarters—Petition request to FRA to allow construction near work areas.	FRA anticipates zero petition submissions over the next three-year period.				
SUBPART D—Electronic Recordkeeping System and Automated Recordkeeping system					
228.207(b)—Training—Initial training—New employees and supervisors.	671 railroads	250 training records	2 minutes	8	713.04
—(c) Refresher training—System audits for irregularities by railroads and contractors.	797 railroads/signal contractors & sub-contractors.	797 audits and records	2	1,594	142,073.22
SUBPART F—Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation					
228.407(a)—Analysis of work schedules—Railroads' analysis of one cycle of work schedules of employees engaged in commuter or intercity passenger transportation.	36 railroads	3 analyses	2	6	534.78
—(b) Submissions of certain work schedules and any fatigue mitigation plans, (FMP) and determinations of operational necessity or declarations.	36 railroads	3 fatigue mitigation plans.	20	60	5,347.80
—(b) Submissions to FRA for review and approval.	36 railroads	1 submission	1	1	89.13
—(c) Submission of models for FRA approval; validated models already accepted by FRA.	FRA anticipates zero submissions under this requirement over the next three-year period.				
—(d) Analysis of certain later changes in work schedules—Analyses and mitigation plans—Resubmission to FRA for approval.	36 railroads	1 analysis or plan	1	1	89.13
—(e) Fatigue mitigation plans	The paperwork burden for this requirement has been fulfilled by railroads or included under § 228.407(b)–(d).				

REPORTING BURDEN—Continued

CFR Part 228 section	Respondent universe	Total annual responses (A)	Average time per response (hours) (B)	Total annual burden hours (A * B = C)	Total cost equivalent U.S.D (D = C * wage rate) ¹
—(f) RR Consultation with directly affected employees on: (i) RR Work schedules at risk for fatigue level possibly compromising safety; and (ii) Railroad's selection of fatigue mitigation tools; and (iii) All RR Submissions required by this section seeking FRA approval.	36 railroads	20	40	800.00	71,304.00
228.409—Requirements for railroad-provided employee sleeping quarters during interim releases and other periods available for rest within a duty tour.	<i>The paperwork burden for requirement is included under § 228.407(f).</i>				
228.411—Training programs on fatigue and related topics (e.g., rest, alertness, changes in rest cycles, etc.).	36 railroads	36	2	72	6,417.36
—(e) Records of training on fatigue and related topics.	36 railroads	5,539	1 minute	92	8,199.96
228.411(f)—Conditional exclusion—Written declaration to FRA by tourist, scenic, historic, or excursion railroads seeking exclusion.	93 railroads	1	1	1	89.13
Totals ²	797 railroads signal contractors & sub-contractors.	18,660,988	N/A	1,284,832	114,517,098

Total Estimated Annual Responses:
18,660,988.

Total Estimated Annual Burden:
1,284,832 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$114,517,098.

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. 2024–25565 Filed 11–1–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0006]

**Proposed Agency Information
Collection Activities; Comment
Request**

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

¹ The dollar equivalent cost is derived from the 2023 Surface Transportation Board Full Year Wage A&B data series using employee group 200 (Professional Administrative Staff) hourly wage rate of \$50.93. The total burden wage rate (straight time plus 75%) used in the table is \$89.13 (\$50.93 × 1.75 = \$89.13).

² Totals may not add up due to rounding.

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before January 3, 2025.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2024–0006. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–NEW) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice, made available to the public, and include them in its information collection submission to OMB for approval.

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 provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities 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 for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce

reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Women of Rail (WoR) Gender Diversity Survey.

OMB Control Number: 2130–NEW.

Abstract: This project is being conducted as a one-time effort to administer research that will inform development of resources to improve gender diversity outcomes for the rail industry. The information collected in this study will be used to develop a richer understanding of effective practices for promoting gender diversity at all levels of the rail industry and to obtain greater insight into challenges and barriers that currently exist to attracting and retaining a more gender diverse workforce.

The study will also be used to address research needs as identified in FRA Broad Agency Announcement (BAA)

RSI–003 Workforce Recruitment: Attracting and Retaining Women of Rail and to inform development of a resource toolkit to support the rail industry in attracting and retaining a more gender-diverse workforce. The data collection effort will consist of surveys, interviews, and focus groups that are designed to (1) identify the current attitudes, gender-specific barriers, cultural norms, and beliefs (written and unwritten) regarding women in traditionally male-dominated positions and (2) identify lessons learned, strategies, and practices that organizations are implementing to attract more women in the workplace.

A digital outreach strategy will be employed to solicit volunteer participants. Eligible participants include all rail industry workers, leaders in similar industries, middle and high school teachers and students, and college faculty and students. Surveys will be conducted via an online platform. The only data that will be collected through the survey is attitude and opinion data. Following the survey, interviews and focus groups will be conducted via established conferences, organization meetings, and through

conference calls. Participants will only be asked to share opinions on the research topics. No personally identifying data will be collected with either the survey or interview/focus group activities.

The results of this study will be published in an FRA research report and will be used to inform development of a resource toolkit to support the rail industry in attracting and retaining a more gender-diverse workforce.

Type of Request: Approval of a new collection of information.

Affected Public: Businesses, Rail stakeholders including those in labor positions, carrier management, research/academia, professional association staff, Human Resource personnel, regulators, executive level staff, students, and faculty.

Form(s): FRA F 6180.280; FRA F 6180.285; FRA F 6180.286; FRA F 618.287.

Respondent Universe: Rail Employees, Rail Leaders, Education Focus Groups, Industry Focus Groups.

Frequency of Submission: On occasion.

Reporting Burden:

Survey methods	Respondent universe	Estimated # contacted (* using 20% response rate for online surveys and industry interviews; 5% for education focus groups)	Total annual responses	Average time per response	Total annual burden hours	Wage ¹ rates	Total cost equivalent U.S. D
			(A)	(B)	(C) = A * B	(D)	(E) = C * D
FRA Rail Workers Form FRA F 6180.280 Survey #1 ² .	All rail industry employees (N = 181,210).	10,245	2,049	12 minutes ...	410 hours	46.26	\$18,966.60
Senior Leadership & Human Resources Form FRA F 6180.287 Survey #2–.	Rail Companies (N = 654 (approx.) Class I–III, commuter, Amtrak).	654	131	10 minutes ...	22 hours	81.16	1,785.52
Interviews Form FRA F 6180.285 Survey #3.	Non-managerial (N = 174,430).	250	50	30 minutes ...	25 hours	46.26	1,156.50
	Managerial (N = 7,780)	250	50	30 minutes ...	25 hours	81.16	2,029.00
	Similar Industry Managerial (N >> 7,780).	125	25	30 minutes ...	12.5 hours	81.16	1,014.50
FRA Focus Groups Form FRA F 6180.286 Survey #4.	Middle and High school students (N = 30 schools).	1,500 students (min. 10 schools to ensure demographic diversity).	75 responses	1 hour	75.00 hours ...	15.50	1,162.50
	College students (N = 40 institutes of higher education (IHE)).	1,000 Students (min. 5 IHEs to ensure demographic diversity).	50 responses	1 hour	50.00 hours ...	16.54	827.00
	Middle and High school faculty (N = 40 schools).	400 faculty (min. 10 schools to ensure demographic diversity).	20 responses	1 hour	20.00 hours ...	62.60	1,252.00
	College faculty (N = 40 institutes of higher education (IHE)).	400 faculty (min. 5 IHEs to ensure demographic diversity).	20 responses	1 hour	20.00 hours ...	94.48	1,889.60
Total ³ .....	.....	.....	2,470 responses	N/A	659.50 hours	N/A	30,083.22

Total Estimated Annual Responses: 2,470.

Total Estimated Annual Burden: 659.50 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$30,083.22.

¹ Unless otherwise stated, the dollar cost equivalent throughout the burden table was derived using the wage rates from the May 2023 Department of Labor, Bureau of Labor Statistics (BLS), classified within the NAICS 482000, Rail Transportation. This data source was also used to determine the

respondent universe for all rail occupations. All benefit costs are calculated using the BLS June 2023 Employer Costs for Employee Compensation. Student wage rates were calculated using SALARY TABLE 2023–GS (*opm.gov*). Benefit rates were not applied to student cost burdens.

² In order to get a representative sample of 181,210 employees FRA must contact approximately 5.65% of the respondent universe, which equates to approximately 10,245 persons.

³ Totals may not add up due to rounding.

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. 2024–25597 Filed 11–1–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2024–0068]

Receipt of Petition for Temporary Exemption From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption; request for public comment.

SUMMARY: Legacy Limousines and Luxury Coaches has petitioned NHTSA for a temporary exemption from the requirement to install Type 2 seat belts (*i.e.*, shoulder belts) at side-facing locations in the company's motorcoaches. The petitioner is a final-stage manufacturer of entertainer-type motorcoaches, seeking temporary exemption from the shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," for side-facing seats on motorcoaches. The petitioner seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of the Type 2 seat belts (lap and shoulder belts) required by FMVSS No. 208. The petitioner states that, absent the requested exemption, it will otherwise be unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle. NHTSA is publishing this document to notify the public of the receipt of the petition and to request comment on it, in accordance with statutory and administrative provisions.

DATES: Comments must be received on or before December 4, 2024.

ADDRESSES: NHTSA invites you to submit comments on the petition described herein and the questions posed below. You may submit comments identified by docket number

in the heading of this notice by any of the following methods:

- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of

Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Instructions:* All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 366–9826.

Privacy Act: 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, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting

confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Sara R. Bennett, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Authority and Procedures for Temporary Exemption
- III. FMVSS No. 208
- IV. Legacy Limousine and Luxury Coaches' Petition
- V. Public Participation

I. Background

NHTSA is responsible for promulgating and enforcing Federal motor vehicle safety standards (FMVSS) designed to improve motor vehicle safety. Generally, a manufacturer may not manufacture for sale, sell, offer for sale, or introduce or deliver for introduction into interstate commerce a vehicle that does not comply with all applicable FMVSS.¹ There are limited exceptions to this general prohibition.² One path permits manufacturers to petition NHTSA for an exemption for noncompliant vehicles under a specified set of statutory bases.³ The

¹ 49 U.S.C. 30112(a)(1).

² 49 U.S.C. 30112(b); 49 U.S.C. 30113; 49 U.S.C. 30114.

³ 49 U.S.C. 30113.

details of these bases, and under which basis Legacy Limousines and Luxury Coaches petitions, is provided in the sections of this notice that follow.

II. Authority and Procedures for Temporary Exemption

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. chapter 301, authorizes the Secretary of Transportation to exempt motor vehicles, on a temporary basis and under specified circumstances, and on terms the Secretary considers appropriate, from a FMVSS or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.⁴

The Safety Act authorizes the Secretary to grant, in whole or in part, a temporary exemption to a vehicle manufacturer if the Secretary makes one of four specified findings.⁵ The Secretary must also look comprehensively at the request for exemption and find that the exemption is consistent with the public interest and with the objectives of the Safety Act.⁶

The Secretary must evaluate the petition for exemption under at least one of the following bases:

(i) Compliance would cause substantial economic hardship, and the manufacturer tried to comply in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature, and the safety level is equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier, and the safety level of the vehicle is not unreasonably lowered; or

(iv) compliance would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.⁷

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. The requirements in 49 CFR 555.5 state that the petitioner must set forth the basis of the petition by providing the information required under 49 CFR 555.6, and the reasons why the exemption would be in the public interest and consistent with the

objectives of the Safety Act. A petition submitted on the basis that the applicant is otherwise unable to sell (or in this instance, manufacture) a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempt vehicle must include the information specified in 49 CFR 555.6(d).

III. FMVSS No. 208

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).

In the notice of proposed rulemaking (NPRM) preceding the final rule, NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.⁸ The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. NHTSA stated that “a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.”⁹

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141 (July 6, 2012). Section 32703(a) of MAP-21 directed the Secretary of Transportation (authority delegated to NHTSA) to “prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.” As MAP-21 defined “safety belt” to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.

Even so, the agency reiterated its view that “the addition of a shoulder belt at [side-facing seats on light vehicles] is of

limited value, given the paucity of data related to side facing seats.”¹⁰ The agency also noted that Australian Design Rule ADR 5/04, “Anchorage for Seatbelts” specifically prohibits shoulder belts for side-facing seats.

Given that background, and believing that few OTRBs would have side-facing seats, NHTSA stated in the November 2013 final rule that the manufacturers at issue may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.¹¹ In the November 2013 final rule, NHTSA stated that the agency would be receptive to the argument that lap belts provide an equivalent level of safety to lap/shoulder belt combinations for side-facing seats.¹² NHTSA stated that the basis for any petition for exemption from this requirement would be that the applicant is unable to sell a bus whose overall level of safety is at least equal to that of a non-exempted vehicle.¹³

Since issuing the November 2013 final rule, NHTSA has granted temporary exemptions to more than a dozen final stage manufacturers of entertainer buses for the same shoulder belt requirement of FMVSS No. 208 for side-facing seats on entertainer buses.¹⁴

In the most recent decision notice granting one of these exemptions, NHTSA’s rationale for granting the exemption cited the uncertainties about shoulder belts on side-facing seats, the relatively small number of side-facing seats on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type.¹⁵ NHTSA stated that it believes the potential safety risk at issue is theoretical, as explained in the in

¹⁰ 78 FR 70416, 70448 (Nov. 25, 2013), citing the 2004 Anton’s Law final rule.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The first petition was submitted by Hemphill Brothers Leasing Company, LLC (Hemphill). (Notice of receipt of petition, 84 FR 11735 (Mar. 28, 2019); notice of grant of petition, 84 FR 69966 (Nov. 14, 2019)). In its original petition, Hemphill stated that 39 “other petitioners” were covered by it. Later, NHTSA granted the 13 petitions submitted by All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc. (Notice of receipt of the petitions, 85 FR 51550 (Aug. 20, 2022); notice of grant of petitions, 87 FR 33299 (June 1, 2022)). Most recently, NHTSA granted an exemption to Beat the Street Interiors, Inc. (BTS). (Notice of receipt of petition, 88 FR 25445 (Apr. 26, 2024); notice of grant of petition, 88 FR 78093 (Nov. 14, 2023)).

¹⁵ 88 FR 25445.

⁴ 49 CFR 1.95.

⁵ 49 U.S.C. 30113(b)(3).

⁶ 49 U.S.C. 30113(b)(3)(A).

⁷ 49 U.S.C. 30113(b)(3)(B).

⁸ 75 FR 50958 (Aug. 18, 2010).

⁹ http://ec.europa.eu/enterprise/automotive/projects/safety_consider_long_stg.pdf.

November 2013 final rule, and the agency cannot affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in front crashes. NHTSA also stated that it believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule and further explained that it believed granting the exemption was consistent with the public interest and the Safety Act.

IV. Legacy Limousine and Luxury Coaches' Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Legacy Limousine and Luxury Coaches submitted a petition asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on its vehicles. The petitioner seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. Petitioner seeks this exemption because it states it is otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles. 49 CFR 555.6(d). The only difference between the requested exempt vehicles and non-exempted vehicles is that the non-exempted vehicles have lap/shoulder belts at side-facing seating positions, while exempted vehicle would have no belts or lap belts at side-facing seating positions.

Legacy Limousine and Luxury Coaches is a corporation that identifies itself as a final-stage manufacturer of entertainer-type motorcoaches. Legacy Limousine and Luxury Coaches states it is responsible for ensuring that the completed coach meets the FMVSS. The company typically receives a bus shell from an incomplete vehicle manufacturer and customizes the OTRB.

According to the petition, the bus shell received from the incomplete vehicle manufacturer generally contains the following components: exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signal lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

Petitioner states it then builds out the complete interior of the vehicle, which

might include: roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, inverter and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

Pursuant to 49 CFR 555.5(b)(7), the petitioner must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act.

Petitioner argues that NHTSA clearly had reservations about the safety effects of Type 2 seat belts on side-facing seats in motorcoaches. Petitioner notes that Congress mandated that NHTSA require Type 2 seat belts in side-facing seating positions in motorcoaches. NHTSA required it, per the direction from Congress, but NHTSA stated "the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats."¹⁶ Petitioner raises the fact that NHTSA has also reiterated that there have been concerns expressed in literature in this area about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, simulation data indicate potential carotid artery injury when the neck is loaded by the shoulder belt.¹⁷ Similarly, petitioner states that NHTSA also noted that Australian Design Rule ADR 5/04, "Anchorages for Seatbelts," specifically prohibits shoulder belts for side-facing seats. Petitioner also notes that there was no testing before or after the issuance of the 2013 final rule requiring Type 2 seat belts on side-facing seats in motorcoaches.

Petitioner states that granting its petition would be consistent with the Safety Act and in the public interest because NHTSA's analysis in developing the 2013 final rule found no demonstrable increase in associated risk related to the use of Type 1 seat belts.

¹⁶ 78 FR 70448 (quoting the agency's Anton's Law final rule, which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907).

¹⁷ Eds.: Fildes, B., Digges, K., "Occupant Protection in Far Side Crashes," Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

V. Public Participation

A. Request for Comment and Comment Period

The agency seeks comment from the public on the merits of Legacy Limousine and Luxury Coaches' petition for a temporary exemption from FMVSS No. 208's shoulder belt requirement for side-facing seats. The petitioner seeks to install lap belts at the side-facing seats; it does not seek to be completely exempted from a belt requirement. Further, the petitioner's request does not pertain to forward-facing designated seating positions on its vehicles. Under FMVSS No. 208, forward-facing seating positions on motorcoaches must have Type 2 lap and shoulder belts, and the petitioners are not raising issues about that requirement for forward-facing seats. After considering public comments and other available information, NHTSA will publish a notice of final action on the petition in the **Federal Register**.

B. Instructions for Submitting Comments

How long do I have to submit comments?

Please see **DATES** section at the beginning of this document.

How do I prepare and submit comments?

- Your comments must be written in English.

- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.

- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to

consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.

Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

(Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.95 and 501.5.)

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024–25594 Filed 11–1–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tax Treatment of Salvage and Reinsurance Yearly Disclosure Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning tax treatment of salvage and reinsurance.

DATES: Written comments should be received on or before January 3, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545–1227 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at lanita.vandyke@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Tax treatment of salvage and reinsurance yearly disclosure to state insurance regulatory agencies.

OMB Number: 1545–1227.

Regulation Project Number: TD 8390.

Abstract: Section 1.832–4(d)(2)(i)(A) and (B) allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 2024.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2024–25605 Filed 11–1–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8725 and TD 8379

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8725—Excise Tax on Greenmail and TD 8379.

DATES: Written comments should be received on or before January 3, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545–1049 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at lanita.vandyke@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: TD 8379.

Form Number: 8725.

Abstract: Treasury Decision (TD) 8379 provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid. Form 8725 is used by persons who receive "greenmail" to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There is no change to these existing collection requirements.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Responses: 12.

Estimated Time per Response: 7 hours, 37 minutes.

Estimated Total Annual Burden Hours: 92.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 2024.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2024-25606 Filed 11-1-24; 8:45 am]

BILLING CODE 4830-01-P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Event

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public event.

SUMMARY: Notice is hereby given of the following open public event of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to monitor, investigate, and report to Congress annually on "the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China." Pursuant to this mandate, the Commission will hold a public release of its 2024 Annual Report to Congress in Washington, DC on November 19, 2024.

DATES: The release is scheduled for Tuesday, November 19, 2024 at 10:30 a.m.

ADDRESSES: This release will be held in-person at or near the U.S. Capitol and adjacent Congressional office buildings (specific building and room number to be announced) and online via live webcast on the Commission's website at www.uscc.gov. Please check the Commission's website for an announcement on the specific event location once determined. Instructions on how to view the webcast and submit questions or participate in the question and answer session will also be posted at USCC.gov. Reservations are not required to attend.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the event should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202-624-1496, or via email at jcunningham@uscc.gov. Reservations are not required to attend.

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham at 202-624-1496, or via email at jcunningham@uscc.gov. Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Topics to Be Discussed: The Commission's 2024 Annual Report to Congress addresses key findings and recommendations for Congressional action based upon the Commission's hearings, research, and review of the areas designated by Congress in its mandate, including focused work this year on: a review of economics, trade, security, and foreign affairs developments in China and in the U.S.-China relationship in 2024; China's progress in emerging technologies at the forefront of U.S.-China competition; the risks to consumer product safety posed by Chinese imports; China's counter-intervention capabilities in the Indo-Pacific region; U.S. strategies to address China's nonmarket practices and other aspects of intersecting economic and national security challenges associated with China; the Chinese Communist Party's efforts to prepare Chinese society for a crisis or conflict; and changing relations between China and the Middle East, Taiwan, and Hong Kong.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398), as amended by division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Pub. L. 109-108 (November 22, 2005), as amended by Pub. L. 113-291 (December 19, 2014).

Dated: October 28, 2024.

Christopher P. Fioravante,

Deputy Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2024-25579 Filed 11-1-24; 8:45 am]

BILLING CODE 1137-00-P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch.10, that a meeting of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will be held January 7, 2025, via WebEx. The meeting will be held between 3 and 5 p.m. EDT. The meeting will be closed to the public from 3:30-5 p.m. EDT for scientific review and the discussion, examination, and reference to the research applications. Discussions will

involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), and as amended by Public Law 94–409, closing the committee meeting is in accordance with Title 5 U.S.C. 552b(c) (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure the high quality and mission relevance of VA's legislatively mandated Biomedical Laboratory and Clinical Science Research and Development programs.

Board members advise the Directors of the Biomedical Laboratory and Clinical Sciences Research Services and the Chief Research and Development Officer on the scientific and technical merit, mission relevance, and protection of human subjects of Biomedical Laboratory and Clinical Sciences Research and Development proposals. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public may attend the open portion of the meeting. The time limited agenda does not enable public comments or presentations. To attend the open portion of the meeting (3–3:30 p.m. EDT), the public may join by dialing the phone number 1–404–397–1596 and entering the meeting number (access code): 2823 274 3705. Public comments accepted during the open portion of the meeting and public stakeholders who want to speak to the committee will be afforded three minutes during the public comment period. These stakeholders must notify the DFO of their intention to speak to the committee.

Written public comments must be sent to Michael R. Burgio, Ph.D., Designated Federal Officer, Advisory Committee Management Office, 811 Vermont Avenue NW, Room 4342A,

Washington, DC 20006, or to *Michael.Burgio@va.gov*, at least five days before the meeting. The written public comments will be shared with the Board members. The public may not attend the closed portion of the meeting as disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals (per Pub. L. 92–463 subsection 10(d), as amended by Pub. L. 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c) (6) and (9)(B)).

Dated: October 29, 2024.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–25538 Filed 11–1–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, AMENDED, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch.10, that a meeting of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will be held January 7, 2025, via WebEx. The meeting will be held between 3 and 5 p.m. EDT. The meeting will be closed to the public from 3:30–5 p.m. EDT for scientific review and the discussion, examination, and reference to the research applications. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), and as amended by Public Law 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure the high quality and mission relevance of VA's legislatively mandated Biomedical Laboratory and Clinical Science Research and Development programs.

Board members advise the Directors of the Biomedical Laboratory and Clinical Sciences Research Services and the Chief Research and Development Officer on the scientific and technical merit, mission relevance, and protection of human subjects of Biomedical Laboratory and Clinical Sciences Research and Development proposals. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public may attend the open portion of the meeting. The time limited agenda does not enable public comments or presentations. To attend the open portion of the meeting (3–3:30 p.m. EDT), the public may join by dialing the phone number 1–404–397–1596 and entering the meeting number (access code): 2823 274 3705. These stakeholders must notify the DFO of their intention to speak to the committee.

Written public comments must be sent to Michael R. Burgio, Ph.D., Designated Federal Officer, Advisory Committee Management Office, 811 Vermont Avenue NW, Room 4342A, Washington, DC 20006, or to *Michael.Burgio@va.gov*, at least five days before the meeting. The written public comments will be shared with the Board members. The public may not attend the closed portion of the meeting as disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals (per Pub. L. 92–463 subsection 10(d), as amended by Public Law 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B)).

Dated: October 29, 2024.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–25550 Filed 11–1–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 89

Monday,

No. 213

November 4, 2024

Part II

Federal Housing Finance Agency

12 CFR Parts 1239, 1261, 1273

Federal Home Loan Bank System Boards of Directors and Executive Management; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1239, 1261, and 1273

RIN 2590–AB24

Federal Home Loan Bank System Boards of Directors and Executive Management

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is proposing to revise regulations addressing boards of directors and overall corporate governance of the Federal Home Loan Banks (Banks) and the Bank System's Office of Finance (OF) to update and clarify regulatory requirements on a variety of topics including: FHFA's annual designation of Bank directorships; Bank director eligibility and professional qualifications; nomination, election, and removal of Bank directors; the conduct of System board and committee meetings; conflicts of interest; and the respective responsibilities of System boards of directors and executive management.

DATES: Written comments must be received on or before February 3, 2025.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AB24, 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. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AB24.
- **Hand Delivered/Courier:** The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB24, 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–AB24,

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.

FOR FURTHER INFORMATION CONTACT: Lindsay Spadoni, Assistant General Counsel, Office of General Counsel, (202) 649–3634, Lindsay.Spadoni@FHFA.gov; or Janna Bruce, Senior Financial Analyst, Division of Bank Regulation, (202) 649–3202, Janna.Bruce@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.

SUPPLEMENTARY INFORMATION:

I. Comments

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 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.

II. Background

A. Statutory Requirements on Bank System Governance

The Bank System consists of eleven district Banks and the OF. The Banks are wholesale, cooperatively owned financial institutions, the debt of which is the joint and several obligation of all eleven Banks. They are organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a very limited extent, through certain eligible nonmembers. In general, only members may obtain advances (low-cost secured loans) and access other products and services provided by a Bank.

The Bank Act vests the management of each Bank in its board of directors.¹ As required by statute, each Bank's board comprises two types of directors: (1) member directors, who are drawn from the officers and directors of member institutions located in the Bank's district and who are elected to represent members in each respective state in that district; and (2) independent directors, who are unaffiliated with any of the Bank's member institutions or borrowing housing associates,² but who reside in the Bank's district and are elected on an at-large basis.³ The Bank Act specifies that a majority of seats on each Bank's board of directors must be member directorships, while not less than 40 percent must be independent directorships.⁴ Both types of directors serve four-year terms, which must be staggered so that approximately one-quarter of a Bank's total directorships are up for election every year.⁵ The Bank Act establishes the eligibility requirements for both types of Bank directors, including the professional qualifications required for independent directors, and sets forth requirements for their nomination and election.⁶ The statute requires the FHFA Director to annually designate the size and composition of each Bank's board of directors for the following calendar

¹ See 12 U.S.C. 1427(a)(1).

² FHFA's regulations refer to eligible nonmember borrowers as "housing associates." See 12 CFR part 1264.

³ See 12 U.S.C. 1427(a)(4), (b), and (d).

⁴ See 12 U.S.C. 1427(a)(2).

⁵ See 12 U.S.C. 1427(d).

⁶ See 12 U.S.C. 1429, 1430(a)(1), 1430b.

year, including by establishing the number of member and independent directorships and allocating member directorships among the states of the Bank district.⁷

The Bank Act requires that at least two of a Bank's independent directors qualify as "public interest" independent directors, each of which must "have more than 4 years of experience in representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections."⁸ Each independent director that is not a public interest independent director (referred to in this proposed rule as a "regular independent director") must "have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the [FHFA] Director may provide by regulation."⁹ By regulation, FHFA has added "the law" to that list of qualifying knowledge and experience.¹⁰

B. Existing Regulations on Corporate Governance of Banks and OF

Part 1261 of FHFA's regulations, entitled "Federal Home Loan Bank Directors," implements the statutory provisions and otherwise establishes requirements and processes relating to the composition and operations of Bank boards of directors. With respect to the former, sections in subpart B of the regulation (§§ 1261.2 through 1261.15) cover the annual designation of Bank directorships by the FHFA Director, director eligibility, the nomination and election processes, reporting and record retention requirements, handling conflicts of interest, and the filling of vacancies. Sections in subpart C (§§ 1261.20 through 1261.24) address director compensation and expenses and the conduct of board and committee meetings.¹¹

In addition to the corporate governance issues addressed in part 1261, part 1239 of FHFA's regulations, entitled "Responsibilities of Boards of Directors, Corporate Practices, and Corporate Governance," addresses duties and responsibilities of directors, required board committees, and programs and policies each Bank must establish and maintain. Although part 1239 generally applies to all of FHFA's

regulated entities, subpart E of the regulation sets forth requirements that are specific to the Banks. Part 1273 of FHFA's regulations governs the Bank System's OF, with governance issues—including composition and meetings of the OF board of directors—being addressed primarily in § 1273.8.

III. Overview of the Proposed Rule

The proposed rule would make numerous revisions to part 1261, as well as more limited revisions to parts 1239 and 1273 to address various issues related to the corporate governance of the Banks and the OF. While the greater portion of the proposed changes to existing regulatory text are intended merely to restate existing requirements more clearly, many of the proposed revisions are substantive. The latter are being proposed primarily to ensure that the Banks maintain strong corporate governance that enables them to effectively fulfill their public policy mission while maintaining safe and sound operations. New proposed requirements and authorities would help ensure the Banks have the leadership and resources to forestall avoidable difficulties and to address challenges that may arise in the years ahead. The proposed revisions reflect FHFA's view that corporate governance of the Banks is strengthened when: the public interest is adequately represented; Bank boards have the collective knowledge and expertise to guide the Bank through new and emerging risks and complex problems; independent directors represent a true independent voice; each Bank has the tools to ensure that its directors are fit to serve in a fiduciary role with the Bank; and Bank directors and management are incentivized to carry out their duties and responsibilities conscientiously.

As discussed further below, several of the proposed changes implement action items from FHFA's *FHLBank System at 100: Focusing on the Future* Report (FHLBank System at 100 Report or Report), published in November 2023. The proposed rule would also address issues raised in comments received in response to FHFA's April 2023 Notice of Regulatory Review, which was published pursuant to FHFA's Regulatory Review Plan.¹² Other

substantive changes are intended to increase transparency by codifying existing guidance or practices or to provide clarity on issues for which there currently exists no formal guidance, but on which FHFA has received inquiries. Finally, FHFA is also proposing many non-substantive revisions to part 1261, which are intended merely to address existing requirements, processes, and authorities pertaining to Bank boards and directors more clearly than does the existing regulation.

The FHLBank System at 100 Report provides a blueprint for innovative and prudent steps to bolster and improve the Bank System over the next several years, with the goal of ensuring that the Banks remain well positioned to meet the needs of their members and the communities they serve as they approach their 100th anniversary. The Report was informed by a year-long review of the Bank System involving significant stakeholder outreach, a historical review of the role of the Banks, and detailed analysis of both the strengths and areas for improvement in the System's current structure. As stated in the Report, FHFA's vision for the future is to have an effectively governed Bank System that efficiently provides stable and reliable funding to creditworthy members and delivers innovative products and services to support the housing and community development needs of the communities its members serve, all in a safe and sound manner. The Report noted that each Bank's "effectiveness in achieving its mission and safety and soundness goals is influenced by its governance."¹³

The Report laid out four regulatory actions to be taken by FHFA to strengthen Bank boards of directors and enable them to effectively address emerging risks and to oversee the safety and soundness and mission achievement of the Banks in today's financial market environment: (1) clarify required qualifications for public interest independent directors; (2) expand the list of qualifying experience for regular independent directors to reflect business developments in housing finance and new and emerging risks and complex problems; (3) encourage the Banks to evaluate potential gaps in board knowledge and pursue opportunities to address these gaps by nominating individuals with particular skills, backgrounds, and experience; and (4) facilitate the nomination of individuals with

¹² See 88 FR 22919 (Apr. 14, 2023) (FHFA Notice of Regulatory Review). The Regulatory Review Plan establishes a process by which, at least every five years, FHFA issues a notice of the regulatory review in the **Federal Register** and requests comments on how its regulations may be made more effective and less burdensome in achieving the Agency's regulatory objectives. See 77 FR 10351 (Feb. 22, 2012) (FHFA Regulatory Review Plan).

¹³ See FHLBank System at 100 Report at 64.

⁷ See 12 U.S.C. 1427(b)(1), (c).

⁸ 12 U.S.C. 1427(a)(3)(B)(ii).

⁹ 12 U.S.C. 1427(a)(3)(B)(i).

¹⁰ See 12 CFR 1261.7(e)(1).

¹¹ Subpart A of the existing regulation, entitled "Definitions," has no content.

technical subject matter expertise.¹⁴ The proposed rule would address each of those four action items.

The proposed rule would clarify required qualifications for public interest independent directors, including by specifying criteria for a Bank to consider when determining if an individual has “represented” consumer or community interests on banking services, credit needs, housing, or financial consumer protections, as required by statute to qualify as a public interest independent director. The rule would codify existing guidance that a person must have advocated for, or otherwise acted primarily on behalf of or for the direct benefit of, consumers or the community to meet the representation requirement.

The revised regulation would require each Bank to take affirmative measures to ensure that its board of directors has the knowledge and experience needed to adequately oversee the management of the Bank. Based on input received during the FHLBank System at 100 outreach, the proposed rule would add artificial intelligence, information technology and security, climate-related risk, Community Development Financial Institution (CDFI) business models, and modeling to the list of qualifying experience for regular independent directors. To ensure coverage of critical areas, each Bank’s board would be required to conduct an annual assessment of the skills and experience possessed by its incumbents and those for which the board has a need. “Skills and experience” assessments are authorized, but not required, under the existing regulation.¹⁵

Banks would be required to take active steps to seek independent directorship nominees—and to encourage member directorship nominees—who possess needed skills and experience. The revised regulation also would require the Banks to prioritize knowledge and experience relevant to the business, programs, and mission of the Bank and gained primarily through full time paid executive, management, or other senior positions when considering potential independent directorship nominees. To provide Banks with more flexibility to address critical needs when filling board vacancies, the proposed rule would add a provision expressly permitting Banks to fill a vacant public interest independent directorship by redesignating a qualifying incumbent regular independent director as a public

interest independent director and vice versa. The Bank could then find new nominees to fill the resulting independent directorship vacancy (a practice FHFA currently permits).

At several points during the outreach phase of the FHLBank System at 100 initiative, stakeholders stressed the importance of independent voices on a Bank’s board. The proposed rule includes provisions addressing director independence. It would make modest changes to increase the separation between independent directors and Bank members by extending “independence” requirements (which currently only apply to seated directors) to independent directorship nominees and prohibiting former member directors from serving as an independent director until they have been off the board for at least two years.

In response to a Notice of Regulatory Review comment, the proposed rule includes a new provision clarifying the definition of “advances” for purposes of the prohibition against an independent director serving as an officer, employee, or director of any “recipient of advances” from the Bank. This issue is of particular relevance for independent directors who lead or work for entities certified as housing associates.¹⁶ As proposed, the word “advances” would refer to any loan from a Bank to the recipient, regardless of form or nomenclature, except for debt securities traded in the public capital markets. This definition strikes a balance between preventing circumvention of the independence requirements and allowing Banks to tap into their housing associates’ valuable expertise without having to relinquish, or decline to make, investments in their debt securities.

The proposed rule would codify requirements and authorities relating to the “fitness” of an individual to serve as a director. It would require that a Bank decline to nominate or seat as a director any individual it knows to be “unfit” to serve and authorize each Bank’s board to adopt bylaws or policies under which it may remove directors “for cause” upon a two-thirds vote of the board. As proposed, “cause” for removal would include code of ethics or policy violations, violations of the law, posing a risk of material harm to the Bank, conduct or a mental condition indicating an inability to oversee the Bank, and poor performance or lack of participation. The proposed rule would also require that each Bank’s board

conduct an annual assessment of director performance and participation to determine whether each director is contributing positively to the board’s ability to adequately oversee the operations of the Bank. The proposed rule would require that director compensation reflect performance, as determined through the annual assessment, and permit the board to remove a director where the assessment reveals that a director’s continuous poor performance or lack of participation is compromising the board’s ability to adequately oversee the operations of the Bank. Additionally, the proposed rule would allow the FHFA Director to establish and provide notice of an annual amount of director compensation determined to be reasonable.

As further assurance that all Bank directors are fit to serve, the proposed rule would codify as a regulatory requirement the Banks’ existing practice of conducting thorough background checks on independent directorship nominees, as well as individuals under consideration to fill a vacant directorship. It would also for the first time expressly require the Banks to conduct background checks for their member directorship nominees. The revised regulation would prohibit a Bank from including any individual on the ballot without having first confirmed, based on the background check, the individual’s fitness to serve in a fiduciary role with the Bank.

With respect to directorship terms and term limits, the proposed rule would expressly provide that FHFA may continue, as part of the annual designation of directorships process, to adjust downward the length of terms from time to time where required to maintain the even staggering of directorship terms on a Bank’s board. The proposed rule would make clear that such truncated terms do not count as “full terms” for purposes of the statutory term limit provisions, but that full terms on either side of a truncated term must be counted as consecutive for those purposes.

In one of only a few revisions to address corporate governance issues below the board level, the proposed rule would require each Bank to adopt and implement a conflicts of interest policy covering all Bank employees. The required policy would establish appropriate limitations, standards, and procedures on the holding of outside positions and financial interests by Bank employees and close family members and associates. Although the treatment of different types of employees under such a policy may be

¹⁴ See FHLBank System at 100 Report at 67.

¹⁵ See 12 CFR 1261.9(a).

¹⁶ See 12 CFR part 1264. A Bank may make an advance to an entity, such as a state housing finance agency, that is certified as a housing associate, but housing associates cannot become bank members.

calibrated to the risk presented, each Bank's policy would be required to prohibit its executive officers and senior management from holding paid positions with any entity that is, or may be eligible to become, a member or housing associate of any Bank or with any affiliate of such entity.

Finally, the proposed rule would revise the regulation's existing provisions on record retention. Changes would increase the amount of time a Bank must retain materials pertaining to its directors and the director nomination and election process from two years to the longer of seven years or seven years after the director to which the information pertains leaves the board. This requirement is consistent with recognized best practices and should not be burdensome to implement in an electronic environment.

Although the proposed rule would impose new requirements (in addition to codifying some existing expectations), it would also implement new, or make permanent previously temporary, flexibilities. As requested in a Notice of Regulatory Review comment, the proposed rule would remove the requirement that Bank boards satisfy their six meeting per year minimum only through in-person meetings. The proposed revision would codify the substance of a waiver that has been in place since early in the COVID-19 pandemic by permitting Bank and OF board and committee meetings to be held by video or teleconferencing, or in a hybrid format, provided all directors have an opportunity to communicate, have access to all written documents and presentations, and all participants are within a state or U.S. Territory that is part of a Bank district.

To reduce burden in other areas, the proposed rule would also implement a number of other recommendations received as comments on the Notice of Regulatory Review. These changes include expanding the range of arms-length transactions not considered to be a prohibited "financial interest" for purposes of the Bank director conflicts-of-interest requirements, updating and expanding the authorized methods for withdrawal of OF operating funds, and allowing the OF board of directors to delegate review and approval of contracts as specified in applicable governance documents.

In addition to these substantive revisions, the proposed rule would make non-substantive revisions throughout part 1261 to improve the readability of the regulatory text and provide greater clarity on the requirements, processes, and authorities pertaining to Bank directors. In

particular, provisions governing the annual designation of directorships, director eligibility, the nomination and election processes, and the filling of vacant directorships would be updated. These proposed non-substantive revisions include substitution of clearer phrasing, changes to assure consistent use of terminology, consolidation of related subject matter, replacement of statutory cross-references with either substantive text or regulatory cross-references, reorganization of sections and revision of headings, and removal of transitional material that is no longer needed.

IV. Section-by-Section Analysis of the Proposed Rule

A. Revisions to 12 CFR Part 1261

1. Definitions—§ 1261.2

Section 1261.2 of the existing regulation sets forth definitions applicable to subpart B of part 1261, which consists of the provisions governing Bank director eligibility, nominations, and elections. Existing § 1261.2 includes definitions for "independent directorship," "member directorship," "public interest director," and "public interest directorship." As described below, the proposed rule would add to and revise the regulatory terms describing the Bank directorship types and sub-types. The proposals are intended to provide clarity, and revisions to existing definitions are not intended to change the scope of the defined terms.

The existing regulation defines the terms "independent directorship" and "member directorship" by means of cross-references to the relevant provisions of the Bank Act. The proposed rule would replace these statutory references with cross-references to the regulatory provisions establishing the eligibility and designation requirements for those two types of Bank directorships. FHFA believes it is preferable to define terms with reference to the regulation itself, as opposed to requiring reference to the statute the regulation is intended to implement. Because part 1261 addresses both "directorships" (the designated seats comprising a Bank's board) and "directors" (the individuals filling those seats), those variants would be defined together for each directorship type.

While both the Bank Act and the existing regulation define "public interest directorship" (referring to an independent directorship to be filled by an individual meeting the "representing consumer or community interests" qualification requirement), both refer to an independent directorship to be filled

by an individual meeting the "knowledge and experience" qualification requirement of the statute with such undefined terms as "an independent directorship, other than a public interest directorship" and "an independent director that is not a public interest director." The proposed rule would establish a joint definition for "regular independent directorship and regular independent director" to refer to those types of independent directorships and directors, and would define the terms with a cross-reference to the new provision addressing the qualifications requirements for such directors under the proposed rule (§ 1261.5(c)(1), discussed below).

The existing regulation defines "public interest directorship" as "an independent directorship filled by an individual with more than four years of experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protections." The regulation separately defines "public interest director" to mean "an individual serving in a public interest directorship." The proposed rule would revise the former term to "public interest independent directorship" to make clear that it refers to a sub-type of independent directorship and so the construction of the term parallels that of its counterpart, "regular independent directorship." The proposed rule would also combine the "directorship" and "director" definitions into one paragraph and define the terms with a cross-reference to the new provision addressing the qualifications requirements for such directors under the proposed rule (§ 1261.5(c)(2), also discussed below), so that the definitions parallel those of the other directorship types.

The proposed rule would also add a definition for the term "nominee," referring to an individual formally nominated by a Bank's members or board of directors, as appropriate, to stand for election for a Bank directorship. This change is intended to allow a clearer distinction in the regulatory text between requirements that apply to persons requesting or being considered for nomination for a directorship and requirements that apply only to those that have been duly nominated.

Existing § 1261.2 defines the term "voting State" to mean "the District of Columbia, Puerto Rico, or the State of the United States in which a member's principal place of business, as determined in accordance with 12 CFR part 1263, is located as of the record date," and further clarifies that "[t]he

voting State of a member with a principal place of business located in the U.S. Virgin Islands as of the record date is Puerto Rico, and the voting State of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date is Hawaii.” The proposed rule would amend this definition to eliminate the unnecessary references to the District of Columbia and Puerto Rico in the first clause. Section 1201.1 of FHFA’s regulations, which defines terms that are used frequently throughout the regulations, already defines the term “State” to include the District of Columbia and Puerto Rico (as well as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands), so there is no reason to specify their inclusion in the definition of “voting State.”

Where appropriate, the proposed rule would also revise numerous references to a “State” in existing part 1261 to refer to a “voting State.” This is especially important with respect to provisions on the allocation of member directorships and member directorship nominations and voting, as the latter term includes the concept that members in U.S. Virgin Islands nominate, vote for, and are represented by member directors for Puerto Rico, while members in American Samoa, Guam, or the Northern Mariana Islands nominate, vote for, and are represented by member directors for Hawaii.

2. General Provisions—§ 1261.3

Section 1261.3 of the existing regulation sets forth “General provisions” addressing board size and composition, length of term of directorships, annual elections, location of members for purposes of voting to fill member directorships, and the calculation of dates for purposes of determining compliance with deadlines required under the regulation. The proposed rule would remove the material on board size and composition in existing § 1261.3(a), the substance of which would be consolidated with related material on the designation of directorships in revised § 1261.4. The remaining paragraphs of § 1261.3 would be redesignated as appropriate and revised to remove or replace statutory references and streamline language for greater clarity and consistency. No change in substantive meaning is intended.

3. Annual Designation of Directorships—§ 1261.4

Section 1261.4 of the existing regulation addresses the annual “designation of directorships” process which results in the issuance of an order by the FHFA Director designating the size and composition of each Bank’s board of directors for the following calendar year. The proposed rule would make various revisions to this section to consolidate provisions relating to the designation of directorships and to provide clarity regarding the methods through which FHFA determines the appropriate size and composition for each Bank’s board and the requirements and procedures associated with the process. The proposed rule would also change the heading of § 1261.4 to “Annual designation of directorships” to reflect that the process is annual and that the Director designates not only member directorships, but also independent directorships for each Bank. The proposed revisions are not intended to change any current procedure or requirement.

The proposed rule would redesignate existing § 1261.4(a) as § 1261.4(b) and would add a new paragraph (a) providing that the Director will annually issue a written order designating for each Bank’s board of directors for the following calendar year: (1) the total number of member directorships and their allocation among the voting States of the Bank’s district; (2) the total number of independent directorships; and (3) the directorships for which an election will be held for terms beginning on January 1 of the following year, and the length of those terms.¹⁷ The designation of directorships has been carried out by means of a Director’s order since the inception of FHFA and the new regulatory text would make this explicit and would more accurately describe the content of the designations order than existing § 1261.3(a). Consistent with current practice, the proposed rule would provide that the Director will issue the designation of directorships order by June 1 of each year.

Redesignated § 1261.4(b), requiring each Bank to submit a capital stock report to provide data for the allocation of member directorships and the determination of the number of votes each member may cast in the election, would remain substantively unchanged. For clarity, however, the sentence

providing that “[i]f a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by members” would be revised to refer to “the total shares of *each class of stock* required to be held by the members.”

Paragraphs (b) and (c) of existing § 1261.4—entitled “Designation of member directorships” and “Allocation of directorships,” respectively—would be replaced by a new § 1261.4(c), which is intended to describe the process through which FHFA sets the total number of member directorships for each Bank and allocates them among the respective States of the Bank district.

Proposed paragraph (c)(1) would describe the first part of the statutorily required process, whereby member directorships are allocated among the States of each district based on the relative amount of Bank stock the members in each respective state were required to hold as of December 31 of the preceding year. As described in the proposed regulatory text, FHFA begins by choosing for each Bank a “base” number of member directorships to allocate among the states of the district. For practical reasons, the base number is typically eight,¹⁸ but may differ where there is a legal or policy reason for selecting a different number. For example, where the number of states comprising a Bank district exceeds eight, FHFA must begin with a higher base number for that Bank because the Bank Act requires that each state have a minimum of one member directorship. In other cases, for example where application of the statutory “grandfather provision” (discussed below) would otherwise result in an excessively large board size, FHFA may start with a base number lower than eight.¹⁹

Proposed § 1261.4(c)(1)(i) provides that FHFA will then use the “method of equal proportions” to allocate those member directorships among the voting States of the Bank district, based on the ratio of the number of shares of Bank stock required to be held by the members in each State to the number of shares required to be held by all members of the Bank. As required by statute,²⁰ proposed § 1261.4(c)(1)(ii) makes clear that each State must be allocated at least one, but no more than

¹⁸ Among other things, a base number of eight seats has been shown to result in most cases in a board that is not excessively large, but is large enough so that the board’s composition meets all statutory requirements.

¹⁹ The Bank Act provides that each Bank is to have a board of 13 directors, “or such other number as the Director determines appropriate.” See 12 U.S.C. 1427(a)(1).

²⁰ See 12 U.S.C. 1427(c).

¹⁷ Bank directorship terms, for both member and independent directors, are generally four years but, as discussed below, FHFA may on rare occasions truncate the term length for a Bank directorship to maintain the equal staggering of terms.

six, member directorships. As does the existing regulation, proposed § 1261.4(c)(1)(iii) provides that, for those Banks that have issued more than one class of stock, member directorships will be allocated based on the combined number of shares required to be held by members. Proposed § 1261.4(c)(1)(iv) would make clear that the required stock amounts on which the allocations are based shall be the amounts as of the record date (December 31 of the preceding calendar year, as defined in § 1261.2) shown in the capital stock report required to be submitted by the Banks under redesignated § 1261.4(b).

In practice, when allocating member directorships for a Bank, FHFA first allocates one member directorship to each State in the Bank district to fulfill the minimum statutory requirement. Any remaining seats are then allocated

using the “method of equal proportions,” which is the method that has been used to apportion seats in the United States House of Representatives since 1941.²¹ The use of the method of equal proportions is intended to result in the stock-based allocation of member directorships having the closest possible correlation with the relative amounts of stock required to be held by Bank members in each respective state of the district.

Under the method of equal proportions, after each state has been allocated one seat, a priority value is calculated for each potential subsequent seat a state could be allocated—out to the maximum of six member directorships that may be allocated to each State—based on the following formula:

$$V = \frac{P}{\sqrt{n(n-1)}}$$

- V represents a priority value.
- P represents the total shares of Bank stock required to be held by members in a particular State.
- n represents the number of member directorships the state would have if it gained a seat.

The remaining seats are then allocated sequentially among the states of the district based on those priority values.

For example, if FHFA were to allocate eight member directorships among the states of a Bank district including three states having required member stock holdings of 20 million, 12.5 million, and 5 million shares, respectively, the priority values for potential seats #2 through #6 for each state would be as follows:

Seat # >	2nd Seat	3rd Seat	4th Seat	5th Seat	6th Seat
Multiplier >	0.7071068	0.4082483	0.2886751	0.2236068	0.1825742
State A (20,000,000 sh)	14,142,136	8,164,966	5,773,503	4,472,136	3,651,484
State B (12,500,000 sh)	8,838,835	5,103,104	3,608,439	2,795,085	2,282,177
State C (5,000,000 sh)	3,535,534	2,041,241	1,443,376	1,118,034	912,871

This would result in a priority order for the allocation of seats #2 through #6 for each state as follows:

Seat # >	2nd	3rd	4th	5th	6th
State A	1	3	4	6	7
State B	2	5	8	10	11
State C	9	12	13	14	15

Assuming a base number of eight total member directorships are to be allocated, there would be five remaining seats after each state has been allocated one seat. Based on the priority order reflected in the table above, State A would be allocated the first of the remaining seats, State B the second, State A the third and fourth, and State B the fifth, resulting in an overall allocation of four seats to State A, three seats to State B, and one seat to State C.

The Bank Act generally requires that FHFA allocate member directorships based on the ratio of required stock holdings. However, the statute also requires that, whenever the number of member directorships representing the members located in any State would not be at least equal to the total number representing that State on December 31,

1960, FHFA “shall add to the board of directors” such additional seats as are necessary to bring the total number being allocated to that State up to the 1960 total (the “grandfather provision”).²² The minimum number of member directorships that must be allocated to each State to meet the requirements of the grandfather provision is specified in a table set forth in existing § 1261.15, which would not be revised as part of this rulemaking.

Existing § 1261.4(c) implements the grandfather provision through a bare cross-reference to the statute. In contrast, proposed § 1261.4(c)(2) would expressly provide that, where the stock-based allocation has resulted in a state being allocated fewer member directorships than shown for that State in § 1261.15, FHFA will allocate it as

many additional member directorships as are necessary to increase the total number of member directorships for that State to the number shown on the table in that section. Only those states that have been “grandfathered” at more than one member directorship appear on the table in § 1261.15. Proposed § 1261.4(c)(2) would deem the minimum number of member directorships required to fulfill the “grandfather provision” to be one for those States not appearing on the table. In the example above, if all three States had been represented by three member directorships in 1960, FHFA would need to allocate two additional seats to State C, beyond the one earned in the stock-based allocations, increasing the total number of member directorships for the Bank to 10.

²¹ The method of equal proportions has been the required method for the stock-based allocation of Bank member directorship seats since 1998. See 63

FR 65683, 65685, 65688 (Nov. 30, 1998) (final rule); 63 FR 26532, 26533 (May 13, 1998) (proposed rule).

²² 12 U.S.C. 1427(c). By its express terms, the statutory grandfather provision does not apply to

the directorships of any Bank resulting from the merger of two or more Banks—currently only the Federal Home Loan Bank of Des Moines.

Proposed § 1261.4(d) would state that, after the total number of member directorships and their allocation have been determined for each Bank, FHFA will set the number of independent directorships at a number within the statutorily prescribed range of at least 40 percent, but less than 50 percent, of total directorships. In the example above, with 10 member directorships, FHFA could choose to designate seven, eight, or nine independent directorships (with independent directors representing 41 percent, 44 percent, or 47 percent of boards comprising 17, 18, or 19 directors). That decision is based on a variety of general and Bank-specific considerations, including the number of independent directorships designated for the current year.

Under the designation of directorships process, year-to-year changes in the relative level of required stock holdings for the members in the various States of a Bank district may result in the redesignation of one or more member directorships from one state to another. In some cases, the interaction of changes in the relative level of required stockholdings with the requirements of the grandfather provision may result in the addition of a new member directorship to a Bank's board. This could also lead to the addition of a new independent directorship if needed to maintain the required ratio of independent directorships to total directorships. In other instances, FHFA may simply choose to add a new independent directorship for policy reasons or at the request of a Bank's board.

Proposed § 1261.4(e) would address these redesignations and additions. Proposed paragraph (e)(1) (like existing § 1261.4(e)) would make clear that the member directorship representing the state that is losing a seat terminates as of December 31 of the year the designation of directorships order is issued and a new directorship is created as of January 1 of the following year to represent the state that is gaining a seat. The Bank would need to hold an election to fill the newly added member directorship during the year the designation of directorships order is issued, with the duly elected director to begin serving on the following January 1. The individual occupying the member directorship being terminated would cease to be a director after December 31 of the current year.

As does the existing regulation, proposed paragraph (e)(1) would further provide that the length of the initial term of the newly added member directorship shall be adjusted to equal the remaining term of the directorship

being terminated, to ensure that the terms of the Bank's directorships remain staggered with approximately one quarter of the terms expiring each year, as required by statute.²³ Similarly, proposed paragraph (e)(2) would provide that the Director may truncate the initial term of any new directorship added to a Bank's board if needed to maintain the even staggering of terms. As under the existing regulation, such truncated terms would not be counted in determining term limits for Bank directors (this is discussed further below).

Finally, proposed § 1261.4(f) would provide that the board of directors of each Bank shall determine the number of public interest independent directorships to be included among its designated independent directorships for the following year, a requirement that appears in § 1261.3(a) of the existing regulation. Under the proposed provision, a Bank would now also be expressly permitted to change the number of public interest independent directorships during the year (a practice which FHFA has permitted). As required by statute, a Bank would at all times need to have at least two such directorships.

4. Director Eligibility—§ 1261.5

The proposed rule would make numerous revisions to § 1261.5 of the existing regulation, which governs director eligibility, including qualifications for independent directors and term limits. These revisions are intended to consolidate provisions relating to director eligibility, strengthen eligibility requirements to encourage strong corporate governance, fill in gaps in the coverage of the existing regulation, and provide greater overall clarity than the existing regulation.

The proposed rule would make clarifying revisions to § 1261.5(a), which implements the statutory eligibility requirements for member directors, with no intended change to the substance. The heading to the provision would be revised to make clear (as does the existing text) that the eligibility requirements apply not just to sitting directors, but to nominees as well. Proposed paragraph (a)(1) would provide that each member director, and each nominee for a member directorship must be: (i) a citizen of the United States; and (ii) an officer or director of a member institution that is located in the voting State of the Bank district to which the directorship being occupied, sought, or filled has been allocated under proposed § 1261.4(c). As required

by statute, paragraph (a)(1)(ii) would make clear that the member institution with which any member director or member directorship nominee is associated must meet all minimum capital requirements established by its appropriate Federal banking agency or appropriate State regulator. As does existing § 1261.5(a), paragraph (a)(2) would provide that the institution with which the director is associated must have been a member as of the "record date" (that is, December 31 of the year preceding the election) or, in the case of a director chosen by a Bank's board of directors to fill a vacancy, as of the time the board acts.

Existing § 1261.5(b) provides that each member director, and each nominee to a member directorship, must be an officer or director of a member located in the State to which the Director has allocated the directorship. Because its substance would be incorporated into proposed § 1261.5(a), the proposed rule would delete this provision.

Existing § 1261.5(c), entitled "Eligibility requirements for independent directors," provides that each independent director and each nominee to an independent directorship shall be: (1) a citizen of the United States; and (2) a bona fide resident of the district in which the Bank is located. The Bank Act actually sets forth a total of four requirements each independent director must meet to be eligible to serve. In addition to the two covered by existing § 1261.5(c), an independent director may not serve as an officer of any Bank or as a director, officer, or employee of any member of a Bank, or of any recipient of advances from a Bank²⁴ and must possess certain professional qualifications, which differ depending on whether the individual is filling a public interest independent directorship or a regular independent directorship.²⁵ While the latter two requirements are covered in separate provisions of the existing regulation (§§ 1261.10 and 1261.7, respectively), they are not identified as "eligibility requirements" in § 1261.5(c).

The proposed rule would redesignate § 1261.5(c) as § 1261.5(b) and would expand the list of eligibility requirements set forth therein to include the independence and qualifications requirements. This proposed revision is intended to provide clarity by itemizing in one provision all of the requirements an individual must meet to be eligible for nomination and service as an independent director. In the case of the

²⁴ 12 U.S.C. 1427(a)(3)(B)(iii).

²⁵ 12 U.S.C. 1427(a)(3)(B)(i), (ii).

²³ See 12 U.S.C. 1427(d).

independence and qualifications requirements, proposed § 1261.5(b) would cross-reference other provisions of the revised regulation (§§ 1261.10 and 1261.5(c), respectively) providing more detail on how a Bank must determine whether an individual meets those requirements. Under proposed § 1261.5(b), all four requirements would apply to both sitting independent directors and to independent directorship nominees. While the citizenship, residency, and qualifications requirements apply to nominees as well as sitting directors under the existing regulation, the independence requirement currently applies only to seated directors. The extension of this requirement to nominees is discussed below in the analysis of proposed § 1261.10.

The proposed rule would add a new paragraph (c) to § 1261.5 to address the required professional qualifications for both regular and public interest independent directors. Under the existing regulation, both sets of required qualifications are fully or partially stated in multiple provisions, which FHFA believes is a potential source of confusion.²⁶ Under the proposed rule, the required qualifications for regular and public interest independent directors would be described once—in proposed § 1261.5(c)—which would, in turn, simply be cross-referenced where relevant in other provisions of the revised regulation. As explain below, the proposed rule would also make substantive revisions to the regulatory text describing the qualifications.

The existing regulation, at § 1261.7(e), provides that each independent director that is not a public interest independent director (*i.e.*, a “regular independent director” under the proposed rule) must “have experience in, or knowledge of, one or more of the following areas: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, and the law.”²⁷ To that list of qualifying knowledge and experience, which would now appear in proposed § 1261.5(c)(1), the proposed rule would add artificial intelligence, information technology and security, climate-related risk, CDFI business models, and modeling.

These additions were developed both from input on critical areas of expertise that should be covered by a Bank’s board of directors sought and received

during the FHLBank System at 100 initiative and from understanding of the Banks’ corporate governance needs developed through FHFA’s general supervisory efforts. Their inclusion is intended to encourage each Bank’s board to take active steps to ensure it has sufficient knowledge and expertise regarding recent business developments in housing finance and new and emerging risks and complex problems that could affect Bank operations. To allow FHFA and the Banks to respond more rapidly to evolving conditions and risks going forward, the list of qualifying knowledge or expertise for regular independent directors in proposed § 1261.5(c)(1) would also include “such other areas as the Director shall determine,” thus allowing FHFA to add other areas to the list, as appropriate, without going through the rulemaking process. Such additions would be conveyed through guidance.

FHFA requests comment on whether these areas of qualifying experience are appropriate and whether other specific areas should be included.

Proposed § 1261.5(c)(2) would implement the statutory requirement that each public interest independent director qualify by having “more than four years of experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protection.” The application of this requirement has been a frequent subject of inquiry and discussion between FHFA and Bank boards of directors and staff, potential directors, and trade groups since it was adopted as part of the Housing and Economic Recovery Act of 2008 (HERA).²⁸ In early 2022, FHFA issued a revised version of the Bank Independent Director Application Form (FHFA Form #129), the instructions for which provide guidance on how to determine whether an applicant for a public interest independent directorship meets the statutory qualifications.²⁹ The guidance provided on the Form is consistent with advice given by FHFA in individual cases over the years. In addition to restating the statutory requirement, proposed § 1261.5(c)(2) would include the substance of this material to provide clarity on the

implementation of the statutory standard in the regulation itself.

The new provision would stipulate that, for purposes of determining compliance with the public interest qualification requirements, “representing” means advocating for, or otherwise acting primarily on behalf of or for the direct benefit of, consumers or the community in one of the four enumerated areas. Those who have not advocated for or acted on behalf of or for the direct benefit of consumers and the community in any material capacity cannot reasonably be viewed as representatives of those constituencies. Industry-side interests are more than adequately represented among the Banks’ member and regular independent directors. Among other things, FHFA believes that experience related to fair housing, fair lending, consumer protection, affordable housing, community development, and diversity and inclusion that otherwise meets the requirements of the statute and regulation would be qualifying experience for public interest independent directors.

Proposed § 1261.5(c)(2) would also provide that qualifying experience in one of the four enumerated areas may have been acquired in professional, public service, or significant volunteer positions, so long as the work done was substantial in terms of time commitment and responsibility and that the experience was accrued from activities personally undertaken by the director or nominee, as opposed to being attributed based solely on the activities of organizations with which the person was associated.

Prior to 2008, the Bank Act required the appointment of at least two “community interest” directors at each Bank “chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.” In 2008, HERA substituted the current language focusing on the personal experience of the individual in representing community or consumer interests, as opposed to the mission of the organization with which they were affiliated. The additional clarifying regulatory text is intended to ensure that nominees meet the statutory requirement of personal experience and have the kind of knowledge, experience, and perspective necessary to oversee a Bank and guide it in the safe and sound fulfillment of its public policy mission. Experience gained through full-time paid employment is almost always qualifying. FHFA has generally viewed experience with nonprofits, community

²⁶ See 12 CFR 1261.5(c)(2), 1261.7(d)(1)(i) and (e)(2) (public interest independent director qualifications); 12 CFR 1261.7(d)(1)(ii) and (e)(1), 1261.8(a)(1)(iii) (regular independent director qualifications).

²⁷ See 12 CFR 1261.7(e).

²⁸ Under existing §§ 1261.7(f) and 1261.14(b), FHFA has an opportunity to review the completed Independent Director Application Forms and other supporting materials for each Bank’s proposed independent directorship nominees and to provide comments to the Bank where warranted. For public interest independent directorship nominees, FHFA’s review includes evaluation of whether the individual’s professional experience meets the statutory standard.

²⁹ FHFA released an updated version of the Form with some additional minor revisions in 2023.

organizations, state and local housing finance agencies, and non-member CDFIs, or service as an elected, appointed, or career government official, to be qualifying. Ultimately, determinations as to qualification to serve as a public interest independent director must be made on a case-by-case basis, given the numerous ways in which a person could conceivably meet the statutory standard.

Both regular and public interest independent directors need to have the capacity to challenge Bank management on important issues, including the sufficiency and effectiveness of its mission programs. While Bank boards can benefit from a wide variety of viewpoints, FHFA has observed that the most effective directors possess knowledge and experience that are relevant to the business, programs, and mission of the Bank and that provide a basis for understanding the actual and potential impact of the Bank's activities on its members and on communities within the Bank's district. FHFA also believes that service in full-time executive, management, or other senior paid professional positions generally provides the most valuable experience for a Bank director. Proposed § 1261.5(c)(3) would require that Banks' boards prioritize those characteristics when soliciting and choosing Bank independent directorship nominees.

With respect to length of board service, the Bank Act limits Bank directors to "three consecutive full terms" and requires former directors who have termed out to sit out for a minimum of two years before seeking to serve again as a Bank director.³⁰ Section 1261.5(d) of the existing regulation, entitled "Restrictions," implements the statutory term limit provisions by setting forth principles for determining whether a director has been elected to and served three consecutive full terms. In general, under the existing regulation, four-year terms to which a director has been elected and has served any part count as full terms, while terms that have been truncated to maintain board staggering and terms served out by a vacancy electee do not. Much of the material in existing § 1261.5(d) is intended to address issues arising from the transition from the pre-HERA regime, under which directors served three-year terms and independent

directors were appointed by the Bank System regulator, to the current regime, under which directors serve four-year terms and independent directors are nominated by Bank boards and elected by Bank members.

Proposed § 1261.5(d) (which would be re-titled "Term limits") would continue to address director term limits using the principles reflected in the existing regulation. The proposed rule, however, would remove from the regulatory text the post-HERA transition material, which is no longer needed because all directors who were serving at the time of the statutory change have now termed out, and otherwise streamline the language and structure of the provision. Consistent with other revisions, the proposed rule would replace cross-references to the Bank Act with either an express substantive statement or a cross-reference to a substantive regulatory provision. As proposed, § 1261.5(d) would continue to provide that truncated terms do not count as full terms, but would make clear that two full terms on either side of a truncated term count as consecutive full terms; that is, while a truncated term may not count in the term limit calculation, it cannot re-set the term limit calculation back to zero.

Existing § 1261.5(e) explains that a director shall become ineligible to remain in office if, during their incumbency, the directorship to which they have been elected is eliminated. The proposed rule would add to this provision a cross-reference to the section of the proposed rule (§ 1261.4, governing the designation of directorships) under which a seat could be eliminated. As under the existing regulation, proposed § 1261.5(e) would continue to provide that the incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

Section 1261.6 of the existing regulation, governing the determination of members votes, would not be changed by the proposed rule.

5. Nominations for Member and Independent Directorships—§ 1261.7

Section 1261.7 of the existing regulation governs nominations for member and independent directorships, including election announcements, the submission and acceptance of member directorship nominations, independent directorship qualifications and nominations, and eligibility verification. The proposed rule would make numerous textual and structural revisions to § 1261.7, most of which are

non-substantive and intended only to provide clarity.

Existing § 1261.7(a) requires that "[w]ithin a reasonable time in advance of an election," a Bank provide notice to each member in its district of the commencement of the election process to include: (1) the number of member directorships designated for each voting State and the total number of independent directorships; (2) the name of, and pertinent information about, each incumbent Bank director; (3) a brief statement of the skills and experience the Bank believes are most likely to add strength to its board; (4) an attachment identifying every member, its voting state, and the number of votes it is eligible to cast; and (5) a certificate to be used by member institutions to make any desired nominations.

The proposed rule would make three substantive revisions to the list of information to be included in or with the election announcement, each of which FHFA believes is consistent with the current practice of most Banks. First, the proposed rule would require that the statement regarding the number of member and independent directorships include the number of independent directorships designated by the Bank as public interest independent directorships for the following calendar year. Second, the proposed rule would require that the election notice identify the member directorships, regular independent directorships, and public interest independent directorships, respectively, for which the Bank will be holding an election in the current year. Finally, while the existing regulation makes inclusion of a brief statement of sought-after skills and experience contingent on the Bank having carried out the assessment of board skills and experience permitted under existing § 1261.9, the proposed rule would make the inclusion of the statement mandatory because, as discussed below, the annual assessment would also be made mandatory. In addition to these substantive revisions, the proposed rule would also move a misplaced heading and renumber the paragraphs to accommodate the additional material.

The proposed rule would combine into proposed § 1261.7(b) material that appears in existing paragraphs (b) and (c) governing member directorship nominations by members and the acceptance of such nominations by a Bank's board. The one substantive change would be the removal in two places of the requirement that election and nomination records be retained for at least two years after the date of the election. These provisions would be replaced by a new § 1261.7(f), requiring

³⁰ 12 U.S.C. 1427(d). (The Bank Act provides that "[i]f any person . . . has been elected to each of three consecutive full terms as a director of a [Bank] and has served for all or part of each of said terms, such person shall not be eligible for election to a directorship of such [Bank] for a term which begins earlier than two years after the expiration of the last expiring of said three terms").

each Bank to retain all information received under proposed § 1261.7 for at least seven years after the date of the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board (discussed below). The remaining changes consist of non-substantive paragraph redesignations, revised headings, and minor textual changes to provide clarity.

In the existing regulation, § 1261.7(d) and (e) address independent director nominations and independent director required qualifications, respectively. The proposed rule would remove § 1261.7(e) in its entirety because, under the revised regulation, the required qualifications for regular and public interest independent directors would be stated in only one provision—proposed § 1261.5(c). Further duplicative statements regarding the required qualifications would also be removed from existing § 1261.7(d), which would be redesignated as § 1261.7(c). The proposed rule would also remove from the redesignated provision language indicating that an interested individual may not submit, and a Bank may not consider, an Independent Director Application Form that does not demonstrate that the applicant is both eligible and qualified to serve; these restrictions are not consistent with the intended use of the completed Form as a means through which eligibility may be determined. Instead, the proposed rule would include in proposed § 1261.7(d)(3), discussed below, a new express provision prohibiting a Bank's board from nominating any individual for an independent directorship or accepting the nomination of any individual for a member directorship if it has not concluded based on the appropriate completed Form and supplementary materials that the individual is eligible to serve.

The proposed rule would also remove the language in existing § 1261.7(d)(3) requiring that each Bank determine and announce to its members the number of public interest independent directorships to be included among its authorized independent directorships for the following year, because this requirement would be covered by proposed § 1261.4(f). The proposed rule would also remove language requiring each Bank to retain all completed Independent Director Application Forms for at least two years after the date of the election because, as mentioned, the record retention requirements for all records related to the nomination and election of directors would now be governed by proposed § 1261.7(f). The remaining changes to

the existing provisions on the nomination of independent directors would be non-substantive textual and organizational revisions (including the division of different topical material into paragraphs) for better readability.

Existing § 1261.7(f) addresses the steps each Bank must take to verify the eligibility of its member and independent director nominees. It requires each Bank to use the information provided on the Member Director Eligibility Certification Form or the Independent Director Application Form, as applicable, to verify that each nominee meets the relevant eligibility requirements and, for independent directorship nominees, possesses the required qualifications. The provision further requires that, before announcing any independent director nominee, the Bank deliver to FHFA for review a copy of the proposed nominee's executed Independent Director Application Form. Although the existing regulation does not generally require FHFA approval of Bank independent directorship nominees, existing § 1261.7(f) requires a Bank's board to consider any comments on a proposed nominee provided by FHFA within two weeks of FHFA's receipt of the Application Form for that individual.³¹

The proposed rule would redesignate § 1261.7(f) as § 1261.7(d) and, for clarity, would break the existing text into topical paragraphs and revise references to the member and independent director eligibility requirements to add cross-references to the applicable substantive provisions of the revised regulation (proposed § 1261.5(a) and (b) respectively). The proposed rule would also add a new paragraph (d)(3) expressly prohibiting a Bank's board from nominating any individual for an independent directorship or including on the ballot any individual nominated for a member directorship except where it has concluded that the individual meets the applicable eligibility requirements and is not term limited. Although this concept is implicit in the existing regulation, FHFA believes it is preferable for the regulation to set forth a clear statement to this effect.

The proposed rule would add a new § 1261.7(e), which would prohibit a Bank's board from nominating any person for an independent directorship

or including on the election ballot any individual nominated for a member directorship without having first conducted a thorough background check and concluding that the individual is fit to serve in a fiduciary role with the Bank. The proposed rule would require each Bank to include a discussion of the results of the background check for each independent directorship nominee when submitting its Independent Director Application Forms to FHFA, including any potentially concerning information that was revealed and how the Bank's concerns were allayed. In recent years, the Banks have typically conducted background checks on independent directorship nominees and addressed the results of those checks in their submissions to FHFA; the proposed rule would codify this practice. The rule would also require each Bank to conduct a background check on nominees for a member directorship, as the risks background checks are designed to mitigate are no less of a concern for member directors than they are for independent directors.

Although the Bank Act clearly vests in a Bank's members the authority to nominate and elect their own representatives on a Bank's board, the continued safe and sound operation of every Bank depends upon the reservation of some mechanism for identifying and addressing potential risks to the institution that could be posed by its own directors. Bank directors not only have a unique opportunity to influence a Bank's course of action, they also are privy to the most sensitive inside information, including confidential supervisory information (CSI), about the operations, finances, and personnel of the Bank. It is critical that a Bank's board retain the ability to police itself and prevent individuals whose history of criminality, malfeasance, poor judgment, or other concerning behavior indicates they are not fit to fulfill a fiduciary role with the Bank from being or remaining seated as directors. Conducting a background investigation in support of a director's nomination, whether for a member or independent directorship, is a common-sense way to prevent problems before they start.

In July 2020, FHFA's Division of Bank Regulation issued a Supervisory Letter discussing the importance of conducting a thorough background check on any individual a Bank's board intends to nominate for an independent directorship. The guidance given in the letter remains applicable to background checks to be carried out under proposed § 1261.7(e).

³¹ In 2022, in conjunction with FHFA's issuance of the revised Bank Independent Director Application and Certification Forms, FHFA's Division of Bank Regulation issued a Supervisory Letter on the proper submission of Independent Director Application Forms and pertinent supplementary material to FHFA for review. This guidance would remain in effect under the proposed rule.

Without a background investigation, a Bank could not reasonably determine whether a potential nominee meets its own standards, including codes of conduct, codes of ethics, conflicts of interest policies, and anti-fraud policies. A background check also gives a Bank an opportunity to verify that eligibility requirements have been met and that the employment and educational history shown on nominee's Application Forms is accurate. On occasion, a background check may reveal information that calls into question the validity of the responses on the Application Form, or the fitness of the nominee to serve in a fiduciary role with a large financial institution like the Bank. Examples that may give rise to concerns about the latter include a criminal record, past bankruptcy, or failure to pay taxes. A Bank should evaluate the circumstances surrounding each issue of concern and take appropriate steps to determine whether the risk can be satisfactorily mitigated or whether the board should decline to the nominate an individual for an independent directorship or post a member-nominated individual on the ballot for a member directorship. In either case, the board should thoroughly document its decision-making process.

Finally, the proposed rule would add a new § 1261.7(f), which would require each Bank to retain all information received under proposed § 1261.7 for at least seven years after the date of the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board. Each Bank would be required to maintain those records pursuant to a duly adopted policy. As mentioned above, existing § 1261.7 includes a number of separate provisions requiring that a Bank retain various documents for at least two years after an election.³² FHFA believes that all material documentation regarding a Bank's nomination and election process should be subject to the same retention requirements and that two years is not a sufficient length of time to retain those types of important records. Seven years is a conservative retention period that is frequently required by law or corporate policy,³³ and one that is an appropriate minimum for Bank nomination and election records and not burdensome for a Bank

to fulfill given the ease with which electronic records are stored.³⁴

Where information involves an individual that was elected to the board, proposed § 1261.7(f) would require the information to be retained for the duration of that director's service and then for at least seven years after that director leaves the board. Issues regarding sitting Bank directors arise from time to time that call for reference to information or materials submitted years earlier as part of the nomination process and these materials should remain accessible until well after the directors to which they pertain have left the board.

6. Election Process—§ 1261.8

Section 1261.8 of the existing regulation governs the various aspects of the Bank director election process. The proposed rule would make several substantive revisions to this section, including revisions regarding the required contents of a Bank's director election ballot, the authority of a Bank's board to decline to seat a director-elect for cause, and the length of time ballots need to be retained.

Existing § 1261.8(b) provides that if a Bank has conducted an annual assessment of the skills and experience possessed by the board permitted by § 1261.9 and has included the results of the assessment as part of the election notice, it may include with each ballot a statement of the results of that assessment or any subsequent assessment. As discussed below, the proposed rule would revise § 1261.9 to make the now optional assessment mandatory for each Bank. The proposed rule would also require that the results of that assessment be included as part of the election notice required under § 1261.7(a).

Consistent with those changes, the proposed rule would delete existing § 1261.8(b) and revise § 1261.8(a) to require that a Bank include on the ballot a statement of the results of the assessment, including an explanation for any differences between the statement on the ballot and that appearing on the earlier election notice. Revised § 1261.8(a) would also require that each Bank include on its election ballot a brief description of the skills

and experience of each nominee for a member directorship. This is permitted but not required under the existing regulation, which does require that that qualifying areas of expertise for independent directorship nominees be noted on the ballot (a requirement that would be retained under the proposed rule). To accommodate these substantive revisions, the provisions within § 1261.8(a) would be redesignated as paragraphs (a)(1) through (6).

Given the ever changing business and societal landscape within which the Banks operate, it is prudent to look beyond the four to six regular independent directors they are likely to have on their respective boards and find ways to promote the nomination and election to member directorships of individuals that have the experience to cover some of the critical areas of board expertise. For example, if the Chief Technology Officer (CTO) of a Bank member were to be elected as a member director, that individual would likely be able to provide the board with necessary expertise in information technology and security and possibly in other critical areas enumerated in proposed § 1261.5(c).

Even if the nomination and election of member directors is largely within the control of Bank members in the respective voting States of the district, the required statement of needed skills and expertise on the election notice and ballot and the required inclusion on the ballot of a statement on the knowledge and skills possessed by individual member directorship nominees would encourage Bank members to take into account the expertise needed to allow the board to most effectively supervise the operations of the Bank. The coverage of vital areas of expertise through member directors, where possible, would allow the Bank to seek independent directors to cover some of the areas of expertise that senior officers and directors of Bank member institutions would be less likely to have.

Existing § 1261.8(f)(4) provides that a "[b]ank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve." This provision, which would be redesignated as § 1261.8(e)(4), would be revised also to prohibit a Bank's board from declaring elected a nominee or seating any director-elect it has reason to know is "unfit" to serve. As discussed above with respect to the background check required under § 1261.7(e), a Bank's board must retain the ability to address the directorship status of individuals

³² See 12 CFR 1261.7(b)(3), (c), (d)(2) (nominating certificates, executed Membership Director Certification Forms, and Independent Directorship Application Forms, respectively).

³³ See, e.g., 17 CFR 210.2-06 (Securities and Exchange Commission rule requiring records of an audit or review of an issuer's financial statements to be retained for seven years).

³⁴ FHFA's regulations at 12 CFR part 1235 establish general minimum requirements for record retention for the Agency's regulated entities, including the Banks and the OF. The standards established require that the regulated entities maintain adequate records in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of each regulated entity and the OF and such other operational and management standards as the Director determines to be appropriate.

who may pose a material risk to the Bank to fulfill its fiduciary duty to protect the Bank's interests. Proposed § 1261.8(e)(4) would authorize and require a Bank to prevent the seating of a director if it obtains information indicating the individual poses a material and unacceptable risk to the Bank that was not available to it at the time it conducted the required background check.

Because § 1261.8(b) would be eliminated, the proposed rule would redesignate existing paragraphs (c) through (h) as paragraphs (b) through (g). It would also make multiple non-substantive changes throughout the section by adding cross-references to appropriate provisions of the revised regulation, removing redundant statements of the required qualifications for independent directors, and making other minor changes to nomenclature and phrasing.

7. Actions Affecting Director Elections—§ 1261.9

Existing § 1261.9 addresses actions affecting director elections. Paragraph (a) authorizes each Bank to “conduct an annual assessment of the skills and experience possessed by its board of directors as a whole and [to] determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience.” The proposed rule would make this annual assessment mandatory and require that the results of the assessment be reflected in the election announcement under proposed § 1261.7(a) and the election ballot under proposed § 1261.8(a), as discussed above. It would also require that the assessment be undertaken “pursuant to policies adopted by the board.”

To effectively oversee a Bank's operations, its board should be balanced and includes a diversity of experience and perspectives across member and independent directors. Periodic assessment of the knowledge and skills possessed by sitting board directors and identification of areas that require better coverage is critical to ensuring that a Bank's board of directors is able to effectively oversee and guide the operations of the Bank.

FHFA requests comment on whether requiring that such an assessment be completed on a less frequent cadence than annually would compromise a Bank's ability to plan effectively.

Aside from this, to plan effectively, Bank boards of directors should develop and maintain a director's service timeline to track all directors' terms from beginning to end; develop and annually review and update a director

position description for member directors, regular independent directors, and public interest independent directors; and focus recruiting on addressing gaps in knowledge and skills identified by the assessment. Insufficient board succession planning can lead to a lack of experience and expertise needed to effectively oversee a Bank's operations. For example, if several long-tenured directors were to vacate a Bank's board simultaneously, the board may face a critical loss of institutional knowledge. Without appropriate succession planning, a Bank's board may find itself lacking knowledge, skills, and abilities that are critical to providing effective strategic direction and oversight.

The remaining revisions to § 1261.9(a) would be non-substantive clarifying revisions to change the heading from the cryptic “Banks” to the more descriptive “Annual assessment of skills and experience,” add cross-references to appropriate provisions of the revised regulation, remove redundant statements of the required qualifications for independent directors, and make other minor changes to nomenclature and phrasing. Existing § 1261.9(b) and (c) would remain unchanged.

8. Independent Director Independence—§ 1261.10

Section 1261.10 is currently entitled “Independent director conflict of interests.” Because the focus of the section is to elaborate on the “independence” requirements for independent directors, the proposed rule would revise the heading of § 1261.10 to read “Independent director independence.” Conflicts-of-interest policies for all Bank directors are covered separately from independence requirements, in § 1261.11.

Existing § 1261.10(a) prohibits any independent director from serving as an officer, employee, or director of any member of the Bank, or of any recipient of advances from the Bank, or as an officer of any Bank, during that director's term of service on the Bank's board. The proposed rule would redesignate paragraph (a) as paragraph (a)(1) and revise the provision to prohibit an independent director from serving not only as an officer, but also as any kind employee, of another Bank. Permitting even a non-executive employee of one Bank to serve on the board of another Bank could not only compromise the independence of the board on which the individual sits, but could also give rise to internal control concerns for the Bank employing the individual.

The proposed rule would further revise newly-redesignated § 1261.10(a)(1) to prohibit not just the seating, but also the nomination of individuals with any of the impermissible connections. Under the existing regulation, FHFA has permitted Banks to nominate individuals with a prohibited connection for an independent directorship, provided the nominee agrees to relinquish the impermissible position prior to being seated on the board. Extending the independence requirement to the nomination phase creates greater separation between a director's term of service and pursuit of possible conflicting interests and helps ensure that anyone wishing to serve as an independent director is committed to being a true outside voice.³⁵

The proposed rule would also create a new paragraph (a)(2), which would define the term “advances” for purposes of applying the prohibition against the seating or nomination of any officer, employee, or director of any “recipient of advances” from the Bank. As proposed, the term would include any loan from a Bank to the recipient, regardless of form or nomenclature, except for debt securities traded in the public capital markets. This definition is intended to prevent Banks and housing associates such as state housing finance agencies (SHFAs) from skirting the independence requirements by creating bespoke lending terms for the housing associate by which an independent director or nominee is employed in an arrangement called something other than an “advance.” At the same time, the definition would allow Banks to support their housing associates through the purchase of debt securities on the open market on the same terms and conditions as are applicable to other market participants even where an employee of the housing associate is serving as an independent director. Providing clarity regarding the meaning of the word “advances” in this context was suggested in the Bank System's joint letter in response to FHFA's Spring 2023 Notice of Regulatory Review. FHFA requests comment on whether the proposed definition adequately addresses the relevant legal and policy concerns or whether a different definition would be more appropriate.

³⁵ Notwithstanding FHFA's approach to this issue since the post-HERA requirements were implemented, the extension of the independence requirements to independent directorship nominees is consistent with section 7(b)(2)(B) of the Bank Act, which provides that “[n]ominees shall meet all applicable requirements prescribed in this section.” See 12 U.S.C. 1427(b)(2)(B).

The proposed rule would make no revisions to existing § 1261.10(b).

Existing § 1261.10(c) provides that, for purposes of determining compliance with the independence requirements, a Bank shall attribute to the independent director any officer position, employee position, or directorship of the director's spouse. The proposed rule would further strengthen independence requirements by extending the attribution requirement to all "immediate family members" of the director or nominee. Existing § 1261.11(f) defines "immediate family member" to include a "parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director" for purposes of the director conflicts-of-interest requirements; under the proposed rule, the same definition would apply for purposes of the independence provisions. The proposed change recognizes that director independence can be compromised through the activities and financial interests of close family members other than a spouse, seeks to prevent circumvention of the spirit of the independence requirement, and aligns the standards for the independence requirement with those of the conflicts-of-interest requirements.

In line with the extension of the independence requirements to nominees under proposed § 1261.10(a), the rule would also add a new paragraph (d) to § 1261.10 to require any former member director to wait at least two years after leaving a member directorship before returning to the board as an independent director (assuming all eligibility requirements are met for the position). The two-year requirement parallels the two-year requirement set forth in the statutory provision at 18 U.S.C. 207 that is the primary source of post-employment restrictions applicable to officers and employees of the executive branch of the Federal Government and the two year period during which former Bank directors who have termed out are prohibited from serving.³⁶ These types of transitions have happened on occasion and FHFA has typically permitted a member director to transition to an independent directorship upon relinquishing the impermissible position, without any "cooling off" period. By requiring a two-year sit out period FHFA intends to create greater separation between the seating of an independent director and the individual's employment with a member. The Agency requests comments on whether a different length

of time would more effectively ensure board independence.

9. Conflicts of Interest Policy for Bank Directors—§ 1261.11

In § 1261.11, the proposed rule would revise the section heading to read "Conflicts of interest" instead of "Conflict of interests" and would make related conforming changes throughout the section. The only other changes to § 1261.11 would be to revise the definition of "financial interest" in paragraph (f) and to list definitions in alphabetical order.

Existing § 1261.11(b) requires a Bank director to disclose any "financial interests," as well as those of any immediate family member or business associate, in any matter to be considered by the Bank's board of directors and in any other proposed or actual business matter involving the Bank and any other person or entity and to refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has any financial interest. For purposes of those requirements, existing § 1261.11(f) defines "financial interest" to mean "a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed." The provision further states that the term "does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are available generally to the public."

In its letter in response to FHFA's Spring 2023 Notice of Regulatory Review, the Bank System commented that the list of exclusions in the definition of "financial interest" found in existing § 1261.11 is too narrow in scope and should be broadened to reflect other financial services products obtained under similar circumstances. In response to the comment, FHFA is proposing to revise the exclusion from the definition of "financial interest" in § 1261.11(f) to refer to "a deposit or savings account, loan or extension of credit, or other accounts and products obtained in the normal course of business on non-preferential terms generally available to the public from a member institution or from a non-member counterparty to the Bank on whose board the director sits."

In the same letter, the Bank System recommended that FHFA harmonize the standard for what constitutes a conflict

under FHFA's Affordable Housing Program (AHP) regulation³⁷ with the standard for Bank directors under § 1261.11—specifically, that the definitions of "financial interest" and "immediate family member" be made identical for both regulations. Existing § 1261.11 defines "immediate family member" as a parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director. That definition would remain unchanged under the proposed rule and would also be used, along with the revised definition of "financial interest," in the new provision on Bank employee conflicts under proposed 12 CFR 1239.31 (discussed below). FHFA anticipates that the Bank System's request regarding the AHP regulation will be addressed in a subsequent rulemaking.

The proposed rule would not make any other revisions to § 1261.11.

10. Reporting Requirements for Bank Directors—§ 1261.12

The proposed rule would make only one change to § 1261.12, which establishes reporting requirements for Bank directors. Existing § 1261.12(b) provides that at any time a director believes or has reason to believe that they no longer meet the eligibility requirements set forth in the Bank Act or the regulation, the director shall promptly notify the Bank and FHFA in writing. The proposed rule would eliminate the requirement that a director submit the notification to FHFA, requiring only that it be submitted to the Bank. The last sentence of § 1261.12(b) requires a Bank to promptly notify FHFA in writing any time it believes or has reason to believe that any director no longer meets the eligibility requirements, and this has typically been the method through which FHFA has been informed of director ineligibility. Director eligibility is an issue for a Bank to monitor and address in the first instance and there is no reason for an individual director to contact FHFA directly about eligibility issues.

³⁷ The AHP regulation prohibits Bank directors, employees, and advisory council members from participating in decisions regarding AHP projects in which they or a family member have a financial interest and requires each Bank to adopt a conflicts-of-interest policy for its AHP. See 12 CFR 1291.16. For purposes of these requirements, the regulation defines "family member" as "any individual related to a person by blood, marriage, or adoption," see 12 CFR 1291.1, but does not define "financial interest."

³⁶ See 12 U.S.C. 1427(d).

11. Ineligibility and Removal of Bank Directors—§ 1261.13

Existing § 1261.13 addresses the ineligibility of Bank directors. It provides that upon a determination by FHFA or a Bank that any director of the Bank no longer satisfies the statutory or regulatory eligibility requirements, or has failed to comply with the reporting requirements, the directorship shall immediately become vacant. The proposed rule would retain this provision without revision, other than to redesignate it as paragraph (a), with the heading “Ineligibility.”

The proposed rule would also create a new paragraph (b) to establish the authority of a Bank’s board to remove directors for good cause, which may be based upon: (i) a material violation of the Bank’s code of ethics or other applicable Bank policy; (ii) a material violation of the Bank Act, FHFA regulations or other criminal or civil law; (iii) a determination by the board that continuation in office of such director would be materially harmful to the Bank; (iv) conduct, or a mental or physical condition, that raises substantial questions concerning the director’s ability to fulfill their duties and obligations; or (v) a determination under proposed § 1261.22(b)(3) (discussed below, requiring that the board assess director performance annually) that the director’s continuous poor performance or lack of participation is compromising the board’s ability to adequately oversee the operations of the Bank. Under the proposed rule, a Bank would also be required to promptly notify FHFA in writing of any pending or final removal actions taken pursuant to this authority.

As stated above with respect to the required background check for directorship nominees, the safe and sound operation of every Bank depends, in part, upon the existence of some mechanism for identifying and addressing potential risks to a Bank that could be posed by its own directors. It is important that a Bank’s board have clear authority to address risks posed by sitting directors, as well as potential risks posed by those seeking to become directors. FHFA believes that the prescribed list of “good cause” bases for removal, as well as the requirements that two-thirds of disinterested Bank directors vote to remove and that a Bank carry out any actions pursuant to policies adopted by the Bank’s board should minimize the chance that any removal authority would be abused or applied in anything other than an objective fashion in the best interests of the Bank.

Some Banks already have a policy providing for the good cause removal of directors, which FHFA believes is appropriate. FHFA believes it is important to make clear that each Bank’s board retains this limited authority and requests comment on whether it would be appropriate to require each Bank to adopt policies on good cause removal. The Agency also requests comment on whether any factors should be added or eliminated from the list of “good cause” bases for removal and on whether the revised regulation should require separate votes by member and independent directors or something other than a two-thirds vote for removal.

12. Vacant Bank Directorships—§ 1261.14

Section 1261.14 of the existing regulation establishes the requirements and procedures for the filling of vacant Bank directorships by the Bank’s board of directors. The proposed rule would make numerous clarifying edits to this section.

Existing § 1261.14(a), entitled “Filling of unexpired terms,” requires that, when a directorship vacancy occurs, the Bank’s board elect an individual to complete the unexpired term of office of the vacant directorship. The election is determined by a majority vote of the remaining Bank directors sitting as a board, regardless of whether the remaining Bank directors constitute a quorum.³⁸ The regulation permits a Bank’s board to fill an anticipated vacancy prior to its occurrence, but it may do so no sooner than the regularly scheduled board meeting immediately prior to the effective date of the vacancy.³⁹ To fill a particular vacancy, a Bank’s board may elect only an individual who satisfies all the statutory and regulatory eligibility requirements “that applied to his or her predecessor” and, for independent directorships, also satisfies any of the independent director qualifications. If a Bank does not have at least two sitting public interest independent directors, its board must designate the vacant directorship as a public interest independent directorship and elect an eligible and qualified individual to fill it.⁴⁰

While retaining the same basic approach, the proposed rule would restate the standards for determining who is eligible to fill a particular vacancy and expressly allow Banks some flexibility in filling vacant independent directorships. The

proposed rule would also reconfigure existing paragraph (a)(1) into the introductory paragraph to § 1261.14(a) and redesignate the succeeding paragraphs accordingly.

With respect to determining who is an eligible successor to a director that has left the board, the existing regulation provides that the board “shall elect only an individual who satisfies all the eligibility requirements in the Bank Act and in this subpart that applied to his or her predecessor and, for independent directorships, also satisfies any of the qualifications in the Bank Act or this subpart.” The proposed rule would delete this language and state, simply, in § 1261.14(a)(2) that a Bank’s board must: (i) fill a vacant member directorship only with an individual who meets the member director eligibility requirements set forth in proposed § 1261.5(a) (including by being an officer or director of a member located in the voting state to which the vacant member directorship is allocated); and (ii) fill a vacant independent directorship only with an individual who meets the eligibility requirements for independent directors set forth in proposed § 1261.5(b).

By statute, a Bank’s board must at all times have at least two seats designated as public interest independent directorships. If one of those seats becomes vacant, it should be filled as expeditiously as possible. Proposed § 1261.14(a)(3) would provide more express flexibility in filling a vacant public interest independent directorship than the existing regulation by permitting a Bank’s board either to: (i) elect an individual who is qualified under § 1261.5(c)(2) to serve as a public interest independent director to fill the vacancy; or (ii) elect to redesignate as a public interest independent director a sitting regular independent director who is qualified under § 1261.5(c)(2) to serve as a public interest independent director. In the latter case, the board would elect another individual who is qualified under § 1261.5(c)(1) to serve as a regular independent director to fill the resulting vacant regular independent directorship. The proposed change would also make it possible for the board of directors to redesignate a public interest independent director as a regular independent director. This may occur, for example, if the Bank already has more than two sitting public interest independent directors on its board. Although FHFA views such scenarios as permissible under the existing language and has permitted Banks to fill vacant public interest and regular independent directorships in that way, the proposed revisions would

³⁸ 12 CFR 1261.14(a)(1).

³⁹ 12 CFR 1261.14(a)(2).

⁴⁰ 12 CFR 1261.14(a)(3).

make it clear that the Banks have this flexibility.

Proposed § 1261.14(a)(4) would make clear that a Bank's board of directors must consult with the Bank's Advisory Council before considering any individual to fill a vacant independent directorship, just as is required under existing § 1261.7(d)(2) (proposed § 1261.7(c)(3)) when a board is considering independent directorship nominations during the regular election cycle.

Existing § 1261.14(b), entitled "Verifying eligibility," requires that prior to any election to fill a board vacancy, the Bank obtain an executed Application or Certification Form (as appropriate) from each individual being considered to fill the vacancy and use the Forms to verify each individual's eligibility and qualifications. The existing provision also requires that the Bank deliver to FHFA for its review a copy of the Application Form of each individual being considered by the board.

The proposed rule would make several clarifications to § 1261.14(b), as well as breaking the revised material into four paragraphs for better readability. Proposed § 1261.14(b)(1) would continue to require that a Bank obtain the appropriate executed Application or Certification Form from each individual being considered to fill a vacancy and would clarify that this requirement applies even when a Bank's board is contemplating the redesignation of a sitting regular independent director as a public interest independent director or vice versa.

Proposed § 1261.14(b)(2) would require that a Bank conduct a background check on any individual being considered to fill a vacant directorship in the same manner as required for nominees in the regular election cycle under proposed § 1261.7(e).

Proposed § 1261.14(b)(3) would continue to require that a Bank's board deliver to FHFA for review the executed Independent Director Application Form for each individual being considered by the board to fill a vacant independent directorship and would clarify that (as is the case for its review of Independent Director Application Forms during the regular election cycle) FHFA has two weeks within which to provide comments to the Bank. The proposed provision would also require a Bank to provide a summary of the background check.

Finally, proposed § 1261.14(b)(4) would require a Bank to retain all information obtained under § 1261.14(b) for at least seven years after the date of

the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board. This parallels the retention requirements that would apply to materials received during the regular nomination and election cycles under §§ 1261.7(f) and 1261.8(e)(5).

Existing § 1261.14(c), governing notification, would remain unchanged under the proposed rule.

In the remainder of subpart B of part 1261, the proposed rule would make no changes to existing § 1261.15 (setting forth the table for "grandfathered" member directorships) and would remove § 1261.16, which contains no regulatory text and is designated as reserved.

13. (Directors' Compensation) General—§ 1261.21

In subpart C of the existing regulation, § 1261.21 addresses Bank and OF director compensation.⁴¹ Existing § 1261.21(a) authorizes each Bank and OF to pay its directors reasonable compensation and necessary expenses. This authority is subject to further provisions of subpart C requiring each Bank and the OF to compensate its directors pursuant to an annually adopted and FHFA-reviewed written compensation policy⁴² and authorizing the Director to disapprove compensation or expenses determined not to be reasonable.⁴³ Existing § 1261.21(b) requires that each Bank and OF report to the Director annually about the compensation it anticipates paying out in the following year and director compensation, expenses, and meeting attendance for the immediately preceding calendar year. FHFA is proposing changes to both paragraphs (a) and (b) of existing § 1261.21, as described below.

Proposed amendment to paragraph (a), "Standard." By statute, the Banks and OF are authorized to pay their directors reasonable compensation for the time required of them and necessary expenses they incurred in performing their duties, provided the Bank System regulator approves such compensation.⁴⁴ As did predecessor Bank System regulators, FHFA interprets its statutory obligation to

approve reasonable director compensation as conferring authority to establish a maximum amount or level of reasonable compensation and to provide prior notice of that amount to each Bank and the OF. FHFA now proposes to state that authority in the regulation.

Current section 7(i)(1) of the Bank Act is identical to the provision regarding director compensation originally enacted as section 7(h) of the Bank Act in 1932, providing that "[e]ach bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors, subject to the approval of the board."⁴⁵ Although the current statutory provision does not expressly identify FHFA as the approving authority, review of the Bank Act demonstrates that "board," as used in the approval proviso, must be read to refer to FHFA.

When originally enacted in 1932, the Bank Act defined "board" as the Federal Home Loan Bank Board (FHLBB), the original regulator of the Bank System.⁴⁶ Thus, through use of the word "board," section 7(h) as originally enacted unambiguously provided the FHLBB authority to approve Bank director compensation. When section 7 of the original Bank Act is read as a whole, it is apparent that Congress used the term "board" standing alone to mean the Bank System regulator, and used "board of directors" or a clear derivative of that term (e.g., a "board of eleven directors," or "such board") when referring to a Bank's board of directors.⁴⁷ Moreover, that approach is evident throughout the Bank Act as originally enacted⁴⁸ and across amendments over time.⁴⁹

Original section 7(h) was redesignated as section 7(i) in 1935.⁵⁰ When Congress amended sections 7(a) through (h) in 1961 to revise provisions governing the

⁴⁵ Compare 12 U.S.C. 1427(i)(1) with Public Law 72-304, sec. 7(h), 47 Stat. 725, 730 (July 22, 1932).

⁴⁶ Public Law 72-304, sec. 2(1), 47 Stat. 725.

⁴⁷ Public Law 72-304, sec. 7(a) and (b), 47 Stat. 730.

⁴⁸ See generally, Public Law 72-304, secs. 12, 17, 18, and 20, 47 Stat. 735-38.

⁴⁹ Amendments from 1935 also used "Board" in uppercase to refer to the FHLBB. Among other changes, amendments to section 7 in 1935 provided for the election of "[t]wo of such [Bank] directors" by Bank members without regard to classes, under "rules and regulations to be prescribed by the Board." Public Law 74-76, sec. 3(b), 49 Stat. 293, 294 (May 28, 1935) (emphasis added). As later examples, see Public Law 84-345, sec. 109(a)(2), 69 Stat. 635, 640 (Aug. 11, 1955), and Public Law 86-349, sec. 1 and 2, 73 Stat. 625 (Sept. 22, 1959). The 1935 amendments also added a new paragraph (d), such that original paragraph (h) on Bank director compensation was re-lettered paragraph (i), as it is today.

⁵⁰ Public Law 74-76, sec. 3(b), 49 Stat. 294.

⁴¹ Section 1261.21 applies to OF independent directors by operation of 12 CFR 1273.7(f)(2). Bank presidents serve as *ex officio* directors of the OF but are not compensated for such service. 12 CFR 1273.7(f)(1).

⁴² See 12 CFR 1261.22(a) and (d).

⁴³ See 12 CFR 1261.23.

⁴⁴ See 12 U.S.C. 1427(i)(1). FHFA has applied section 7(i) to OF pursuant to the Director's authorities under 12 U.S.C. 4511(b)(2).

election and appointment of Bank directors it added a clause stating that “Federal Home Loan Bank Board” would be “hereinafter in this section referred to as the Board” to paragraph (a).⁵¹ Section 7(i) on director compensation and section 7(j) on administration of the affairs of each Bank by its board of directors were not addressed in the 1961 amendments, and section 2(1) of the Bank Act, defining “board” as the FHLBB, also was not amended or repealed. As a result, after the 1961 amendments, section 7 used both “Board” and “board” standing alone, and each term was identified or defined as—and understood to refer to—the Bank System regulator.

Reading “board” otherwise—as referring to a Bank’s board of directors—leads to an implausible outcome. For example, the Bank’s board of directors would then be statutorily required to act twice on the matter of directors’ compensation—once by resolution and once by “approval”—or one of the two actions (resolution or approval) is unnecessary, because it would be redundant.⁵² Moreover, such a reading also requires assuming that in 1961 Congress intended to withdraw authority from the Bank System regulator and confer it on each Bank’s board of directors through a new practice, used in only one place in the Bank Act, of referring to the Bank’s board of directors as “board,” standing alone in lowercase and as distinguished from “Board,” meaning the Bank System regulator, standing alone in uppercase. The correct reading of section 7 after the 1961 amendments is that *either* “board” or “Board,” when standing alone in section 7, meant the “Federal Home Loan Bank Board.” This conclusion is also supported by the Bank System regulator’s contemporaneous understanding, as evidenced by the fact that following the 1961 amendments, the FHLBB did not revise its Bank director compensation regulation adopted in 1958, which stated that Bank directors’ fees were subject to the approval of the FHLBB.⁵³

In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) established the Federal Housing Finance Board (Finance Board) to replace the FHLBB as the Bank System regulator and revised the Bank Act to replace all uses of “board” except in section 7 with “Board,” which FIRREA defined as the Finance Board.⁵⁴ Because this change in terms did not cover section 7 (plausibly to avoid changing “board” in the term “board of directors” to “Board”), in sections 7(a) through (h) “Board” continued to connote the Bank System regulator while section 7(i) continued to use the lowercase “board.” There is no evidence that FIRREA’s failure to change the word “board” in section 7(i) as part of the conforming amendments to reflect the name of the new System regulator, however, was intended to change the long-held understanding that the word refers to the Bank System regulator. In contrast, FHLBB regulations in effect immediately prior to FIRREA’s enactment and later regulations of the Finance Board demonstrate that those agencies understood “board” in the approval proviso to refer to the System regulator.⁵⁵

Most recently, section 7(i) of the Bank Act was amended by HERA in 2008, when section 7(i)(2), which was added by the Gramm-Leach-Bliley Act (GLBA) in 1999 and imposed statutory limits on Bank director compensation, was repealed.⁵⁶ The 2008 amendment thus returned section 7(i)(1) to the same language as section 7(i) before GLBA was enacted, providing that director compensation was subject to the approval of the “board”—in lowercase but standing alone. Because HERA also

made FHFA the Bank System regulator, replacing the Finance Board, HERA included a number of general amendments changing references to the “Board” or the “Finance Board” to the “Director” of FHFA.⁵⁷ Likely because “board” in the section 7(i)(1) approval proviso was not capitalized, it was not identified as a reference in need of updating. Once again however, the fact that the proviso was not changed indicates that Congress did not intend to change its meaning. And, as has been consistently demonstrated from the enactment of the Bank Act in 1932 through its many amendments and in the regulations of successive System regulators, the proviso means that the Bank System regulator—now FHFA—has authority to approve Bank director compensation.⁵⁸

The legislative and regulatory history that substantiates FHFA’s authority to approve Bank director compensation also affirms its authority to establish limits on “reasonable” compensation. As early as 1974, the Bank System regulator limited Bank director compensation by policy, exercising statutory authority identical to that in existing section 7(i)(1).⁵⁹ Thereafter, the Bank System regulator’s authority to determine a level of “reasonable” Bank director compensation was codified in regulation, first in 1978 and again in 1989, 1996, 1999, 2000, 2002, and 2010.⁶⁰

In common with earlier Bank System regulators, FHFA views its express statutory authority to approve Bank director compensation on the basis that it is reasonable as conferring authority to establish and provide to the Banks and OF an amount of director compensation that FHFA has determined would be reasonable. After administering the existing regulation for almost 15 years, FHFA believes it could be useful to provide the Banks and OF information on a level or amount of director compensation FHFA has determined to be reasonable, for consideration when each Bank and OF develops its directors’ compensation policy.

The existing regulation requires each Bank and OF to submit its director compensation policy to FHFA for prior

⁵⁴ Public Law 101–73, secs. 401(a)(2), 702(a), and 703, 103 Stat. 354, 413, and 415 (Aug. 9, 1989); see also Public Law 101–73, sec. 701(a)(1) and (b), 103 Stat. 411, 412.

⁵⁵ See 12 CFR 522.60 (1989), as originally adopted in 1978, 43 FR 46837. This regulatory provision was not thereafter amended by the FHLBB but was transferred without change by the Finance Board after FIRREA’s enactment, see 54 FR 36757, 36758 (Sept. 5, 1989). See also 61 FR 43151, 43153 (Aug. 21, 1996) (wherein the Finance Board determined that a dollar cap on Bank director compensation was appropriate considering “the agency’s statutory responsibility to ‘approve’ Bank directors’ compensation, see 12 U.S.C. 1427(i), the Bank Act’s requirement that such compensation be ‘reasonable,’ see *id.*, and the preference for providing a clear regulatory standard.”).

⁵⁶ Public Law 110–289, sec. 1202(7), 122 Stat. 2783 (July 30, 2008); see also Public Law 106–102, sec. 606(b), 113 Stat. 1450, 1453 (Nov. 12, 1999). Even after GLBA’s imposition of statutory limits the Bank System regulator continued to assert approval authority by regulation, see 12 CFR 932.17(f) (2000) (“Payments made to directors in compliance with the limits on annual directors’ compensation and the standards set forth in this section are deemed to be approved by the Finance Board for purposes of section 7(i) of the [Bank] Act, as amended.”).

⁵⁷ Public Law 110–289, sec. 1204, 122 Stat. 2785.

⁵⁸ Consistent statutory interpretation by the administrative regulator “is of persuasive force,” *U.S. v. Madigan*, 300 U.S. 500, 505 (1937); see also *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

⁵⁹ See 61 FR 17603 (Apr. 22, 1996).

⁶⁰ See 43 FR 46837 (Oct. 11, 1978), 54 FR 36757 (Sept. 5, 1989), 61 FR 43151 (Aug. 21, 1996), 64 FR 71278 (Dec. 21, 1999), 65 FR 8260 (Feb. 18, 2000), 67 FR 12846 (Mar. 20, 2002), and 75 FR 17040 (Apr. 5, 2010).

⁵¹ Public Law 87–211, 75 Stat. 486 (Sept. 8, 1961).

⁵² “Every clause and word of a statute should, if possible, be given effect.” *United States v. Menasche*, 348 U.S. 528, 538–539 (1955) (internal citations omitted). “The presence of statutory language cannot be regarded as mere surplusage; it means something.” *Potter v. U.S.*, 155 U.S. 438, 446 (1894).

⁵³ See 23 FR 9878, 9885 (Dec. 23, 1958). Presumably Congress was aware of this interpretation in 1961, when it chose not to amend paragraph (i). The FHLBB did not amend its Bank directors’ compensation regulation again until 1978, when it codified its policy, first established in 1974, of imposing supervisory limits on Bank director compensation. See 43 FR 46835 (Oct. 11, 1978).

review and addresses FHFA's obligation to disapprove director compensation that is not reasonable. The Bank Act does not define "reasonable," but FHFA relies on concepts and processes similar to those used in its review of Bank executive officer compensation (where, by statute, FHFA is required to prohibit the regulated entities from providing executive officers compensation that is not reasonable and comparable to compensation paid by similar institutions for the performance of similar duties⁶¹). When determining if proposed compensation of Bank or OF directors is "reasonable," FHFA considers a variety of factors including compensation of directors at other banking institutions; the Banks' status as government-sponsored enterprises and features of their statutory charters, governance, and businesses that may distinguish them from other institutions; their statutory purposes and mission; and the fact that they were created to serve a public purpose.

Currently, if FHFA determines that proposed director compensation is not reasonable, it does not provide the relevant Bank or OF information on an alternative amount of compensation that FHFA would deem to be reasonable. Instead, the Bank or OF must submit a new proposal, subject to a new FHFA review. FHFA believes this process imposes a burden on the Banks and OF which could be reduced or avoided if FHFA provided notice of a maximum amount of annual director compensation FHFA has determined would be reasonable. Because FHFA has not previously exercised that authority, and for consistency with earlier System regulators which stated such authority in regulation, FHFA now believes it should state its authority to establish an amount of "reasonable" director compensation and to provide prior notice of that amount to the Banks and OF in regulation.

FHFA does not propose to establish a maximum amount or level of compensation in this regulatory action. In the future, FHFA may establish such an amount and may do so through a regulatory amendment or an order. FHFA may also provide guidance on an amount of Bank or OF director compensation it believes would be reasonable. In any case, FHFA expects any amount or level of "reasonable" compensation so established would reflect consideration factors such as those set forth above.

Likewise, FHFA does not propose to amend other provisions of existing

subpart C that currently require each Bank and OF, when submitting its directors' compensation policy to FHFA, to include all studies or other supporting materials upon which the board relied in determining the level of compensation and expenses to pay to its directors; require FHFA to review the policy; and acknowledge FHFA's authority to disapprove the policy if FHFA determines that compensation and/or expenses to be paid to the directors are not reasonable.⁶² Should FHFA in the future provide the Banks and OF prior notice of a maximum amount of director compensation determined to be reasonable, FHFA does not intend that each Bank or OF simply adopt that amount in its policy. Instead, FHFA expects that the board of directors of each Bank and OF would continue to evaluate and affirmatively determine reasonable director compensation and that each annual policy submission would continue to provide studies, supporting materials, and justification for such determinations. As it does currently, FHFA expects to review each submission in full and may disapprove proposed compensation that is not supported as reasonable. FHFA may also approve a proposal to pay compensation that exceeds the amount FHFA has communicated by prior notice if the Bank or OF provides appropriate support.

Proposed amendment to paragraph (b), "Reporting." As noted above, existing § 1261.21(b) requires that each Bank report to the Director annually about the compensation it anticipates paying out in the following year and director compensation, expenses, and meeting attendance for the immediately preceding calendar year. One of the items required to be included in the latter category under the existing regulation is "[t]he number of board and designated committee meetings each director attended in-person or through electronic means such as video or teleconferencing." In order to conform more closely to the language that would be used in revised § 1261.24 (discussed below), the proposed rule would revise the description of this item to refer to "meetings each director attended in person or remotely, through video or teleconferencing, and in accordance with § 1261.24(b)."

14. Directors' Compensation Policy—§ 1261.22

Existing § 1261.22 requires that a Bank adopt a written compensation policy to "provide for the payment of reasonable compensation and expenses

to the directors for the time required of them in performing their duties as directors." The policy must "address the activities or functions for which director attendance or participation is necessary and which may be compensated, and . . . explain and justify the methodology used to determine the amount of compensation to be paid to the Bank director." A Bank's compensation policy must require that compensation be reduced, as necessary, to reflect lesser attendance or performance at board or committee meetings during a given year.

The proposed rule would split paragraph (b), addressing minimum contents for Bank compensation plans, into two paragraphs. It would also add a third paragraph, § 1261.22(b)(3), requiring each Bank to establish, as part of its compensation policy, a fair and impartial process for annually evaluating individual director performance and participation, including, but not limited to, an assessment of whether each director: (i) demonstrated understanding of the Bank System; (ii) demonstrated knowledge of the Bank's policies and governance documents; (iii) demonstrated understanding of his or her legal and ethical responsibilities as a board member; (iv) made suggestions congruent with the Bank's mission, vision and values (even if divergent from majority opinion); and (v) acted in support of Board decisions, regardless of initial position. The proposed rule would also revise newly designated § 1261.22(b)(2) to stipulate that, as a consequence for poor performance or participation, a Bank's board may not only reduce a director's pay, but may also remove a director whose lack of performance or participation is compromising the board's ability to adequately oversee the operations of the Bank. This authority is also referenced in proposed § 1261.13, which addresses a board's authority to remove a director for good cause.

Bank directors hold positions of trust and are well compensated for their time and efforts. Each Bank needs all of its directors to devote the time, attention, and thought necessary to properly oversee the Bank and its operations. It is a matter of strong corporate governance for a Bank's board of directors to have an effective process for assessing the performance of board directors; this process can help improve individual and collective board performance.⁶³ It is just as essential that

⁶¹ See 12 U.S.C. 4518(a); see also 12 CFR part 1230.

⁶² See 12 CFR 1261.22 and 1261.23.

⁶³ See PwC's, Governance Insights Center, *Individual director assessments*, (August 2023), available at <https://www.pwc.com/us/en/services/>

a Bank's board have an effective mechanism for addressing lack of performance. In extreme cases, where a director's performance is so poor or detrimental that it poses a risk to the board's ability to effectively oversee the Bank's operations, this could include removal of a director using the procedures established under proposed § 1261.13(b).

15. Board Meetings—§ 1261.24

The proposed rule would make multiple substantive changes to codify a waiver FHFA first issued in 2020 permitting Bank System board and committee meetings to be held in virtual formats.

Existing § 1261.24(a) requires that the board of directors of each Bank hold as many meetings each year as are necessary and appropriate to carry out its fiduciary duties regarding its oversight of the Bank, provided that each board must hold a minimum of six in-person meetings during each calendar year. A similar regulatory requirement applies to the board of directors of the OF.⁶⁴ As mentioned above, FHFA regulations also require that each Bank annually adopt a written compensation policy to provide for the payment of reasonable compensation and expenses to the directors for the time required of them in performing their duties as directors.⁶⁵ The OF is required to pay reasonable compensation to independent directors in accordance with the requirements of part 1261 applying to the compensation of Bank directors, including the requirement that compensation be reduced to reflect lesser attendance or performance at board or committee meetings.⁶⁶

The requirements for Bank and OF boards to hold at least six in-person meetings are prudential measures adopted by FHFA as an aid to promoting sound governance; they are not required by statute. In response to the COVID-19 pandemic, the FHFA Director issued a letter in March 2020 waiving the need to comply with the in-person board meeting regulatory requirements and with provisions of compensation policies tying compensation to attendance at in-person board and committee meetings. Over the course of the pandemic, the waiver was extended nine times and the last extension remains in effect without an expiration date.

Although the COVID-19 public health emergency has ended and FHFA prefers that Banks and OF hold in-person board meetings whenever possible, it also recognizes the benefits of allowing greater flexibility in fulfilling the Agency's regulatory requirement to hold at least six board meetings a year, particularly in times of emergency. The proposed revisions allowing boards to meet remotely at their discretion without seeking prior Agency approval could promote efficiency by minimizing delays in response to urgent issues and reducing travel costs and unexpected travel disruptions while fostering greater board participation for directors unable to attend in person. Additionally, the Bank System has already demonstrated its ability to use electronic platforms to engage in discourse and conduct business over the past four years. The proposed rule would permanently address the issue by codifying the substance of the existing waiver into regulation.

The principal effect of modifying the regulation would be to allow the Banks and OF an alternative means of holding a board meeting that would otherwise be held in person. The interests of the members and the public should be equally represented through either type of board meeting. Expectations for attendance and performance at meetings and the compensation methodology should be communicated to board members in the compensation policy, which, with supporting materials, must be submitted to the FHFA Director annually.⁶⁷ Consequently, the Agency would expect the Banks and OF to keep adequate meeting records to sufficiently document board member attendance and performance. FHFA also expects the Banks and OF to appropriately mitigate any security risks that may arise from meeting in a virtual setting.

The proposed rule would revise existing § 1261.24(a) to remove the requirement that the six minimum board meetings be "in-person." In conjunction with this, the proposed rule would revise § 1261.24(b) to provide that "[a] Bank's board of directors and its committees may conduct meetings in-person, through video conferencing or teleconferencing, or in a hybrid format, provided that all directors have an opportunity to communicate and have access to all written documents and presentations." Any meeting of the type described can be counted as one of the minimum six meetings required under § 1261.24(a).

Proposed § 1261.24(b)(2) would state an expectation that that each Bank will

"generally" hold board and committee meetings within the Bank district and would retain the prohibition against holding any board or committee meeting that is not within a "State" as defined by 12 CFR 1201.1. This definition includes "United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands."⁶⁸ It would further require that all directors be located within a State, as so defined, when attending a board or committee meeting via video conference or teleconference.

The proposed rule would also add to § 1261.24 a new paragraph (c) to define "quorum" to mean "for purposes of meetings of a Bank's board of directors, . . . a majority of sitting directors, which must include a majority of sitting independent directors." This provision would better ensure that independent voices are heard on critical Bank issues and provide consistency within the Bank System. The proposed provision parallels the definition of "quorum" as it is currently stated in the OF regulation at 12 CFR 1273.8(b).

B. Revisions to 12 CFR Part 1239

Although each Bank is required under existing § 1261.11 to adopt a conflicts-of-interest policy to cover all of its board directors, there is currently no equivalent requirement with respect to Bank employees, many of whom are in no less a position of trust at the Bank than are its board directors.

Part 1239 of FHFA's regulations addresses responsibilities of boards of directors, corporate practices, and corporate governance for FHFA's regulated entities. The proposed rule would add to part 1239 a new § 1239.31 requiring each Bank to adopt a conflicts-of-interest policy covering its employees and establishing the requirements for those policies. The content and format of the new section is based on that of § 1261.11, which addresses the Bank director conflicts-of-interest policy requirement, appropriately modified to be applicable to Bank employees.

Proposed § 1239.31(a) would require that each Bank's board of directors adopt a written conflicts-of-interest policy covering all employees, which must, at a minimum: (1) require that all employees of the Bank discharge their official responsibilities in an objective and impartial manner in furtherance of the interests of the Bank's membership as a whole and consistent with the public interest; (2) establish appropriate limitations, standards, and procedures

governance-insights-center/library/assets/pwc-individual-director-assessments.pdf.

⁶⁴ See 12 CFR 1273.8(b).

⁶⁵ See 12 CFR 1261.22.

⁶⁶ See 12 CFR 1273.7(f)(2).

⁶⁷ See 12 CFR 1261.22(d).

⁶⁸ See 12 CFR 1201.1.

regarding the holding of outside positions and financial interests by Bank employees and close family members and associates; (3) prohibit executive officers and senior management from holding paid positions with any entity that is, or may be eligible to become, a member or housing associate of any Bank or with any affiliate of such entity; (4) prohibit employees from participating in any particular matter in which the employee or any immediate family member or business associate has a financial interest; (5) prohibit employees from otherwise holding financial interests that conflict with the conscientious performance of duty; (6) require employees to disclose actual or apparent conflicts of interests and establish procedures for addressing such conflicts, including recusal; (7) require the establishment of internal controls to ensure that conflicts-of-interest reports are made and filed and that conflicts-of-interest issues are disclosed and resolved; and (8) establish procedures to monitor compliance with the conflicts-of-interest policy. While the proposed rule would require each Bank's policy to set appropriate guidelines for all of its personnel, FHFA would expect a Bank to appropriately calibrate the treatment of different types of employees under the policy according to the risk presented, including by setting more stringent standards for executives and officers.

Paralleling § 1261.11, paragraphs (b) and (c) of proposed § 1239.31 would prohibit employees in most cases from disclosing or using confidential information they receive by reason of their position with the Bank and discourage Bank employees from accepting gifts that appear to be intended to influence the employee's actions.

Proposed paragraph (d) would employ the same definitions that are used in proposed § 1261.11(f). For purposes of attribution, "immediate family member" means a parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director and the term "business associate" means any individual or entity with whom a director has a business relationship, including, but not limited to: (1) Any corporation or organization of which the employee is an officer or partner, or in which the employee beneficially owns ten percent or more of any class of equity security, including subordinated debt; (2) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and (3) Any

trust or other estate in which an employee has a substantial beneficial interest or as to which the employee serves as trustee or in a similar fiduciary capacity. The definition of "financial interest" matches the revised definition of that term in proposed § 1261.11(f).

C. Revisions to 12 CFR Part 1273

The proposed rule would also make several revisions to part 1273, which governs the OF. Primarily, the proposed rule would amend part 1273 to revise the provision governing the minimum number and site of OF board meetings to match the revised language with respect to the Bank's boards in § 1261.24. The remaining proposed revisions are in response to comments provided by the Bank System in response to FHFA's Spring 2023 Notice of Regulatory Review.

1. Funding of the OF—§ 1273.5

Existing § 1273.5 addresses the funding of the OF. Existing § 1273.5(b)(1)(ii) limits OF operating funds withdrawals to check, wire transfer, or draft signed by the Chief Executive Officer (CEO) or other persons designated by the OF board of directors.

In its letter sent in response to FHFA's Spring 2023 Notice of Regulatory Review, the Bank System commented that the existing regulation governing the withdrawal of OF operating funds is both limited and outdated. It suggested that the regulation be modernized to permit the use of other widely accepted fund transfer methods that have been or will be developed in the future and that the regulation be expanded to allow CEO delegation of authority to achieve greater operational efficiency. In response, FHFA is proposing to revise § 1273.5(b)(1)(ii) to expand the range of permissible OF withdrawal methods to include "draft[s]" and "other funds transfer methods with written authorization by the CEO or other persons designated by the CEO or OF board of directors in accordance with OF governance documents."

2. General Duties of the OF Board of Directors—§ 1273.8

Existing § 1273.8 addresses the "general duties of the OF board of directors." Paragraph (b) of this section establishes requirements for OF board meetings, requiring that the OF board of directors conduct its business by majority vote of its members at meetings convened in accordance with its by-laws, and hold no fewer than six in-person meetings annually.

The proposed rule would subdivide § 1273.8(b) into four paragraphs for clarity and would revise the existing

text concerning meeting frequency and location in a manner paralleling the proposed changes to the board meeting requirements for the Banks set forth in § 1261.24. The reasons for these revisions are discussed in depth in the discussion of proposed § 1261.24, above.

Proposed § 1273.8(b)(1) would allow the OF board of directors and its committees to conduct meetings "in person, through video conferencing or teleconferencing, or in a hybrid format, provided that all meeting attendees have an opportunity to communicate and have access to all written documents and presentations." Under the proposed rule, all such meetings could be counted toward the minimum of six board meetings per year that is required under the existing regulation and as proposed. The proposed rule, in § 1273.8(b)(2), would prohibit the OF from holding any board or committee meeting that is not within a "State" as defined by 12 CFR 1201.1 and would also require that all directors be located within a State, as so defined, when attending the meeting via teleconference or video conference. Proposed § 1273.8(b)(3) and (4) would retain the meeting notice and quorum provisions, respectively, of the existing regulation.

In existing § 1273.8, paragraph (d) enumerates duties of the OF board, other than those relating to Bank System consolidated obligations, among which is included the duty to review and approve all contracts of the OF, except for contracts for which exclusive authority is provided to the Audit Committee by regulation. In its letter sent in response to FHFA's Spring 2023 Notice of Regulatory Review the Bank System commented that the current requirement seems impractical and unnecessary, as those activities generally fall under management's responsibilities. In response, FHFA is proposing to eliminate the requirement that the OF board of directors review and approve *all* contracts of the OF, except for those reserved to the audit committee by regulation. Instead, proposed § 1273.8(d)(4) would state that the OF board of directors will review and approve contracts of the OF, as specified in OF governance documents.

V. Considerations of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: the Banks' cooperative ownership structure; the

mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations.⁶⁹ The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate. FHFA requests comments regarding whether differences related to those factors should result in any revisions to the proposed rule.

VI. Paperwork Reduction Act

The proposed rule would not contain any changes to information collection requirements that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act.⁷⁰ Therefore, FHFA has not submitted any information to OMB for review.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act⁷¹ (RFA) 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. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.⁷² FHFA has considered the impact of the proposed rule under the RFA. FHFA certifies that the proposed rule, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because the proposed rule applies only to the Banks and OF, which are not small entities for purposes of the RFA.

VIII. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501

note) (commonly known as *Regulations.gov*). FHFA's proposal and the required summary can be found at <https://www.regulations.gov>.

List of Subjects

12 CFR Part 1239

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1261

Administrative practice and procedure, Compensation, Conflicts of interest, Directors, Elections, Eligibility, Federal home loan banks, Meetings, Reporting and recordkeeping requirements.

12 CFR Part 1273

Administrative practice and procedure, Audit committee, Consolidated obligations, Directors.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA proposes to amend parts 1239, 1261, and 1273 of chapter XII of title 12 of the Code of Federal Regulations, as follows:

PART 1239—RESPONSIBILITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE

■ 1. The authority citation for part 1239 continues to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), 4526, and 15 U.S.C. 780o(b).

■ 2. Add § 1239.31 to read as follows:

§ 1239.31 Conflicts of interest policy for Bank employees.

(a) *Adoption of conflicts-of-interest policy.* Each Bank's board of directors shall adopt a written conflicts-of-interest policy covering all Bank employees. At a minimum, the conflicts-of-interest policy of each Bank shall:

- (1) Require that all Bank employees discharge their official responsibilities in an objective and impartial manner in furtherance of the interests of the Bank's membership as a whole and consistent with the public interest;
- (2) Establish appropriate limitations, standards, and procedures regarding the holding of outside positions and financial interests by Bank employees and close family members and associates;
- (3) Prohibit Bank executive officers and senior management from holding paid positions with any entity that is, or

may be eligible to become, a member or housing associate of any Bank or with any affiliate of such entity;

(4) Prohibit Bank employees from participating in any particular matter in which the employee or any immediate family member or business associate has a financial interest;

(5) Prohibit Bank employees from otherwise holding financial interests that conflict with the conscientious performance of duty;

(6) Require Bank employees to disclose actual or apparent conflicts of interests and establish procedures for addressing such conflicts, including recusal;

(7) Require the establishment of internal controls to ensure that conflicts-of-interest reports are made and filed and that conflicts-of-interest issues are disclosed and resolved; and

(8) Establish procedures to monitor compliance with the conflicts-of-interest policy.

(b) *Confidential information.* Bank employees shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

(c) *Gifts.* No Bank employee shall accept, and each Bank employee shall discourage the employee's immediate family members from accepting, any gift that the employee believes or has reason to believe is given with the intent to influence the employee's actions, or where acceptance of such gift would have the appearance of intending to influence the employee's actions. Any insubstantial gift would not be expected to trigger this prohibition.

(d) *Definitions.* For purposes of this section:

Business associate means any individual or entity with whom a Bank employee has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the employee is an officer or partner, or in which the employee beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which an employee has a substantial beneficial interest or as to which the employee serves as trustee or in a similar fiduciary capacity.

Financial interest means a direct or indirect financial interest in any activity, transaction, property, or

⁶⁹ 12 U.S.C. 4513(f).

⁷⁰ 44 U.S.C. 3501 *et seq.*

⁷¹ 5 U.S.C. 601 *et seq.*

⁷² See 5 U.S.C. 605(b).

relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account, loan or extension of credit, or other accounts and products obtained in the normal course of business on non-preferential terms generally available to the public from a member institution or from a non-member counterparty to the Bank by which the individual is employed.

Immediate family member means a parent, sibling, spouse, child, or dependent of a Bank employee, or any relative sharing the same residence as a Bank employee.

■ 3. Revise and republish part 1261 to read as follows:

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

Subpart A—Definitions

Sec.

1261.1 [Reserved]

Subpart B—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

- 1261.2 Definitions.
- 1261.3 General provisions.
- 1261.4 Annual designation of directorships.
- 1261.5 Director eligibility.
- 1261.6 Determination of member votes.
- 1261.7 Nominations for member and independent directorships.
- 1261.8 Election process.
- 1261.9 Actions affecting director elections.
- 1261.10 Independent director independence.
- 1261.11 Conflicts of interest policy for Bank directors.
- 1261.12 Reporting requirements for Bank directors.
- 1261.13 Ineligibility and removal of Bank directors.
- 1261.14 Vacant Bank directorships.
- 1261.15 Minimum number of member directorships.

Subpart C—Federal Home Loan Bank Directors' Compensation and Expenses

- 1261.20 Definitions.
- 1261.21 General.
- 1261.22 Directors' compensation policy.
- 1261.23 Director disapproval.
- 1261.24 Board meetings.

Authority: 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

Subpart A—Definitions

§ 1261.1 [Reserved]

Subpart B—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

§ 1261.2 Definitions.

As used in this subpart:

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)), and part 1291 of this chapter.

Bona fide resident of a Bank district means an individual who:

(1) Maintains a principal residence in the Bank district; or

(2) If serving as an independent director, owns or leases in his or her own name a residence in the Bank district and is employed in a voting State in the Bank district.

FHFA ID number means the number assigned to a member by FHFA and used by FHFA and the Banks to identify a particular member.

Independent directorship and *independent director* mean, respectively, a directorship designated as provided under § 1261.4 to be filled by an individual meeting the eligibility requirements of § 1261.5(b) and an individual serving in such a directorship.

Member directorship and *member director* mean, respectively, a directorship designated as provided under § 1261.4 to be filled by an individual meeting the requirements of § 1261.5(a) and an individual serving in such a directorship.

Method of equal proportions means the mathematical formula used by FHFA to allocate member directorships among the States in a Bank's district based on the relative amounts of Bank stock required to be held as of the record date by members located in each State.

Nominee means an individual who has been nominated for a Bank directorship under the applicable provision of § 1261.7.

Public interest independent directorship and *public interest independent director* mean, respectively, an independent directorship designated by a Bank to be filled by an individual having the qualifications specified in § 1261.5(c)(2) and an individual serving in such a directorship.

Record date means December 31 of the calendar year immediately preceding the election year.

Regular independent directorship and *regular independent director* mean, respectively, an independent directorship designated by a Bank to be filled by a person having the qualifications specified in § 1261.5(c)(1) and an individual serving in such a directorship.

Voting State means the State in which a member's principal place of business, as determined in accordance with 12 CFR part 1263, is located as of the

record date. The voting State of a member with a principal place of business located in the U.S. Virgin Islands as of the record date is Puerto Rico, and the voting State of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date is Hawaii.

§ 1261.3 General provisions.

(a) *Term of directorships.* The term of office of each directorship shall be four years, except as adjusted pursuant to § 1261.4(e) or (f) to achieve a staggered board, and shall commence on January 1 of the calendar year so designated by FHFA.

(b) *Annual elections.* Each Bank annually shall conduct an election the purpose of which is to fill all directorships designated by FHFA as commencing on January 1 of the calendar year immediately following the year in which such election is commenced. Subject to the provisions of the Bank Act and in accordance with the requirements of this subpart, the disinterested directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process.

(c) *Location of members.* For purposes of the election of member directors, a member is deemed to be located in its voting State, unless otherwise specified by the Director.

(d) *Dates.* If any date specified in this subpart for action by a Bank, or specified by a Bank pursuant to this subpart, falls on a Saturday, Sunday, or Federal holiday, the relevant time period is deemed to be extended to the next calendar day that is not a Saturday, Sunday, or Federal holiday.

§ 1261.4 Annual designation of directorships.

(a) *Designation of directorships order.* As provided in this section, the Director will by June 1 of each year issue a written order designating for each Bank's board of directors for the following calendar year:

(1) The total number of member directorships and their allocation among the voting States of the Bank's district;

(2) The total number of independent directorships; and

(3) The directorships for which an election will be held for terms beginning on the January 1 of the following year, and the length of those terms.

(b) *Capital stock reports.* (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of each class of stock required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) The number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank.

(c) *Allocation of member directorships.* For each Bank's board of directors, the Director will designate a total number of member directorships and allocate them among the voting States of the Bank's district as follows:

(1) *Method of equal proportions.* (i) FHFA will choose a base number of member directorships and, using the method of equal proportions, allocate those among the voting States of the Bank district according to the ratio of the number of shares of Bank stock required to be held by the members in each State to the number of shares required to be held by all members of the Bank.

(ii) In no case shall the number of member directorships allocated to a voting State be fewer than one or more than six.

(iii) If a Bank has issued more than one class of stock, the Director will allocate the member directorships based on the combined number of shares required to be held by members.

(iv) The Director will allocate a Bank's member directorships based upon members' minimum required stock holdings as of the record date, as shown in the Bank's capital stock report required by paragraph (b) of this section.

(2) *Grandfather provision.* If, after completing the process described in paragraph (c)(1) of this section for a Bank, the number of member directorships allocated to any voting State is not at least equal to the minimum number shown for that voting State on the table in § 1261.15, the Director will allocate to that voting State

such number of additional member directorships as are necessary to increase the total number of member directorships allocated to that voting State to the number shown on the table. If a voting State does not appear on the table in § 1261.15, the minimum number of member directorships for that voting State is deemed to be one for purposes of this paragraph (c)(2).

(d) *Independent directorships.* After designating the member directorships for a Bank's board of directors as provided in paragraph (c) of this section, the Director will designate a number of independent directorships for the Bank's board that is at least 40 percent, but less than 50 percent, of the total number of directorships on the board.

(e) *Adjustments—(1) Redesignated member directorships.* If the annual designation of directorships results in an existing member directorship being redesignated as representing members in a different voting State, that directorship shall be deemed to terminate in the previous voting State as of December 31 of the current year, and a new directorship to begin in the succeeding voting State as of January 1 of the next year. The new directorship shall be filled by vote of the members in the succeeding voting State and, in order to maintain the staggered terms of directorships, shall be adjusted to a term equal to the remaining term of the previous directorship if it had not been redesignated to another State.

(2) *New directorships.* If the annual designation of directorships results in the addition of one or more directorships to a Bank's board, the Director may truncate the initial term of any such new directorship if required to ensure that the terms of the Bank's directorships are staggered with approximately one quarter of the terms expiring each year.

(f) *Public interest independent directorships.* Annually, the board of directors of each Bank shall determine the number of public interest independent directorships to be included among its designated independent directorships for the following year, ensuring that at all times the Bank will have at least two such directorships. In its discretion, a Bank's board may change the number of public interest independent directorships during the year, provided that there are at all times at least two such directorships.

§ 1261.5 Director eligibility.

(a) *Eligibility requirements for member directors and nominees.* (1) Each member director, and each

nominee for a member directorship, shall be:

(i) A citizen of the United States; and
(ii) An officer or director of a member that is located in the voting State of the Bank district to which the directorship being occupied, sought, or filled has been allocated under § 1261.4(c) and that meets all minimum capital requirements established by its appropriate Federal banking agency or appropriate State regulator.

(2) In the case of a director elected by a Bank's members under § 1261.8, the institution of which the director is an officer or director must have been a member as of the record date. In the case of a director elected by a Bank's board of directors to fill a vacancy under § 1261.14, the institution of which the director is an officer or director must be a member at the time the board acts.

(b) *Eligibility requirements for independent directors and nominees.* Each independent director, and each nominee for an independent directorship, shall at all times:

(1) Be a citizen of the United States;
(2) Be a bona fide resident of the district in which the Bank is located;
(3) Meet the independence requirements of § 1261.10; and
(4) Meet the applicable qualifications requirements specified in paragraph (c) of this section.

(c) *Independent director qualifications—(1) Regular independent directors.* Each regular independent director and each nominee for a regular independent directorship shall have experience in, or knowledge of, one or more of the following areas: auditing and accounting; derivatives; financial management; organizational management; project development; risk management practices; artificial intelligence; information technology and security; climate-related risk; Community Development Financial Institution (CDFI) business models; modeling; the law; and such other areas as the Director shall determine. Before nominating any individual for a regular independent directorship, the board of directors of a Bank shall determine that such knowledge or experience of the nominee is commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.

(2) *Public interest independent directors.* Each public interest independent director and each nominee for a public interest independent directorship shall have more than four years of experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protection. For

purposes of this paragraph (c)(2), *representing* means advocating for, or otherwise acting primarily on behalf of or for the direct benefit of, consumers or the community. Qualifying experience in one of the four enumerated areas may have been acquired in professional, public service, or significant volunteer positions, so long as the work done was substantial in terms of time commitment and responsibility. Such experience must have accrued from activities personally undertaken by the director or nominee, as opposed to being attributed based solely on the activities of organizations with which the person was associated.

(3) *Relevance of experience to be considered.* In considering potential nominees for independent directorships, a Bank's board of directors shall give special consideration to individuals that:

(i) Possess knowledge and experience that are relevant to the business, programs, and mission of the Bank and that provide a basis for understanding the actual and potential impact of the Bank's activities on its members and on communities within the Bank's district; and

(ii) Have gained their knowledge and experience primarily through full time paid executive, management, or other senior positions.

(d) *Term limits.* (1) The following are ineligible for nomination or election to a directorship of a Bank:

(i) Any incumbent director whose term of office would not expire before the new term of office would begin; and

(ii) Any person that has been elected to each of three consecutive full terms as a director of a Bank and has served for all or part of each of those terms, unless the term of the directorship to be filled begins at least two years after the expiration of the third consecutive term.

(2) For purposes of determining whether a person is ineligible under the term limit provision of paragraph (d)(1)(ii) of this section:

(i) A four-year term of office shall count as a full term;

(ii) A term of office that is adjusted to a period of fewer than four years as provided in § 1261.4(e) shall not count as a full term;

(iii) Any full term of office that ends immediately before a term of office that is adjusted to a period of fewer than four years as provided in § 1261.4(e), and any full term of office commencing immediately following such adjusted term of office, shall count as consecutive full terms of office; and

(iv) Any period of time served by a director who has been elected by the

board of directors to fill a vacancy under § 1261.14 shall not count as a full term.

(e) *Loss of eligibility.* A director shall become ineligible to remain in office if, during the director's term of office, the directorship to which the director has been elected is eliminated through the annual designation of directorships process described in § 1261.4. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

§ 1261.6 Determination of member votes.

(a) *In general.* Each Bank shall determine, in accordance with this section, the number of votes that each member of the Bank may cast for each directorship that is to be filled by the vote of the members.

(b) *Number of votes.* For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. The number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan.

(c) *Voting preferences.* If the board of directors of a Bank includes any voting preferences as part of its approved capital plan, those preferences shall supersede the provisions of paragraph (b) of this section that otherwise would allow a member to cast one vote for each share of Bank stock it was required to hold as of the record date. If a Bank establishes a voting preference for a class of stock, the members with voting rights shall remain subject to the provisions of section 7(b) of the Bank Act (12 U.S.C. 1427(b)) that prohibit any member from casting any vote in excess of the average number of shares of stock required to be held by all members in its state.

§ 1261.7 Nominations for member and independent directorships.

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall notify each member in its district of the commencement of the election process. Such notice shall include:

(1) The number of member directorships designated for each voting State in the Bank district and the number of independent directorships designated for the Bank, including the number of independent directorships designated by the Bank as public interest independent directorships, for the following calendar year;

(2) The name of each incumbent Bank director, the name and location of the member at which each member director serves, and the name and location of the organization with which each independent director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) Identification of the member directorships, regular independent directorships, and public interest independent directorships for which an election will be held;

(4) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, as determined through the annual assessment required under § 1261.9;

(5) An attachment indicating the name, location, and FHFA ID number of every member in the member's voting State, and the number of votes each such member may cast for each directorship to be filled by such members, as determined in accordance with § 1261.6; and

(6) If a member directorship is to be filled by members in a voting State, a nominating certificate for those members.

(b) Member directorship nominations—

(1) *Nominating certificates.* (i) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available member directorship for its voting State by delivering to its Bank, prior to a deadline to be established by the Bank and set forth in the notice required in paragraph (a) of this section, a nominating certificate duly adopted by the member's governing body or by an individual authorized by the member's governing body to act on its behalf.

(ii) The nominating certificate shall include the name of the nominee and the name, location, and FHFA ID number of the member the nominee serves as an officer or director.

(iii) The Bank shall establish a deadline for delivery of nominating

certificates, which shall be no earlier than 30 calendar days after the date on which the Bank delivers the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline.

(2) *Accepting member directorship nominations.* Promptly after receipt of any nominating certificate, a Bank shall notify in writing any individual nominated for a member directorship. An individual may accept the nomination only by delivering to the Bank, prior to a deadline established by the Bank and set forth in its notice, an executed member director eligibility certification form prescribed by FHFA. A Bank shall allow each nominee at least 30 calendar days after the date the Bank delivered the notice of nomination within which to deliver the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to deliver a properly executed member director eligibility certification form prior to the deadline.

(c) *Independent directorship nominations*—(1) *Potential nominees.* Any individual may request to be considered for nomination to an independent directorship of the board of directors of a Bank by delivering to the Bank, on or before the deadline set by the Bank for delivery of nominating certificates, an executed independent director application form prescribed by FHFA. Any other interested party also may recommend to the Bank that it consider a particular individual as a nominee for an independent directorship, but the Bank shall not nominate any individual unless the individual has delivered to the Bank, on or before the date the Bank has set for delivery of nominating certificates, an executed independent director application form prescribed by FHFA.

(2) *Application form.* The independent director application form prescribed by FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest independent directorship. The board of directors of the Bank shall nominate for a public interest independent directorship only an individual who indicates on the application form a desire to be considered for a public interest independent directorship.

(3) *Advisory Council.* The board of directors of the Bank shall consult with the Bank's Advisory Council before nominating any individual for any independent directorship.

(4) *Procedures.* Each Bank shall include in its bylaws the procedures it

intends to use for the nomination and election of the independent directors.

(5) *Minimum number of nominees.* Each Bank shall nominate at least as many individuals as there are respective regular and public interest independent directorship to be filled in that year's election.

(d) *Eligibility verification*—(1) *Member directorship nominees.* Using the information provided on executed member director eligibility certification forms prescribed by FHFA, each Bank shall verify that each nominee for each member directorship meets all the eligibility requirements of § 1261.5(a).

(2) *Independent directorship nominees.* (i) Using the information provided on executed independent director application forms prescribed by FHFA, each Bank shall verify that each nominee for each public interest independent directorship and each regular independent directorship meets the eligibility requirements of § 1261.5(b).

(ii) Before announcing any independent director nominee, the Bank shall deliver to FHFA for its review a copy of the independent director application forms executed by the individuals nominated for independent directorships. If within two weeks of such delivery FHFA provides comments to the Bank on any independent director nominee, the board of directors of the Bank shall consider FHFA's comments in determining whether to proceed with those nominees or to reopen the nomination.

(3) *Eligible nominees.* A Bank's board shall neither nominate any individual for an independent directorship nor include any nominee for a member directorship on the ballot required under § 1261.8(a) if it has not concluded based on the submissions required under this part and any pertinent supplementary material that the individual meets the applicable eligibility requirements set forth in § 1261.5(a) or (b) and is not term-limited as provided under § 1261.5(d).

(e) *Background checks.* A Bank's board shall neither nominate any individual for an independent directorship nor include any nominee for a member directorship on the ballot required under § 1261.8(a), without having first concluded, based on a thorough background check, that the individual is fit to serve in a fiduciary role with the Bank. Each Bank shall include with its submission required under paragraph (d)(2)(ii) of this section a discussion of the results of the background check for each independent directorship nominee, including any potentially concerning information that

was revealed and how the Bank's concerns were allayed.

(f) *Record retention.* Subject to a duly enacted record retention policy, each Bank shall retain all information received under this section for at least seven years after the date of the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board.

§ 1261.8 Election process.

(a) *Ballots.* Promptly after fulfilling the requirements of § 1261.7(d), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member. A ballot shall include at least the following provisions:

(1) For states in which one or more member directorships are to be filled in the election, an alphabetical listing of the names of each nominee for such directorship, the name, location, and FHFA ID number of the member each nominee serves, the nominee's title or position with the member, a brief description of the skills and experience of each nominee, and the number of member directorships to be filled by the members in that voting State in the election;

(2) An alphabetical listing of the names of each nominee for a public interest independent directorship and a brief description of how each nominee meets the qualifications requirements for public interest independent directors set forth in § 1261.5(c)(2);

(3) An alphabetical listing of the names of each nominee for regular independent directorships and a brief description of how each nominee meets the required qualification requirements for regular independent directors set forth in § 1261.5(c)(1);

(4) A statement of the results of assessments conducted under § 1261.9 and, if the statement differs from the statement provided under § 1261.7(a)(4), an explanation of why the statements differ;

(5) A statement that write-in candidates are not permitted; and

(6) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

(b) *Lack of member directorship nominees.* If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year's

election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting. Thereafter, the Bank shall declare elected all such eligible nominees. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (f) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with § 1261.14.

(c) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 1261.6. A member may not split its votes among multiple nominees for a single directorship, and, where there are multiple directorships to be filled, either within the member's voting State or at large, in the case of independent directorships, a member may not cumulatively vote for a single nominee. If any member votes, it shall by resolution of its governing body either authorizing the voting for specific nominees or delegating to an individual the authority to vote for specific nominees. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each directorship to be filled. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute and deliver the ballot to the Bank on or before the closing date. A Bank shall not allow a member to change a ballot after it has been delivered to the Bank.

(d) *Counting ballots.* A Bank shall not review any ballot until after the closing date, and shall not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate the votes cast in the election: for the member directorships, the Bank shall tabulate votes by each voting State; for the independent directorships, the Bank shall tabulate votes for the district at-large. Any ballots cast in violation of paragraph (c) of this section shall be void.

(e) *Declaring results—(1) For member directorships.* The Bank shall declare elected the nominee receiving the highest number of votes. If more than one member directorship is to be filled for a particular State, the Bank shall declare elected each successive nominee receiving the next highest number of

votes until all such open directorships are filled.

(2) *For independent directorships.* (i) The Bank shall tabulate separately the votes received for public interest independent directorship nominees and those received for regular independent directorship nominees, in each case in accordance with paragraph (e)(2)(ii) of this section.

(ii) If the number of nominees exceeds the number of directorships to be filled, the Bank shall declare elected the nominee receiving the highest number of votes. If more than one directorship is to be filled, the Bank shall declare elected each successive nominee receiving the next highest number of votes for such directorship until all such open directorships are filled.

(iii) If the number of nominees is no more than the number of directorships to be filled, the Bank shall declare elected each nominee receiving at least 20 percent of the number of votes eligible to be cast in the election. If any directorship is not filled due to any nominee's failure to receive at least 20 percent of the votes eligible to be cast, the Bank shall continue the election process for that directorship under the procedures in paragraph (g) of this section.

(3) *Tie votes.* In the event of a tie for the last available directorship, the disinterested incumbent directors of the Bank, by a majority vote, shall declare elected one of the nominees for whom the number of votes cast was tied.

(4) *Eligibility.* A Bank's board shall not declare elected a nominee that it has reason to know is ineligible or unfit to serve, nor shall it seat a director-elect that it has reason to know is ineligible or unfit to serve.

(5) *Record retention.* The Bank shall retain all ballots it receives for at least seven years after the date of the election, and shall not disclose how any member voted.

(f) *Report of election.* Promptly following the election, each Bank shall deliver a notice to its members, to each nominee, and to FHFA that contains the following information:

(1) For each member directorship, the name of the director-elect, the name and location of the member at which he or she serves, his or her title or position at the member, the voting State represented, and the expiration date of the term of office;

(2) For each independent directorship, the name of the director-elect, whether the director-elect will fill a public interest or a regular independent directorship and, as appropriate, the consumer or community interest represented by such

director, any qualifications under § 1261.5(c)(1), and the expiration date of the term of office;

(3) For member directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported by State; and

(4) For independent directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported for the district at large.

(g) *Failure to fill all independent directorships.* If any independent directorship is not filled due to the failure of any nominee to receive at least 20 percent of the eligible vote, the Bank shall continue the election process for that directorship under the following procedures:

(1) The Bank's board of directors, after again consulting with the Bank's Advisory Council, shall nominate at least as many individuals as there are independent directorships to be filled. It may nominate individuals who failed to be elected in the initial vote. The Bank thereafter shall deliver to FHFA a copy of the independent director application form executed by each nominee.

(2) The Bank then shall follow the provisions in this section that are applicable to the election process for independent directors, except for the following:

(i) The Bank shall not place the name of any nominee on a ballot without prior approval of FHFA; and

(ii) The Bank may adopt a closing date that is earlier than 30 calendar days after delivery of the ballots to the eligible voting members, provided the Bank determines that an earlier closing date provides a reasonable amount of time to vote the ballots.

§ 1261.9 Actions affecting director elections.

(a) *Annual assessment of skills and experience.* Each Bank, acting through its board of directors pursuant to policies adopted by the board, shall conduct an annual assessment of the skills and experience possessed by its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications such as those described in § 1261.5(c)(1), it shall identify those qualifications and inform the members that the Bank is seeking

member and independent director nominees that have those qualifications as part of its election announcement pursuant to § 1261.7(a).

(b) *Support for nomination or election.* (1) A Bank director, officer, attorney, employee, or agent, acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided that no such individual shall purport to represent the views of the Bank or its board of directors in doing so.

(2) A Bank director, officer, attorney, employee or agent and the board of directors and Advisory Council (including members of the Council) of a Bank may support the candidacy of any individual nominated by the board of directors for election to an independent directorship.

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, or § 1223.21(b)(7) of this chapter, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

§ 1261.10 Independent director independence.

(a) *Employment interests.* (1) An independent director, and a nominee for an independent directorship, shall not serve as an officer, employee, or director of any member of the Bank on whose board the individual serves or has been nominated to serve, or of any recipient of advances from such Bank, and shall not serve as an officer or employee of any Bank. An independent director or nominee for any independent directorship, and any individual seeking nomination for an independent directorship, shall disclose all such interests to the Bank on whose board of directors the individual serves or which is considering the individual for nomination to its board of directors.

(2) For purposes of paragraph (a)(1) of this section, “advances” includes any loan from a Bank to the recipient, regardless of form or nomenclature, except for debt securities traded in the public capital markets.

(b) *Holding companies.* Service as an officer, employee, or director of a holding company that controls one or more members of, or one or more recipients of advances from, the Bank on whose board an independent director

serves is not deemed to be service as an officer, employee or director of a member or recipient of advances if the assets of all such members or all such recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

(c) *Attribution.* For purposes of determining compliance with this section, a Bank shall attribute to the independent director any officer position, employee position, or directorship of the director's immediate family members (as defined in § 1261.11(f)).

(d) *Member director transition period.* An individual who has served as a member director of any Bank may not serve as an independent director of any Bank until at least two years has elapsed since the date the individual officially left the member directorship, whether due to ineligibility or otherwise.

§ 1261.11 Conflicts of interest policy for Bank directors.

(a) *Adoption of conflicts of interest policy.* Each Bank shall adopt a written conflicts of interest policy that applies to all members of its board of directors. At a minimum, the conflicts of interest policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member;

(2) Require independent directors to comply with § 1261.10(a);

(3) Prohibit the use of a director's official position for personal gain;

(4) Require directors to disclose actual or apparent conflicts of interest and establish procedures for addressing such conflicts;

(5) Require the establishment of internal controls to ensure that conflicts of interest reports are made and filed and that conflicts of interest issues are disclosed and resolved; and

(6) Establish procedures to monitor compliance with the conflicts of interest policy.

(b) *Disclosure and recusal.* A director shall disclose to the Bank's board of directors any financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the Bank's board of directors and in any other business matter or proposed business matter involving the Bank and any other person or entity. A director shall disclose fully the nature of his or her interests in the matter and shall provide to the Bank's board of directors any information requested to aid in its

consideration of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has any financial interest.

(c) *Confidential information.* Directors shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

(d) *Gifts.* No Bank director shall accept, and each Bank director shall discourage the director's immediate family members from accepting, any gift that the director believes or has reason to believe is given with the intent to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift would have the appearance of intending to influence the director's actions as a member of the board. Any insubstantial gift would not be expected to trigger the prohibition in this paragraph (d).

(e) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) *Definitions.* For purposes of this section:

Business associate means any individual or entity with whom a director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or partner, or in which the director beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.

Financial interest means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account, loan or extension of credit, or other accounts and products obtained in the normal course of business on non-preferential terms generally available to the public from a member institution or from a non-

member counterparty to the Bank on whose board the director sits.

Immediate family member means parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director.

§ 1261.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* Annually, each Bank shall require each of its directors to execute and deliver to the Bank the appropriate director eligibility certification form prescribed by FHFA for the type of directorship held by such director. The Bank promptly shall deliver to FHFA a copy of the certification form delivered to it by each director.

(b) *Report of noncompliance.* At any time that any director believes or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Bank Act or this subpart, the director promptly shall so notify the Bank in writing. At any time that a Bank believes or has reason to believe that any director no longer meets the eligibility requirements set forth in the Bank Act or this subpart, the Bank promptly shall notify FHFA in writing.

§ 1261.13 Ineligibility and removal of Bank directors.

(a) *Ineligibility.* Upon a determination by FHFA or a Bank that any director of the Bank no longer satisfies the eligibility requirements set forth in the Bank Act or this subpart, or has failed to comply with the reporting requirements of § 1261.12, the directorship shall immediately become vacant. Any director that is determined to have failed to comply with any of the requirements in this paragraph (a) shall not continue to serve as a Bank director. Whenever a Bank makes such a determination, the Bank promptly shall notify the Bank director and FHFA in writing.

(b) *Removal for good cause.* (1) A Bank's board of directors may, upon a vote of two-thirds of its disinterested directors, remove any director for good cause pursuant to policies adopted by the board. Removal for good cause may be based upon:

(i) A material violation of the Bank's code of ethics or other applicable Bank policy;

(ii) A material violation of the Bank Act, FHFA regulations, or other civil or criminal law;

(iii) A determination by the board that continuation in office of such director would be materially harmful to the Bank;

(iv) Conduct, or a mental or physical condition, that raises substantial

questions concerning the director's ability to fulfill his or her duties and obligations; or

(v) A determination under § 1261.22(b)(3) that the director's continuous poor performance or lack of participation is compromising the board's ability to adequately oversee the operations of the Bank.

(2) A Bank shall promptly notify FHFA in writing of any pending or final removal action under this paragraph (b).

§ 1261.14 Vacant Bank directorships.

(a) *Filling unexpired terms.* Subject to the provisions of this section, when a vacancy occurs on the board of directors of a Bank, the board shall elect, by a majority vote of the remaining Bank directors sitting as a board, an individual to fill the unexpired term of office of the vacant directorship, regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(1) The board of directors may fill an anticipated vacancy prior to the effective date of the vacancy, provided the board does so no sooner than the date of the regularly scheduled board meeting that occurs immediately prior to the effective date of the vacancy.

(2) The board of directors shall:

(i) Fill a vacant member directorship only with an individual who meets the requirements of § 1261.5(a); and

(ii) Fill a vacant independent directorship only with an individual who meets the requirements of § 1261.5(b).

(3) If a Bank does not have at least two sitting public interest independent directors, its board of directors shall either:

(i) Elect an individual who is qualified under § 1261.5(c)(2) to serve as a public interest independent director to fill the vacancy; or

(ii) Elect to redesignate as a public interest independent director a sitting regular independent director who is qualified under § 1261.5(c)(2) to serve as a public interest independent director and elect another individual who is qualified under § 1261.5(c)(1) to serve as a regular independent director to fill the resulting vacant regular independent directorship.

(4) If the Bank has more than two sitting public interest independent directors, the board of directors may redesignate as a regular independent director a sitting public interest independent director who is qualified under § 1261.5(c)(2).

(5) The board of directors of the Bank shall consult with the Bank's Advisory Council before considering any

individual to fill a vacant independent directorship.

(b) *Verifying eligibility.* Prior to any election by the board of directors to fill a board vacancy, the Bank shall fulfill the requirements of this paragraph (b).

(1) The Bank shall obtain an executed member director eligibility certification form prescribed by FHFA from each individual being considered to fill a vacant member directorship and an executed independent director application form prescribed by FHFA from each individual being considered to fill a vacant independent directorship (including any sitting regular independent director to be redesignated as public interest independent director). Using the executed forms, each Bank shall verify each individual's eligibility and, as to independent directors, also shall verify that the individual meets the qualifications requirements for regular independent directors under § 1261.5(c)(1) or public interest independent directors under § 1261.5(c)(2), as appropriate.

(2) For each individual being considered to fill a vacant directorship, the Bank shall conduct a background check, as provided in § 1261.7(e).

(3) The Bank shall deliver to FHFA for its review a copy of the executed independent director application form for each individual being considered by the board to fill a vacant independent directorship, as well as a summary of the results of the background check. If within two weeks of such delivery FHFA provides comments to the Bank on any of those individuals, the board of directors of the Bank shall consider FHFA's comments in determining whether to elect a director from among those individuals or to seek additional individuals for consideration.

(4) The Bank shall retain the information it receives pursuant to this paragraph (b) for at least seven years after the date of the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board.

(c) *Notification.* Promptly after allowing the individual to assume the directorship, as provided in paragraph (b) of this section, a Bank shall notify FHFA and each member located in the Bank's district in writing of the following:

(1) For each member directorship filled by the board of a Bank, the name of the director, the name, location, and FHFA ID number of the member the director serves, the director's title or position with the member, the voting State that the director represents, and

the expiration date of the director's term of office; and

(2) For each independent directorship filled by the board of a Bank, the name of the director, the name and location of the organization with which the director is affiliated, if any, the director's title or position with such organization, and the expiration date of the director's term of office.

§ 1261.15 Minimum number of member directorships.

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each State shall not be less than the number of directorships allocated to that State on December 31, 1960. The following table sets forth the States within Bank districts not created from the merger of two or more Banks whose members held more than one directorship on December 31, 1960:

TABLE 1 TO § 1261.15

State	Number of elective directorships on December 31, 1960
California	3
Colorado	2
Illinois	4
Indiana	5
Kansas	3
Kentucky	2
Louisiana	2
Massachusetts	3
Michigan	3
New Jersey	4
New York	4
Ohio	4
Oklahoma	2
Pennsylvania	6
Tennessee	2
Texas	3
Wisconsin	4

Subpart C—Federal Home Loan Bank Directors' Compensation and Expenses

§ 1261.20 Definitions.

As used in this subpart:

Compensation means any payment of money or the provision of any other thing of current or potential value in connection with service as a director. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any director.

Expenses means necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of official duties as are payable to senior officers of the

Bank under the Bank's travel policy, except gift or entertainment expenses.

§ 1261.21 General.

(a) *Standard.* Each Bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, as determined by a resolution adopted by the board of directors of the Bank and subject to the provisions of this subpart. The Director may establish and provide notice of an annual amount of compensation determined to be reasonable.

(b) *Reporting*—(1) *Following calendar year.* By December 31 of each calendar year, each Bank shall report to the Director the compensation it anticipates paying to its directors for the following calendar year.

(2) *Preceding calendar year.* No later than the tenth business day of each calendar year, each Bank shall report to the Director the following information relating to director compensation, expenses, and meeting attendance for the immediately preceding calendar year:

(i) The total compensation paid to each director;

(ii) The total expenses paid to each director;

(iii) The total compensation paid to all directors;

(iv) The total expenses paid to all directors;

(v) The total of all expenses incurred at group functions that are not reimbursed to individual directors, such as the cost of group meals in connection with board and committee meetings;

(vi) The total number of meetings held by the board and its designated committees; and

(vii) The number of board and designated committee meetings each director attended in-person or remotely, through video conferencing or teleconferencing, and in accordance with § 1261.24(b).

§ 1261.22 Directors' compensation policy.

(a) *General.* Each Bank's board of directors annually shall adopt a written compensation policy to provide for the payment of reasonable compensation and expenses to the directors for the time required of them in performing their duties as directors. Payments under the directors' compensation policy may be based on any factors that the board of directors determines reasonably to be appropriate, subject to the requirements in this subpart.

(b) *Minimum contents.* (1) The compensation policy shall address the activities or functions for which director attendance or participation is necessary

and which may be compensated, and shall explain and justify the methodology used to determine the amount of compensation to be paid to the Bank directors.

(2) The compensation policy shall require that any compensation paid to a director reflect the amount of time the director has spent on official Bank business and shall require that compensation be reduced or a director removed, as necessary, to reflect lesser attendance or performance at board or committee meetings during a given year.

(3) In addition to attendance, the compensation policy shall establish a fair and impartial process for annually evaluating individual director performance and participation, including, but not limited to, an assessment of whether each director:

(i) Demonstrated understanding of the Bank System;

(ii) Demonstrated knowledge of the Bank's policies and governance documents;

(iii) Demonstrated understanding of his or her legal and ethical responsibilities as a board member;

(iv) Made suggestions congruent with the Bank's mission, vision and values (even if divergent from majority opinion); and

(v) Acted in support of Board decisions, regardless of initial position.

(c) *Prohibited payments.* A Bank shall not pay a director who regularly fails to attend board or committee meetings, and shall not pay fees to a director that do not reflect the director's performance of official Bank business conducted prior to the payment of such fees.

(d) *Submission requirements.* No later than the tenth business day after adopting its annual policy for director compensation and expenses, and at least 30 days prior to disbursing the first payment to any director, each Bank shall submit to the Director a copy of the policy, along with all studies or other supporting materials upon which the board relied in determining the level of compensation and expenses to pay to its directors.

§ 1261.23 Director disapproval.

The Director may determine, based upon his or her review of a Bank's director compensation policy, methodology and/or other related materials, that the compensation and/or expenses to be paid to the directors are not reasonable. In such case, the Director may order the Bank to refrain from making any further payments under that compensation policy. Any such order shall apply prospectively only and will not affect either compensation or expenses that have

been earned but not yet paid or reimbursed or payments that had been made prior to the date of the Director's determination and order.

§ 1261.24 Board meetings.

(a) *Number of meetings.* The board of directors of each Bank shall hold as many meetings each year as necessary and appropriate to carry out its fiduciary responsibilities with respect to the effective oversight of Bank management and such other duties and obligations as may be imposed by applicable laws, provided the board holds a minimum of six meetings in any year.

(b) *Site of meetings.* (1) A Bank's board of directors and its committees may conduct meetings in-person, through video conferencing or teleconferencing, or in a hybrid format, provided that all directors have an opportunity to communicate and have access to all written documents and presentations.

(2) Each Bank should generally hold board and committee meetings within the district served by the Bank. A Bank shall not hold board or committee meetings in any location that is not within a State, as defined by 12 CFR 1201.1. A director must be located within a State when attending a meeting remotely through video conferencing or teleconferencing.

(c) *Quorum.* A quorum, for purposes of meetings of a Bank's board of directors, shall require a majority of sitting directors, which must include a majority of sitting independent directors.

PART 1273—OFFICE OF FINANCE

■ 4. The authority citation for part 1273 continues to read as follows:

Authority: 12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

■ 5. Amend § 1273.5 by revising paragraph (b)(1) to read as follows:

§ 1273.5 Funding of the OF.

* * * * *

(b) * * *

(1) At the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the OF and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, draft, wire transfer, or other funds transfer methods with written authorization by the CEO or other persons designated by the CEO or OF board of directors in accordance with OF governance documents.

* * * * *

■ 6. Amend § 1273.8 by revising paragraphs (b) and (d) to read as follows:

§ 1273.8 General duties of the OF board of directors.

* * * * *

(b) *Meetings and quorum—*(1) *Meeting frequency.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its by-laws, and shall hold no fewer than six meetings annually, which may be conducted in-person, through video conferencing or teleconferencing, or in a hybrid format, provided that all directors have an opportunity to communicate and have access to all written documents and presentations.

(2) *Meeting location.* The OF shall not hold board or committee meetings in any location that is not within a State, as defined by 12 CFR 1201.1. A director

must be located within a State when attending a meeting remotely through videoconferencing or teleconferencing.

(3) *Notice.* Due notice shall be given to FHFA by the Chair prior to each meeting.

(4) *Quorum.* A quorum, for purposes of meetings of the OF board of directors, shall require a majority of sitting board members, which must include a majority of sitting Independent Directors.

* * * * *

(d) *Other duties.* The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of 12 CFR 1239.14, as appropriate;

(3) Select, employ, determine the compensation for, and assign the duties and functions of a CEO of the OF who shall—

(i) Be head of the OF and direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the FICO, pursuant to section 21(b)(1)(A) of the Bank Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the REFCORP, pursuant to section 21B(c)(1)(A) of the Bank Act (12 U.S.C. 1441b(c)(1)(A));

(4) Review and approve contracts of the OF, as specified in OF governance documents; and

(5) Assume any other responsibilities that may from time to time be assigned to it by FHFA.

* * * * *

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2024-24767 Filed 11-1-24; 8:45 am]

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FEDERAL REGISTER

Vol. 89

Monday,

No. 213

November 4, 2024

Part III

The President

Notice of November 1, 2024—Continuation of the National Emergency With Respect to Iran

Presidential Documents

Title 3—

Notice of November 1, 2024

The President

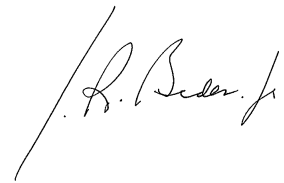
Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran.

Our relations with Iran have not yet normalized, and the process of implementing the agreements with Iran, dated January 19, 1981, is ongoing. For this reason, the national emergency declared on November 14, 1979, and the measures adopted on that date to deal with that emergency, must continue in effect beyond November 14, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12170.

The emergency declared by Executive Order 12170 is distinct from the emergency declared in Executive Order 12957 on March 15, 1995. This renewal, therefore, is distinct from the emergency renewal of March 12, 2024.

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



THE WHITE HOUSE,
November 1, 2024.

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